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НАЦІОНАЛЬНА АКАДЕМІЯ ПРАВОВИХ НАУК УКРАЇНИ

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CONTENTS

Foreword ... 11

THEORY AND HISTORY OF STATE AND LAW

Petryshyn O., Petryshyn O.
Reforming Ukraine: Problems of Constitutional Regulation and Implementation of Human Rights ... 12
Honcharenko V.
The UPR Constitution of 1918 – the Pinnacle of Legislative Activities of the Ukrainian Central Rada ... 23
Yermolaiev V.
On the Constitutional Process in the Ukrainian Peple's Repablic, 1917–1918 ... 35
Zaichuk O., Zaichuk Yu.
Freedom of Expression, Electronic Media and Cybercrime – A Rapidly Evolving Legal Landscape ... 48
Onishchenko N.
Development of the National Legal System in the Context of Civil Society Requests ... 53
Lukianov D.
Legal Systems in the Era of Globalization ... 63
Maksymov S.
Law as a Normative System: Humanistic Positivism of Eugenio Bulygin ... 71
Rumiantsev V.
Issues of Power Organization Under the Draft Constitution by Otto Eihelman ... 81
Hryshchuk O.
Philosophy of Human Dignity in Law ... 91
Zinchenko O.
Peculiarities of Arab Monarchies Forms of Government (Comparative Analysis) ... 103
Kozachenko A.
Local Self-Government System Upon Draft Constitutions of Ukrainian People's Republic of 1917, 1918 And 1920: Sources, Main Risks And Historical Importance ... 115
Omelchuk O.
Theoretical and Legal Aspects of the Study of Human Behavior ... 123
Politanskyi V.
Innovative Legal Views Regarding Stages Development E-Government ... 134

STATE-LEGAL SCIENCES AND INTERNATIONAL LAW

Kucheryavenko N.
The significance and consequences of the existence of the principle of the innocence of the taxpayer in the regime of administrative and tax regulation ... 145
Harashchuk V.
Globalization Processes in Ukraine: Problematic Issues ... 152
Kolomoiets T., Stetsenko S., Sharaia A.
Gifts for a Public Servant: Whether It is Worth to Comply with the Rules ... 159

Kolpakov V.
Administrative Proceeding Relations in the Subject of Administrative Law 172
Shcherbanyuk O.
Competitive Selection of Judges: Problems of Constitutional Realization 179
Pysarenko N.
Unity of Procedure Principles in Administrative and Tax Law 194

CIVIL–LEGAL SCIENCES

Kuznietsova N.
Ensuring high-quality practical training of law students as an integral part of the reform of legal education...197
Kokhanovskaya O.
Regulation of non-property relations in the Civil Code of Ukraine: experience and perspectives..204
Krupchan O.
Anti-statism of Private Law 215
Luts V.
Phenomenon of Contract in Civil Law 223
Maydanyk R.
Virtual Currency in The Civil Law of Ukraine: State, Trends, Perspectives......................233
Bodnar T.
Some problems of protection of proprietary rights of children 247
Chanysheva G.
The Principle of Social Dialogue in the Field of Labour as One of the Main Principles of Labor Law...253
Bychkova S., Churpita A.
Relationship Between the Rules of Family Law and the Procedural Form of Non-Recourse Civil Proceedings 260
Hryniak A., Kot O., Pleniuk M.
Contractual Regulation of Relations of Joint Ownership of Individuals in Ukraine (on the Example of Agreements on the Transfer of Property into Ownership) 272
Kostruba A., Khomenko M.
Development Trends of the Private Law of France 289

ENVIRONMENTAL, ECONOMIC AND AGRICULTURAL LAW

Getman A., Shekhovtsov V.
Ecologization of the origin of the ownership right on the objects of fauna in the aquaculture area 305
Kostytsky V.
Environmental Law as the Theologically-Sociological Phenomenon 315
Malysheva N.
New Boundaries of the Environmental Law of Ukraine 327
Shcherbyna V.
The Right to Economic Management and the Right to Operational Control: the Concept, Essence and Application Scope in Ukraine 337

Balyuk G.
Legal Bases of the State Environmental Policy of Ukraine: Modern Problems................353
Kulinich P.
Directions of improvements of legal regulations of land relations
in Ukraine under conditions of power’s decentralization...362
Nosik V.
Issues of legislative support of legal use of farming lands in collective ownership
in Ukraine 369
Stativka A., Kulchii I.
Legal Provision of Rural Tourism as a Trend of Rural Areas Diversification 378
Ustymenko V., Polishchuk N.
On the State of Legal Support of Cryptocurrencies in Ukraine:
Through the Prism of Foreign Experience..386
Shulga M.
Features of The Legal Regimes of the Categories
of Land Except Agricultural Land 394
Dzhabrailov R., Malolitneva V.
The Promotion of Sustainable Development Through Trade Instruments in the EU:
Case Study for Ukraine...403

CRIMINAL–LEGAL SCIENCES

Baulin Yu.
Fundamental Problems of Criminal Liability 414
Shepitko V., Shepitko M.
Time and Documents 426
Zhuravel V.
Classification of Criminalistic Methods of Crime Investigation 429
Hryshchuk V.
Social Conditionality of Criminal-Legal Guardship (Defense)
and Protection of Human Dignity in Ukraine..440
Tuliakov V.
Criminal Policy in East European Territories 448
Tymoshenko V.
The social basis of crime 454
Fris P.
Substantial Problems of the Criminal-Legal Policy of Modern Ukraine...........................460

ЗМІСТ

Вступ 11

ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА

Петришин О., Петришин О.
Реформи в Україні: проблеми конституційного регулювання
та реалізації прав людини 12
Гончаренко Д.
Конституція Української Народної Республіки 1918 р. – вінець законодавчої
діяльностиі Української Центральної Ради 23
Єрмолаєв В.
Про конституційний процес в Українській Народній Республіці 1917–1918 рр. 35
Зайчук О., Зайчук Ю.
Свобода самовиразу, електронні засоби масової інформації
і кіберзлочинність – правове поле, яке швидко змінюється 48
Оніщенко Н.
Розвиток національної правової системи в контексті запитів
громадянського суспільства 53
Лук'янов Д.
Правові системи в епоху глобалізації 63
Максимов С.
Право як нормативна система: гуманістичний позитивізм Євгенія Булигіна..............71
Рум'янцев В.
Проблеми організації влади за проектом конституції Отто Ейхельмана 81
Грищук О.
Філософія людської гідності у праві 91
Зінченко О.
Особливості форми правління арабських монархій (порівняльний аналіз)...............103
Козаченко А.
Система місцевого самоврядування Української Народної Республіки
за проектами конституцій 1917, 1918 та 1920 років: джерела, основні риси
та історичне значення 115
Омельчук О.
Теоретико-правові аспекти дослідження поведінки людини......................................123
Політанський В.
Новаційно-правові погляди стосовно стадій розвитку електронного урядування.....134

ДЕРЖАВНО-ПРАВОВІ НАУКИ І МІЖНАРОДНЕ ПРАВО

Кучерявенко М.
Значення і наслідки існування принципу невинуватості платника податку
в режимі адміністративного та податкового регулювання...145
Гаращук В.
Глобалізаційні процеси в Україні: проблемні питання 152

Коломоєць Т., Стеценко С., Шарая А.
Подарунки для публічних службовців: чи варто дотримуватися процедурних правил? 159
Колпаков В.
Адміністративно-процесуальні відносини в межах адміністративного права 172
Щербанюк О.
Конкурсний добір суддів: проблеми конституційної реалізації 179
Писаренко Н.
Єдність принципів процедури в адміністративному і податковому праві 194

ЦИВІЛЬНО-ПРАВОВІ НАУКИ

Кузнєцова Н.
Забезпечення якісної практичної підготовки студентів-юристів як невід’ємна складова реформування юридичної освіти 197
Кохановська О.
Регулювання немайнових відносин у ЦК України: досвід і перспективи 204
Крупчан О.
Антиетатизм приватного права 215
Луць В.
Феномен договору в цивільному праві 223
Майданик Р.
Віртуальна валюта в цивільному праві україни: стан, тенденції, перспективи 233
Боднар Т.
Деякі питання захисту майнових прав дітей 247
Чанишева Г.
Соціальний діалог у сфері праці як один з основних принципів трудового права 253
Бичкова С., Чурпіта Г.
Взаємозв’язок норм сімейного права та процесуальної форми непозовного цивільного судочинства 260
Гриняк А., Кот О., Пленюк М.
Договірне регулювання відносин спільної власності фізичних осіб в Україні (на прикладі договорів про передачу майна у власність) 272
Коструба А., Хоменко М.
Тенденції розвитку приватного права Франції 289

ЕКОЛОГІЧНЕ, ГОСПОДАРСЬКЕ ТА АГРАРНЕ ПРАВО

Гетьман А., Шеховцов В.
Екологізація виникнення права власності на об’єкти тваринного світу в галузі аквакультури 305
Костицький В.
Екологічне право як теолого-соціологічний феномен 315
Малишева Н.
Нові межі екологічного права України 327

Щербина В.
Право господарського відання і право оперативного управління: поняття, зміст та сфера застосування в Україні 337
Балюк Г.
Правові засади державної екологічної політики україни: сучасні проблеми 353
Кулинич П.
Напрями вдосконалення правового регулювання земельних відносин в Україні в умовах децентралізації влади 362
Носік В.
Проблеми законодавчого забезпечення правових форм використання земель сільськогосподарського призначення колективної власності в Україні......................369
Статівка А., Кульчій І.
Правове забезпечення сільського туризму як напряму диверсифікації сільських територій 378
Устименко В., Поліщук Н.
Про стан правового забезпечення обігу криптовалют в Україні: погляд крізь призму зарубіжного досвіду 386
Шульга М.
Особливості правових режимів категорій земель окрім земель сільскогосподарського призначення..394
Джабраілов Р., Малолітнева В.
Сприяння сталому розвитку за допомогою торгівлі: досвід ЄС та шлях для України...403

КРИМІНАЛЬНО-ПРАВОВІ НАУКИ

Баулін Ю.
Фундаментаьні проблеми кримінальної відповідальності 414
Шепітько В., Шепітько М.
Час і документи 426
Журавель В.
Класифікація криміналістичних методик розслідування злочинів 429
Грищук В.
Соціальна зумовленість кримінально-правової охорони і захисту гідості людини в Україні 440
Туляков В.
Кримінальна політика на Східноєвропейських територіях 448
Тимошенко В.
Соціальна основа злочинності...454
Фріс П.
Актуальні проблеми кримінально-правової політики сучасної України....................460

FOREWORD

Today more than a hundred specialized legal journals and collections are annually issued in Ukraine, publishing thousands of scientific articles from various branches of legal science.

In 2008 by the decision of the Presidium of the Academy the nationwide scientific periodical – the Yearbook of Ukrainian law was founded, in which the most important legal articles of academicians and corresponding members of the National Academy of Legal Sciences of Ukraine, as well as research associates, who work in the Academy's research institutions and other leading research and higher education institutions of Kyiv, Kharkiv, Donetsk, Lviv, Odesa, are published.

Yearbook aims to become a guide in the field of various scientific information that has already been printed in domestic and foreign journals during the previous year. "Yearbook of Ukrainian law" is a unique legal periodical dedicated to the widest range of legal science's problems striving to become a concentrated source of modern scientific and legal thought on current issues in the theory and history of state and law, constitutional, criminal, civil, economic, international and other branches of law, that has no analogues in Ukraine. The journal's pages contain modern legal concepts and theories of the further development of Ukraine as a democratic, social, law-governed state, full of the most provoking contemporary ideas, fundamental and substantial issues of jurisprudence.

The selection process of articles is carried out by the branches of the Academy (theory and history of state and law, state-legal sciences and international law, civil-legal sciences, environmental, economic and agricultural law, criminal-legal sciences), which combine leading scientists and legal scholars from all over Ukraine.

From 2014, the Yearbook of Ukrainian Law is published in English. Each issue of the English version is sent to more than 70 law libraries of the world, including USA, Canada, Australia, Great Britain, Germany, Portugal, Switzerland, Norway, Denmark, Latvia, and Lithuania. This enables scientists from other countries to get acquainted with the problems relevant to Ukrainian legal science, both the general theoretical, as well as different branches of law, modern Ukrainian legislation and practice, to provide opportunities for international scientific cooperation.

Honorary President of the National Academy
of Legal Sciences of Ukraine
V. Ya. Tatsii

THEORY AND HISTORY OF STATE AND LAW

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REFORMING UKRAINE: PROBLEMS OF CONSTITUTIONAL REGULATION AND IMPLEMENTATION OF HUMAN RIGHTS

Abstract. *The paper focuses on current problems of human rights constitutional provision, protection and implementation in Ukraine in the context of the reforms aimed at Eurointegration. The aim is to brief in the historical aspects of the development of ideas and concepts of human rights in Ukraine, focus on the human rights provision of the active Constitution projected through the ongoing reforms and to expose the correlation between the rights enshrined and their actual implementation. The existing and possible future problems related to the regulation and realization of human rights in Ukraine's reform process are considered. The paper reflects the problem of the value approach to human rights, which is directly related to the low level of legal culture and the insufficient level of development of civil society Ukraine. The work also analyzes the amendments that have been made to the Constitution since the independence. While presenting the latest developments and drafts regarding the addressed issues, we try to look deeper into the problem, far beyond the formal and procedural concerns, addressing social and cultural barriers in understanding the importance and necessity of the problems under consideration not only by the leadership of the state but also by ordinary Ukrainians.*

Key words: *constitutional process in Ukraine, European integration, human and civil rights and freedoms, reforming Ukraine.*

Introduction

The volume of constitutional consolidation of rights and freedoms of man and citizen in Ukraine was constantly changing with the adoption of new constitutions. This process began with the adoption of the Constitution of the *UNR* (*Ukrajinśka Narodna Respublika)* – Ukrainian People's Republic in 1918 and was continued by the constitution of the USSR (Ukrainian Soviet Socialist Republic) in 1919, and the subsequent ones in 1929, 1937 and 1978. Evidently, the concept of Soviet

constitutions was not based on the idea of human rights as understood by the democratic society. Citizens' rights were provided by the authorities, but not recognized by them. Political rights were enshrined only formally, declaratively, while the priority was given to economic, social and cultural rights. The list of rights and freedoms did not correspond with the international documents and standards (Kerikmäe and Nyman-Metcalf, 2012). During the Soviet era, the state authorized a significant number of violations of political and civil rights, such as the persecution of dissidents, restriction of the freedom of religion, confessions, the policy of mass repression etc. However, the above-mentioned documents played an important role in the history of the state of Ukraine and influenced the constitutional consolidation rights and freedoms of man and citizen at the present stage not only through overall legacy but through the Ukrainian people (Kerikmäe and Chochia, 2016).

The processes of human rights development in freshly independent Ukraine mostly relate to historical processes of the late 80's and early 90's of the 20th century, which resulted in the abolition of the Soviet Union and the formation of many independent states, including Ukraine. One of the most critical objectives in the domestic human rights sphere at the time of the Soviet Union's collapse was the urge to reject the old system where the nationwide approach to regulation of human rights was limited to the perception of the latter as an instrument provided to certain groups of citizens to ensure and maintain the state order and the execution of the state policy.

It would be a mistake to define the start of the modern period of human rights development in Ukraine as the adoption of the Constitution of Ukraine (1996), when it is the Declaration on State Sovereignty (1990), which established the basis for a future new constitution of Ukraine, and according to which, legislative acts were to be adopted aimed at strengthening the legal status of a person and a citizen of Ukraine, nationalities and other categories of people living on the territory of Ukraine.

After the adoption of the Constitution of Ukraine in 1996 (further referred as the Basic Law, the Constitution) and the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the Protocols, the *Verkhovna Rada* (the Supreme Council) of Ukraine adopted the Principles of the State Policy of Ukraine in the Field of Human Rights (1999) in order to effectively implement the rights and freedoms. Expanding the provisions of the Constitution, the document stated that in Ukraine the protection of human rights and fundamental freedoms is the main responsibility of the state, state authorities, and local self-government. The state recognized the universality, interconnectedness, and interdependence of the rights and fundamental freedoms of man and citizen – recognizing the man, his life, and health, honor and dignity, inviolability and security as a highest social value.

The analysis of the proclaimed constitutional obligations of the state makes it possible to assert that the Constitution of Ukraine of the time may have been one of the most democratic constitutions in Europe. Such assessment was

confirmed in the conclusions of the Venice Commission (European Commission for Democracy through Law), and through the approval of other international organizations, foreign countries and scholars in the field of constitutional law (Herasymenko, 2008). Yet the further expansion of the relevant provisions through legislation and practice have proven to be quite ambiguous.

Reforms under Ukraine's Constitution: from paper to reality

The Constitution of Ukraine delimits the fundamental rights and freedoms of human and citizen, and this approach comes unconventional for our constitutional legislation. Recognizing the distinction between the rights of a human and a citizen, the Basic Law thereby reinstated the universal values proclaimed in the Declaration of Independence of 1776, the Bill of Rights of 1791 (USA), the Declaration of the Rights of Man and Citizen in 1789 (France). All articles of the second Section of the Constitution of Ukraine "Rights, Freedoms and Responsibilities of Man and Citizen" consistently delimits the rights and freedoms on the basis of the above principle (Kushnirenko, 2001).

The document also reflects qualitative changes in the field of human and civil rights and freedoms in Ukraine. On the one hand, the content of traditional rights and freedoms (personal, political, socio-economic, and cultural) is enriched, and on the other, the list of rights and freedoms, which are fixed at the constitutional level, is further expanded. This is evident through the inclusion of such rights as the right to the free development of personality (Article 23), the right to life (Article 27), the right to respect for human dignity (Article 28), freedom of movement and free choice of place of residence (Art. 33), the right to entrepreneurial activity, which is not prohibited by law (Article 42), the right to strike (Article 44), the right to an adequate standard of living for themselves and their families (Article 48), etc. (Constitution of Ukraine, 1996).

Ukrainian Basic Law, as well as the basic laws of some other countries, mostly apply a positive way of regulating human and civil rights and freedoms (Gerstenberg, 2012), but there is also a negative way of securing rights, that is, one that states that these rights should not be violated by anyone. For example, par. 3 of Article 22 of our constitution states that "When adopting new laws or amending existing laws, the content and scope of existing rights and freedoms cannot be restricted (narrowed).") In the process of reforms, this formula is most often subjected to the negative influence of such, as elaborated more in this paper as we cover the most vulnerable groups of rights subjected to direct or possible violations through reforms implementation (Fokina, 2016).

1. The right to freedom of thought and religion. It presupposes, first and foremost, freedom from any ideological control. The man himself must decide what values to follow. The specification of the right to freedom of conscience and religion is the recognition by constitutions of the right to refuse military service on religious grounds (Heorhitsa, 2003) (Article 34 of the Constitution of Ukraine). Considering the deplorable state of the Ukrainian Army as of the beginning of 2014, in order to stabilize the situation, it was decided to hold several waves of mobilization. During

these, neither the government nor the parliament has taken adequate measures to remedy gaps in legislation in the field of the practical maintenance of a constitutional guarantee for the replacement of military duty by an alternate (non-military) service. The unclear situation led to the creation of a vicious circle, when mobilized believers were "trapped", given no options than to get mobilized or suffer a possible criminal punishment with the accusation of avoiding mobilization for military service. There are several court judgments acknowledging the mentioned constitutional right, yet, on the other hand, there are many examples when the courts ignore these provisions, substantiating their position with the absence of legislative norms that would directly permit the release from the mobilization for those whose beliefs do not allow the use of weapons.

2. Freedom of expression. These include freedom of speech, print, the right to receive information, and the freedom to disseminate information. The right to freedom of thought and speech, or rather, its guarantee is one of the main indicators of the democratic nature of society. However, it is not absolute and in accordance with Part 3 of Art. 34 of the Basic Law is subject to restriction in the interests of national security, territorial integrity or public order to prevent disturbances or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of confidential information or to maintain authority and impartiality of justice. This is one of the many instances where the special conditions regarding the possibilities of limiting rights by the legislature and the circumstances in which the legislature can restrict the rights are very vague and too broad in nature. This gives the state authorities the opportunity to excessively interfere with the law. The provisions of this Article require a more understandable and clear approach in order to protect privacy on the one hand, and to ensure the implementation of the expressed rights without unlawful limitations (for example, determine the right to access information about the activities of public authorities as a separate and unrestricted, define personal life etc.) This gains significance in the wake of the anti-corruption reforms currently in force.

3. Political rights, which include: the right to freedom of association in political parties and public organizations, participation in trade unions (Article 36); the right to participate in the management of state affairs, in nationwide and local referendums, the right to elect and be elected to bodies of state power and local self-government – the right to vote (Article 38); the right to equal access to the civil service, as well as services in local self-government bodies (Article 38), the right to send individual or collective appeals, or personally apply to bodies of state power, bodies of local self-government. This block of rights has been heavily assaulted after the Revolution of Dignity. This includes the adoption of the Law of Ukraine "On Conviction of Communist and National-Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of the Promotion of Their Symbols" (2015) of 09.04.2015, 317-VIII and the Law of Ukraine "On Purification of Government" (2014) of 16.09.2014, 1682-VII. The first one was heavily

criticized by the Office for Democratic Institutions and Human Rights for sanctioning the possibility of a real prison term for an entrepreneurial activity of producing various merchandise with the mentioned symbols. The second law had multiple flaws, such as creating a practice of collective legal responsibility, expanding the grounds for a dismissal of a judge (contrary to the provisions of Art. 126 of the Constitution), violating the generally accepted legal principle of the effect of the law in time (Art 58 of the Constitution: laws and other normative acts do not have a retroactive effect in time) through imposing a penalty in the form of a prohibition on occupying positions for a term of five years. The politicized character of the process of cleansing the government led to the fact that many former (and possibly corrupt) officials were able to return to their duties through a court judgment later on.

It is important to address the issue brought by the amendments to the Law of Ukraine "On the Prevention of Corruption" (2014) of 14.10.2014, 1700-VII, widening the range of persons obliged to submit yearly electronic declarations. In particular, the individuals who "carry out activities related to the prevention and counteraction of corruption", namely, public activists, experts, investigative journalists, citizens involved in anti-corruption measures, were included in the declarations. The inclusion of persons connected with the exercise of their right to freedom of association and the pursuit of certain activities (combating corruption) are discriminatory in terms of the activities of civic organizations and violate the European Convention on Human Rights and Fundamental Freedoms, the provisions of the Constitution of Ukraine on the right to freedom of association, labor, equal opportunities in the choice of profession and kind of employment, freedom of thought and words, free expression of their views and beliefs, privacy and non-interference in personal and family life.

4. Economic rights. Of these rights, probably the most important is the right to own and dispose of private property, which is secured from encroachment by both individuals and the authorities of the state by any legal means of remedy. The principle of the inviolability of private property was expressed in the prohibition of any constitutional norms of any confiscation or requisition otherwise than in the cases clearly established by law according to a court sentence (Hanin, 2006). However, recent amendments to the Criminal Code of Ukraine, the addition of Arts. 96/1 and 96/2 regarding special confiscation created a situation when the politicization of the decision-making process and the restriction of the rule of law bring up new corruption risks. This is evidenced by the fact that the court's judgment on the special confiscation regarding Viktor Yanukovych's assets was classified. The public danger of such activity can further severely affect the economy of Ukraine since there is a possibility of challenging this decision at the ECHR (European Court of Human Rights), which may lead to the need to return the assets that will lay on the state's budget, while the fate of the assets confiscated now is unknown.

5. Health and social protection. Although being debatable, the latest achievements of the health care reform

are also a subject to a contradiction when it comes to the realization of the Art. 49 of the Constitution that stipulates that "The state creates conditions of effective and accessible medical care. State and communal healthcare facilities provide medical care free of charge…" (Konstytutsiia Ukrainy, 1996) The inability or the reluctance to follow procedures and to amend the Constitution before implementing the abovementioned reform led to the creation of yet another situation of uncertainty using ways of circumvention, terminology manipulation and so on. It is hard to tell the future of the health care reform as of right now, but given the start it received, it doesn't look promising.

Talking about social protection, this constitutional right is the subject of constant protection by the Constitutional Court of Ukraine (2011). In fact, whenever the law on the State Budget for a given year abolishes or restricts certain social benefits, the Court finds such actions of the legislator unconstitutional (Barabash, 2012).

However, among the others, the recent pension reform violates at least 4 articles of the Constitution. Part 3 of Art. 22: regarding the narrowing of the content and scope of existing rights and freedoms" (Konstytutsiia Ukrainy, 1996), as mentioned multiple times earlier, as well as Art. 24 (all citizens have equal constitutional rights and are equal before the law), Art. 46 (in the part of providing Ukrainians with pensions not lower than the subsistence level) and Art.58 (in the part of the irreversibility of the laws in time).

Consequently, we have a situation where the state is not fully capable to guarantee the existing social rights, but a cardinal reform of the social sphere is not possible due to constitutional requirements, as well as their interpretation by the Constitutional Court of Ukraine (Barabash, 2009). Further complicated by the fact that Ukrainian authorities are constantly trying to experiment with social security issues. This is quite natural for a country with a fragile economy and insignificant financial resources. Obviously, it will be extremely difficult not only to rebuild the economic and legal component of the social protection system (which should have been the first post-independence priority) but also to change the stereotypical thinking on this issue by the citizens.

If the reforms in Ukraine, both from the moment of independence and the recent ones, were conducted without a single comprehensive course or vector, which was to be first reflected in the corresponding provisions of the Constitution (including the Section 2 "Rights, freedoms and obligations of a man and citizen"), what amendments were more successful?

From the adoption of the Constitution in 1996 and up to 2018, we can divide the constitutional process in Ukraine into 4 stages: 1) 1996–2004 The implementation of the provisions of the Constitution through the newly created legal acts (laws and regulations) and the system of bodies of state power and local self-government; 2) 2004–2013. Yet again politicized by the Orange Revolution and the subsequent devaluation of its ideals, the constitution was reformed in the context of the division of powers, and the process itself was characterized by a large num-

ber of violations, which subsequently led to a return to the 1996 Constitution; 3) 2014. On February 21, 2014, the *Verkhovna Rada* (The Supreme Council of Ukraine), on a revolutionary wave, adopted with a constitutional majority of 386 votes, without the decision of the profile committee, the draft law on the restoration of certain provisions of the Constitution of Ukraine (No. 4163). Meaning that the *Verkhovna Rada* has put into effect the 2004 revision of the Constitution. 4) 2015–2016 was characterized by the amendments regarding decentralization and the changes to the judicial system. It is worth mentioning that the latest reforms were, probably, the most successful and necessary, yet they still lack additional regulation and expansion.

This brings us to a situation where the amendment of a Basic Law of the state is possible only with the necessary political pressure and other interests involved. Based on the wrong goals and purposes later to be adopted and implemented with violations of procedures and ignoring the opinion of the authorized bodies, such reforms cannot contribute to the development of the state, law and its institutions.

Ukrainian legal doctrine features many reform concepts and developments in the sphere of domestic constitutional consolidation of human rights and provision of mechanisms for their implementation (Petryshyn, 2000). Among others, one of the most recent and interesting ones was the Joint Memorandum of Section II of the Constitution prepared by the Working Group on the Rights, Freedoms, and Duties of Man and Citizen on July 15, 2015. This working group (Pylypenko, 2016), consisting of leading experts in the field of state building, human rights, international, civil and criminal law prepared a detailed draft of amendments to the Section II based on the provisions of the major international human rights instruments and the practice of the European Court of Human Rights, offering a plan actions, featuring, among the others:

1) Discover the notion of human dignity and expand the state duties associated with its respect and protection;

2) Fully deny the possibility of conviction to the capital punishment within the framework of the vested right to life,

3) Specify the provisions on the prohibition of torture and assure the concepts of "physical and spiritual integrity";

4) Implement the standards of international conventions on the prohibition of slavery and forced labor, human trafficking;

5) Improve the provisions associated with the realization of the right to freedom and personal inviolability by reducing the maximum period of detention to forty-eight hours and securing the state compulsory compensation for moral and material harm to the detainee contrary to the provisions of Article 29 of the Constitution (Article 26 of the draft);

6) Recognize a wide range of children’s rights: the right to protection and care, free expression of views, direct contact with both parents and the like;

7) Further polish the provisions on freedom of thought, conscience, and religion, as well as freedom of speech, prohibition of discrimination and many others.

Conclusions

The situation around the Constitutional recognition of human rights in Ukraine brings many questions we can only assume answers to. Was Section 2 of the Constitution created with an understanding of the problems that could arise with the realization of such rights in the future? It seems that the overall confusion and political debates of the past still haunt us even up to date. Surely, it is impossible for a young independent state to predict the consequences, yet it seems that nothing was done to at least mitigate the possible negative effects. What can be the result of ongoing reforms if they initially have provisions that are contrary to the provisions of the Constitution? Spreading more uncertainty and legal contradictions for one thing, up to possible repeal and abolition of some of the acts. This will surely affect the lives of Ukrainians for years to come. If changes to the Constitution have already been made without the relevant conclusions of the Constitutional Court of Ukraine, what role will it play in the implementation of the recently introduced right of constitutional complaint? As of 2018, the mechanism of constitutional complaint is still in its early stages, yet the formation process of the Court itself leaves a lot of questions, and its activity in the past is also highly politicized and ambiguous in terms of law and Constitution.

Regarding practical implementation and real protection of constitutional rights, it is impossible to limit ourselves here simply by rewriting existing regulations or by creating special groups, officials monitoring such implementation etc. We must understand that this has nothing to do with Ukraine being a younger independent state as well. There are many examples of post-Soviet counties performing better and showing more economic and political growth than some of the western European states.

What needs to be understood is that the problem of the reality of the assigned rights is primarily connected with the low level of legal culture, the absence of the rule of law and democracy, the construction of a pseudo-market economy based on large and petty corruption, and the lack of understanding of the common good for the state and all its inhabitants. This problem is aggravated by the newly emerged problems of separatism, the problems with the establishment of Ukraine as a single democratic state, in which the constitution becomes an effective tool, and not a set of theses, the implementation of which is impossible.

In Ukraine, human rights and freedoms have not yet become truly the highest value of the state. This is due to the previous history, modern problems of the country, as well as the policy of the current government, which has not yet overcome the traditions of human underestimation that have evolved over many centuries. In addition, civil society in the face of political and other institutions is not sufficiently active in protecting the rights and freedoms of the individual, not to mention the pressure that is being put on such entities (Kerikmäe *et al.*, 2016).

It is evident that the development of Ukraine in the direction of establishing the rule of law is one of the key prerequisites for establishing in the consciousness of Ukrainian society the corresponding values of the legal state, the

general expression of which should be the developed legal culture of Ukrainian citizens. Formal perception of the respective political and legal institutions, as well as legal norms, developed political and legal systems of the world with a view to their adaptation to domestic realities without a fundamental change in the stereotypes of legal thinking and behavior condemns the rule of law in Ukraine to declarative. In this sense, the specialization of the corresponding culture of legal thinking, thinking within the categories of human rights is acquired by the citizens of Ukraine.

Contemporary events in Ukraine, complex and ambiguous in their content, continue to support the idea of the exceptional importance of the comprehensive protection of fundamental rights and freedoms as defined by the Basic Law, as well as the need to prevent legal nihilism in the human rights and law-enforcement spheres. In this sense, it is important to remember the old axiom "one person's freedom ends where another's begins". Therefore, the respect of citizens for their own rights and freedoms of other people as the highest social value is an important condition for solving the crisis in Ukraine. The constitutional rights and freedoms themselves, and the guarantees of their implementation should become the cornerstone for the further development of state formation and law-making, consolidation of democracy and the rule of law, strengthening of the authority of our state in the international arena.

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THE UPR CONSTITUTION OF 1918 – THE PINNACLE OF LEGISLATIVE ACTIVITIES OF THE UKRAINIAN CENTRAL RADA

***Abstract**. Ukrainian constitutionalism has rich history which dates back to the beginning of the XVIII century and is associated with the Pylyp Orlyk Constitution of 1710. An outstanding document of the Ukrainian state-building of the XX century is the Constitution of the Ukrainian People's Republic (hereinafter – UPR) adopted by the Ukrainian Central Rada (hereafter-UCR) on April 29,1918. It signified the final stage of the UCR legislative activities during 1917 – early 1918.*

This article aims at analyzing the contents of the four UCR Universals and other UCR legal acts for the purpose of identifying their place and role in the UCR state-building activity as the documents of the constitutional nature. These acts defined the legal bases, of sovereignty of the Ukrainian people and of the system of central public bodies, and also granted the UPR citizens a wide range of rights and freedoms, including the right of national minorities to national and personal autonomy. The author arrives at the conclusion that UCR legal acts of the pre- constitutional period contained the provisions which set up the foundations of local self-government in the UPR, the state's social and economic structure and its foreign policies.

In addition to the Universals as UCR complex acts, the following laws can be mentioned in the first place as the most significant acts of the constitutional nature: dated November 25, 1917 "On Maintenance of the Central Rada at Public Expense", dated November 25,1917 "On the Exclusive Right of the Central Rada to Issue Legislative Acts", "On the Elections to the Constituent Assembly of the Ukrainian People's Republic" (November 1917), dated December 2, 1917 "On the Establishment of the General Court", dated January 9, 1918 "On the National and Personal Autonomy", the Interim Land Law of January 31, 1918, dated March 2, 1918 "On Citizenship of the Ukrainian People's Republic", dated March 4,1918 "On Registration of Citizenship of the Ukrainian People's Republic", dated March 6, 1918 "On the Administrative Territorial Division of Ukraine".

The author demonstrates that all of the transformations in the UPR were made with a view to building the independent Ukrainian state, and this idea was the keynote in most of the UCR legislative acts which preceded the UPR Constitution of 1918.

As a conclusion, it is noted that the UPR Constitution, in terms of its concept and contents, largely repeated the preceding UPR legislation of the constitutional nature, the provisions of which provided for legitimation of the UPR as one of the forms of Ukrainian national statehood arising in the period of liberation of 1917–1921.

It is stated that the draft UPR Constitution was prepared taking into account the constitutional development experience of foreign countries, in particular, the United States.

Key words: *Ukrainian People's Republic; UPR Constitution of 1918; Universals of the Ukrainian Central Rada.*

As V. Rumyantsev quite rightly mentions, the Constitution of the Ukrainian People's Republic (hereinafter – UPR) in 1918 after P. Orlik's Constitution in 1710 "is the most noticeable phenomenon in the development of the constitutional legislation of Ukraine.[1] The draft Constitution of the UPR was prepared by a specially created constitutional commission at the same time with the development and adoption by the Ukrainian Central Rada a number of legal acts that contained norms which are constitutional in their nature. Many of them became the basis for the Constitution of UPR, adopted by the UCR on the last day of its existence, that is, on April 29, 1918.

The Constitution of the UPR 1918 was studied by many historians of the law of Ukraine. The process of its preparation, its structure, content, meaning for the state-building processes in the process of liberation struggles has been reflected in the scientific monographs and articles by I. Boyko, V. Yermolayev, O. Kopylenko, A. Mironenko, A. Rogozhin, V. Rumiantsev, M. Strakhov, I. Usenko, Yu. Shemshuchenko and other domestic researchers. In general, they analyzed the constitutional legislation of the UPR without any reference to the Constitution of the UPR of 1918. Therefore, there is a need for analyzing this legislation from the perspective of its significance for the creation of the draft Constitution of the UPR.

The state-building work of the UCR, in particular in the sphere of constitutional building, provides grounds for stating that this activity has provided a prominent place for this representative institution of parliamentary type in the history of the national statehood of the twentieth century.

The aim of the research is to analyze the content of the four Universals of the UCR and other legal acts in order to determine their place and role in the state-building activities of the UPR, keeping in mind that they were constitutional by nature. These acts defined legal principles of the sovereignty of the people of Ukraine, the construction of a system of central state bodies, gave citizens of the UPR a broad range of rights and freedoms, in particular the right of national minorities to national autonomy. The author concluded that the legal acts of the UCR before the constitutional period also contained norms which determined the grounds of local self-government in the UPR, the social-economic system in the state, and its foreign policy.

[1] В'ячеслав Румянцев, Конституція Української Народної Республіки 29 квітня 1918 року (2011) 10 Вісник Харківського національного університету імені В. Н. Каразіна 57.

Among the adopted by UCR in 1917 – early 1918 legal acts, four universals had a special significance for the development of the Ukrainian state. According to Yu. Shemshuchenko, these documents "became, in essence, constitutional acts".[1]

First of all, it should be emphasized that UCR documents before the constitutional time contain the idea of he sovereign right of the Ukrainian people to have power in Ukraine passes through the common thread. Even in the First Universal of the UCR (10 (23) June 1917), references to the Ukrainian people have been made repeatedly. So, the text of the Universal itself begins with the words: "Ukrainian people! The people of the villagers, the workers, the working people!"[2] The recognition of the Universal Declaration of the sovereignty of the Ukrainian people is evidenced by the words of this document, filled with the state approach: "Let the Ukrainian people have the right to organize their lives on their own land".[3] Highly appreciating the role of the Ukrainian people in the process of national state rebirth, UCR completes this act with the words: "Ukrainian people! Your destiny is in your hands. In this difficult time of global disorder and disintegration, prove by your unanimity and by the state mind that you, the people of the workers, the people of the grain-growers, you can proudly and dignified to be close to every organized, state people, as equal to the equal."[4]

The fact that the Universal endowed the Ukrainian people with state-owned qualities was not randomly, because the national state-building has a centuries-long history.

In the First Universal were put in the constitutional foundations of representative democracy. The document noted that on behalf of the Ukrainian people, the function of state-building is empowered to the UCR until the moment when they are elected "by public, equal, direct and secret voting by the National All-Ukrainian Assembly (Soym)".[5] The last played the role of a legislative body which was aimed at adopting all the laws which would regulate life in Ukraine.

The III Universal of the UCR (7 (20), November 1917) are filled with the norms, constitutional by their nature. It consolidates the monopoly of the Ukrainian people to power. It follows from the statement that "without the power of a strong, united, *people's* Ukraine … may fall into the abyss of injustice, massacre, decay"[6] (emphasis added). The unconventional significance for the rebirth of Ukrainian national statehood had the norm, which said: "From now on, Ukraine becomes the Ukrainian People's Republic."[7] Proclamation of the UPR, as D. Yarosh rightly emphasizes, "marked the revival of Ukrainian

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[1] Юрій Шемшученко. *Уроки конституційного будівництва в Українській Народній Республіці. Правознавча спадщина Глухівщини* (Юридична думка 2008) 345.

[2] В Гончаренко (упоряд), *Історія конституційного законодавства України: збірник документів* (Право 2007) 29.

[3] Там само С. 29.

[4] Там само С. 32.

[5] В Гончаренко (упоряд), *Історія конституційного законодавства України: збірник документів* (Право 2007) 29.

[6] Історія конституційного законодавства України 35.

[7] Там само 35.

statehood"[1]. The Universal norms on the UPR has an institutional character, and the term "people" is central in the name of the Ukrainian state.

The norm of the Third Universal, which determined the supreme body of state power in the UPR, is the norm of the constitutional level. In particular, it was noted: "… to the Constituent Assembly of Ukraine, all power to create order on our lands, to adopt laws and rule, belongs to us, the Ukrainian Central Rada, and our government – the General Secretariat of Ukraine."[2] That is, Universal defined the Constituent Assembly of Ukraine as the decisive legislative body, while the UCR and the General Secretariat played the role although central and temporary state bodies, but those which concentrated all power in the country. In general, the Third Universal, as an act of a constitutional nature, addressed the issue of the judicial system in the UPR. It fixed the most important norm of the democratic judiciary that "the court in Ukraine should be fair, appropriate to the spirit of the people."[3]

The norm, which defined the territory of the UPR as a sign of any state, had constitutional nature. In particular, as the territory of the UPR Universal classified lands inhabited predominantly by Ukrainians, such as Kyiv region, Podolia, Volyn, Chernihiv, Poltava, Kharkiv, Katerynoslavshyna, Kherson, Tavria (without the Crimea).[4] Thus, the Universal defined the lands as the main administrative-territorial units, which replaced the division of Ukraine into the provinces during the period of the Russian Empire, which for many decades included a significant part of Ukrainian lands. In addition, it mentioned the introduction of local self-government in the UPR.

As a constitutional act, the third Universal proclaimed the freedom of speech, press, faith, meetings, unions, strikes, as well as the inviolability of person and dwellings. It should be noted that the list of such freedoms was contained in the constitutions of many countries of the world, which acted at the time of the adoption of the III Universal.

Without exaggeration the norm of the Third Universal , which proclaimed "the right and opportunity to use local languages in relations with all institutions"[5] can be considered democratic and expedient for the UPR as for a multinational state.

Indirectly, this norm of the Universal provided the national minorities living on the territory of the UPR with the opportunity to develop and use their native language. In addition, the document acknowledged the right of national minorities to national-territorial autonomy "to ensure their right and freedom of self-government in matters of their national life"[6]. It should be noted that the desire to ensure the rights of national minorities in Ukraine was manifested even before the adoption of

[1] Д. Ярош 'Конституція Української Народної Республіки про права і свободи людини: історичний досвід і сучасність' [2006] 1 (17). Університетські наукові записки 7.

[2] Історія конституційного законодавства України 35.

[3] Там само 37.

[4] Історія конституційного законодавства України 35.

[5] Там само 37.

[6] Там само 37.

the Third Universal. V. Sevryukov has rightly pointed out that the UPR policy on the protection of the rights of national minorities was reflected, in particular, by giving them "… the rights of political representation in its membership, the creation of the General Secretariat of National Affairs and the establishment of the posts of three secretary's comrades, which represented the interests of Russian, Jewish and Polish national minorities"[1].

The norms of the Third Universal on the right of national minorities to national-personal autonomy have been developed and detailed in the Law of Ukraine "On national-personal autonomy"[2] adopted by the UCR on January 9 (22) 1918.

III Universal contained other norms of the constitutional direction. It is about, for example, property issues, in particular, to the most important richness of Ukraine – the land. Proclaimed the abolition of ownership of squireship's land and other lands of non-labour agricultural enterprises, as well as to divorce, monastic, office and church lands. It was emphasized that these lands are the property of all the working people of Ukraine and go to it without a ransom.[3] The national importance had the norms of the III Universal on the establishment at all the enterprises on the territory of the UPR the eight-hour working day, state control of the production, as well as the abolition of the death penalty in the UPR as a form of criminal punishment.

While commending the Third Universal in the revival of Ukrainian national statehood, some modern researchers of state-building processes during the Ukrainian Revolution of 1917–1921 even tend to conclude that modern Ukraine is the successor to the UPR, not the Ukrainian SSR.[4]

Indeed, the historic significance for the revival of the Ukrainian national independent state has the Fourth Universal by the UCR (9 (22), January 1918). It was still this document which proclaimed the independence of Ukrainian state: "From now on, the Ukrainian People's Republic," – said in the Universal, "becomes an autonomous, independent, free, sovereign state of the Ukrainian people."[5] Immediately after these words in the Universal it was noted that "with all the neighboring states … we want to live in harmony and favour, but none of them can interfere in the life of an independent Ukrainian republic."[6] O. Butkevich substantiates the fact that the cited document pro-

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[1] В. Севрюков, 'Щодо періодизації становлення та розвитку конституційних гарантій забезпечення прав національних меншин та корінних народів України' (2008) 39 Держава і право Юридичні і політичні науки 269.

[2] В. Верстюк та інші (упоряди), В. Смолій та інші (ред.), *Українська Центральна Рада: документи і матеріали,* т 2: 10 грудня 1917 р. – 29 квітня 1918 р. (Наукова думка 1997) 99–101.

[3] Історія конституційного законодавства України 36.

[4] Р. Губань, 'До питання про історичну спадкоємність при проведенні реформи адміністративно-територіального устрою України на сучасному етапі' в *Конституція як основа розвитку правової системи. VIII Тодиківські читання. Збірка тез наукових доповідей і повідомлень Міжнародної наукової конференції молодих учених, аспірантів і студентів (2–3 жовтня 2015 року)* (Права людини 2015) 168.

[5] Історія конституційного законодавства України 40.

[6] Там само 40.

claims a peaceful foreign policy of an independent Ukrainian state according to the mentioned constitutional norm of Universal.[1]

As in the previous Versions, the Fourth Universal stated that the power in the UPR belongs exclusively to the people of Ukraine.[2] And on behalf of this people to the Ukrainian Constituent Assembly, the power in the country was to be exercised by the Ukrainian Central Rada. Universal changed the name of the government of the UPR. Now he was called the Council of People's Ministers. The term "people's" in the name of the government should have symbolized that it is an expressive of the will of the Ukrainian people and is aimed to act in the interests of this people. The Universal provided the convocation of an elected national body, such as the Ukrainian Constituent Assembly. He, as the "supreme master and governor of the land", must "establish the freedom, order and well-being of the entire working people for the time now and for the future by the Constitution of our independent Ukrainian People's Republic".[3] The Universal also contained constitutional norms that fixed the structure of the armed forces of the UPR, determined the principles of foreign policy of the country, as well as the socio-economic system.

Thus, the UCR Universals defined the principles of the constitutional order in the Ukrainian state during the period of the UCR. As N. Stetsyuk rightly mentions, analyzing the works of the famous Ukrainian lawyer A. Yakovliv, "in the formation of the constitutional and legal system of the Ukrainian People's Republic, the III and the IV universals of the Central Rada had an extremely important (decisive) significance, according to the scientist. It was still these documents which legally and lawfully not only proclaimed the formation of an independent state of the Ukrainian people, but also created the architectonics of its political and legal content (in fact, at the end of the twentieth century that will be called "constitutional characteristics of the state").[4]

In addition to the four versatile people in the pre-constitutional period of the UCR, a number of legal acts were adopted, which in many cases had a constitutional orientation and became useful in drafting the Constitution of the UPR. These, in particular, should include those that regulated the organization and activity of central state institutions, namely: UCR, Malaya Central Rada, General Secretariat. UCR activity was regulated by legal acts of various content. Thus, on November 25, 1917, the Mala Rada adopted the "Law on the Maintenance of the Central Rada at the State's expense."[5] On this day, the Law "On the exclusive right of the Central Rada to issue legis-

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[1] О. Буткевич, 'Джерела міжнародного права в Конституції України: історія і сучасність' в *Актуальні проблеми сучасного міжнародного права: збірник наукових статей за матеріалами І Харківських міжнародно-правових читань, присвячених пам'яті проф. М. В. Яновського і В. С. Семенова*. (Харків, 27 листопада 2015 р.) ч 1 (Право 2015) 18.

[2] Історія конституційного законодавства України 40.

[3] Там само 43.

[4] Н. Стецюк, 'Андрій Яковлів (1872–1955)' [2007] 1(11) Вибори і демократія 61.

[5] В. Верстюк та інші (упоряди), В. Смолій та інші (ред.), *Українська Центральна Рада: документи і матеріали,* т 1: 4 березня – 9 грудня 1917 р. (Наукова думка 1996) 478.

lative acts of the UPR" was also adopted.[1] April 16, 1918, the Law "On the Immunity of Individuals of the Central Rada" was adopted.[2] Other acts of UCR were also saturated with the norms of the constitutional nature, which can be attributed to the field of state-building. The most important of these was the Law "On Elections to the Constituent Assembly of the Ukrainian People's Republic", approved by the UCR in November 1917, which consisted of two sections divided into chapters, containing 183 articles.[3] Article 1 of the Law established the democratic principles of the electoral law, the essence of which was that the Constituent Assembly of the UPR consisted of "members elected by the people on the basis of the general, without gender difference, and equal voting law, through direct elections and secret ballot, with observance of the principle of proportional representation".[4] In November 1917, the Instruction for the use of the first section of mentioned Law was also adopted. The analysis of the content of these acts allowed O. Shumlyak to make a reasonable conclusion that the specified normative acts "were characterized by the wide and deep regulation of all stages of the electoral process"[5].

[1] В. Верстюк та інші (упоряди), В. Смолій та інші (ред.), *Українська Центральна Рада: документи і матеріали,* т 1: 4 березня – 9 грудня 1917 р. (Наукова думка 1996) 477–8.

[2] Українська Центральна Рада: документи і матеріали 282/

[3] Там само 413–434.

[4] Там само 413.

[5] Ольга Шумляк, 'Еволюція інституту реєстрації виборів в аспекті становлення і розвитку виборчого права в Україні (дорадянський період)'(2007) 3 Вісник Центральної виборчої комісії 85.

The development of the judicial system of the UPR was the aim of the Law of December 2, 1917, "On the Establishment of the General Court", which consisted of nine articles.[6]

For any state inherent its division into administrative and territorial units. UPR was not an exception in this regard. On the development of the provisions of the Third Universal on March 6, 1918, the Mala Rada adopted the Law "On the administrative-territorial division of Ukraine", which, in particular, abolished the division of Ukraine into provinces and counties, as a colonial heritage of the Russian Empire[7]; instead, a new division of the UPR into lands was introduced.

In the UCR's field of view, there was such a topical issue of the constitutional level as citizenship in a revived Ukrainian state, which population in the previous days was in the subjugation of the Russian Empire and was divided into conditions as a relic of feudalism. On March 2, 1918, the UCR adopted the Law "On the Citizenship of the Ukrainian People's Republic". The document defined the procedure for acquiring citizenship, its termination, containing the rights and obligations of a citizen of the UPR, and so on. In accordance with paragraph 10 of this Law, a citizen of the UPR could not be a citizen of another state.[8] March 4, 1918 The UCR has adopted the Law "On Registration of Citizenship of the Ukrainian People's Republic".[9]

[6] Українська Центральна Рада: документи і матеріали 497.

[7] Там само 181.

[8] Там само 174.

[9] Там само 177–178

A number of UCR laws can be attributed to those which defined the constitutional principles of socio-economic orientation, such as the "Temporary Land Law" of January 31, 1918.[1] It radically changed the land relations that existed for centuries in Ukraine. Indeed, Articles 1 and 2 were revolutionary in their content. Article 1 emphasized: "The right of ownership to all lands with their waters, ground and underground wealth within the boundaries of the Ukrainian National Republic now declares", and in Art. 2 mention: "All these lands with their waters, ground and underground natural resources become a property of people of the Ukrainian People's Republic". Thus, the Law contained the grounds of socio-economic relations in relation to land in the UPR.

It should be noted that for a relatively short period of time, the UCR in difficult conditions of defending Ukrainian independence was able to create a legal basis for the development of an independent democratic Ukrainian state in the form of the UPR at a sufficiently high level for its time. It remained to ensure this process by a document of the highest legal force – the Constitution. It was adopted by the UCR on April 29, 1918.

The legal acts of the UCR which were analyzed above were the most important source of this Constitution. It can be easily verified by referring to the text of the Constitution of the UPR of 1918, which began with Section I "General Regulations". Article 1 referred to:

"Having restored its state law, as the Ukrainian People's Republic, Ukraine, for the better defense of its land, for a certain guarantee of the right and protection of liberties, culture and welfare of its citizens, proclaimed itself and now the state is sovereign, self-governed and independent from anybody."

The article practically repeats the most important position of the Fourth Universal, according to which the UPR was proclaimed as an independent state. According to Art. 2 "the sovereign right in the Ukrainian People's Republic belongs to the people of Ukraine, that is, to the people of the UPR all together".[2] A similar formula for the sovereign right of the people of Ukraine is in all four universals. In this regard, it should be noted that at the time of the adoption of the Constitution of the UPR many countries of the world also had their constitutions, which contained rules on the sovereignty of the people and its monopoly right to power. Thus, the US Constitution of 1787 began with the words:

"We *the People* of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America" (emphasis added).[3]

And in Article 2 of the Constitution of the American state of Pennsylvania of December 16, 1873, we read: "Ev-

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[1] Українська Центральна Рада: документи і матеріали 128–130.

[2] Історія конституційного законодавства України 44.

[3] *Конституції буржуазних країн. Конституції великих держав і західних сусідів СРСР*. (Радянське будівництво і право 1936) 13.

ery power is inseparable from the people and every free government is based on its power."[1] In Article 31 of the Romanian Constitution 1866, it was noted that "all state power comes from the people."[2] The above shows that the authors of the Constitution of the UPR in 1918 knew well about the constitutional construction in the civilized countries of the world and borrowed their positive experience in this area. In this regard, it should be noted that modern researchers of the history of state and law of Ukraine pay attention to this circumstance. Yes, N. Shuklina quite rightly notes that "the Constitution of the UPR was prepared like the democratic Basic Laws of Europe and the United States."[3] And A. Sereda speaks about the preparation of the Constitution of the UPR of 1918 "like the democratic constitutions of Europe and the United States."[4]

According to Art. 3 of the Constitution of the UPR its sovereign right was exercised by the people of Ukraine through the National Assembly of Ukraine, that is through the parliament. Thus, the Constitution of the UPR adopted the norms of Universals about representative democracy in Ukraine. The constitution provided the lands, volosts and communities with the right of broad self-government on the principles of decentralization (Article 5), which was already emphasized in the III and IV universals.

If the in mentioned universals the rights and freedoms of citizens of the UPR were spoken in general terms, then the Constitution of the UPR paid considerable attention to this problem. At the same time, attention is paid to the fact that the section of the Constitution "On Citizens of Ukraine" by numbering was the second, which was aimed to symbolize the priority of the rights and freedoms of the citizen in front of all other state institutions. The section began with Articles 7–10, which were devoted to issues of citizenship, based on the rules of the Law "On Citizenship of the Ukrainian People's Republic", in particular, on the right to only one citizenship (Article 8). The Constitution enshrined the principle of equality of citizens of the UPR in their rights, and also contained a list of democratic rights and freedoms of the people of the UPR, such as: freedom of speech, press, conscience, organization of strikes, change of place of residence. Impartiality of the person, the home, the secret of correspondence was guaranteed. Similar rights and freedoms were provided to citizens by the constitutions of many countries which were in force at the time of the adoption of the Constitu-

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[1] В. Гессена и Б. Нольде (пер, под ред со вступ очерками), *Современные конституции: сборник действующих конституционных актов,* т. II. Федерации и республики (Право 1907) 504.

[2] В. Гессена и Б. Нольде (пер, под ред со вступ очерками), *Современные конституции: сборник действующих конституционных актов,* т. I. Конституционные монархии (Право 1907) 429.

[3] Н. Шукліна, 'Українські конституційні проекти європейського зразка XIX – початку XX ст. про коло прав і свобод людини і громадянина: політико-правовий аналіз' (2003) 200 Науковий вісник Чернівецького університету Правознавство 24.

[4] А. Середа, 'Розвиток конституційного законодавства в Українській Народній Республіці' (2006) 1 Вісник Запорізького національного університету Юридичні науки 15.

tion of the UPR.[1] Citizens of the UPR were endowed by the Constitution with active and passive electoral law, such as it was regulated by the UCR adopted in November 1917 the Law "On Elections to the Constituent Assembly of the Ukrainian People's Republic".

Section III of the Constitution "Authorities of the Ukrainian People's Republic" defined the system of central government bodies of the UPR, namely: the National Assembly of the UPR – the supreme legislative body; Council of People's Ministers – the highest executive body; The UPR General Court is the highest judicial body.[2] As we see, the Constitution provided for a system based on the separation of powers, and such bodies as the Council of People's Ministers and the General Court of the UPR had already been recognized as the central state authorities under the previous legislation of the UCR.

The use of the authors of the Constitution of the UPR of the previous constitutional legislation of the UCR is also shown by Section VII of the "National Unions", which practically literally repeats the content of the law "On national and personal autonomy" from January 9 (22), 1918. The norms of this section provided the citizens of the UPR who belonged to one or another national minority the opportunity to develop their culture, language, and to be taught in their native language.

As you know, because of the Hetman's coup on April 29, 1918, the power of the UCR was stopped, and therefore the Constitution of the UPR was not implemented.

Conclusions. Summarizing all of the above, we can say the next. Despite some weaknesses (lack of norms on property rights, economic rights of citizens, the head of state, state symbols), the Constitution plays a worthy role in the history of Ukrainian constitutionalism. Its content shows the intentions of its founders to build an independent Ukrainian state on the principles of democracy and humanism, a state in which the rights and freedoms of citizens, regardless of their nationality, would be fully guaranteed and secured.

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[1] Современные конституции: сборник действующих конституционных актов 16–8, 22–4, 56–9, 391–4; Современные конституции: сборник действующих конституционных актов 92–4, 149–159.

[2] Історія конституційного законодавства України 46.

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ON THE CONSTITUTIONAL PROCESS IN THE UKRAINIAN PEPLE'S REPABLIC, 1917–1918

Abstract. *The history and development of the constitutional process in Ukraine with the establishment of the Ukrainian Central Rada and especially the proclamation of the Ukrainian People's Republic, which resulted in the adoption of the UCR of the Constitution of the UPR. The most important types of sources of constitutional law are analyzed, the continuity in the state and law-making of the Central Rada, the drafting of the Statute on the state system, the rights and freedoms of the UPR is followed.*

The article analyzes the Universals of the Central Council, which laid the legal basis for the UNR and its legal system, a step-by-step process of constitutional law-making.

The purpose of the article is to analyze the process of establishing the UCR of constitutional law-making, its implementation of the constitutional and legal principles of democracy and state sovereignty, and the development of a legal constitution. It has been established that, starting with the Universal, the Central Rada, by its legislation, sought to constitutional and legal regulation of acute socio-economic and political relations in Ukraine caused by national liberation and proclamation of the People's Republic. In this article, the specifics of the "interim parliament", as proclaimed by the Central Rada, are the legislative process. The main stages of the drafting of the Basic Law of the UPR, initiated by the draft "Statute of the Autonomous Ukraine", were followed, the attention was paid to the main provisions of the "Draft Constitution of the Ukrainian People's Republic" dated December 10, 1917, and their consolidation in the "Statute on the state system, rights and freedoms of the UNR".

Key words: *Constitutional process, Universals, Ukrainian Central Rada, Ukrainian People's Republic, UNR laws, Constitution of the UNR.*

The Constitution of the Ukrainian People's Republic of 1918 – the consequence and crown of the right and nation-building of the Ukrainian Central Rada, called its leaders as "temporary parliament"[1]. The "Statute on the state system, rights and freedoms of the UNR" embodied the conceptual foundations and prospects of the state-building of a parliamentary republic, taking into account the experience gained by the Central Rada.

[1] Українська Центральна Рада. Документи і матеріали: У 2 т. НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 1. 4 березня-9 грудня 1917 р. Київ: Наук. думка, 1996. С. 81.

Known historian of the national constitutionalism O. M. Mironenko was the first and most fully explored the origins of Ukrainian revolutionary constitutionalism in the theoretical and methodological aspect[1]. Thanks to him he introduced the full texts of unpublished draft of the Constitution of the UPR, defined the role of "party constitutions" of the leading parties of the Central Council, "doctrinal constitutions" of the then lawyers, reflected true methodological pluralism in the theory of state formation of the era of national liberation struggle.

In the continuation of the study of the history of Ukrainian constitutionalism of this era, this article focuses on the main content and milestones of the constitutional process carried out by the UCR.

Formation of the composition and representation of the Central Council, begun on March 3, 1917, continued until the beginning of August, when at its sixth session the representation of the All-Ukrainian Councils of peasants, military and workers' deputies, "from the provinces, large cities and colonies", political parties – Ukrainian, Russian, Polish, Jewish, etc.[2]. Of the 19 parties represented in the Rada, 17 have called themselves socialist. They determined the nature of their activities and lawmaking. According to the minutes of the general meeting, the UCR factions were created on a party basis, among which the factions of Ukrainian SRs, Social Democrats and Socialist-Federalists played a decisive role in its work[3]. The desire to build autonomy on their own, recalled the Head of UCR, the leader of Ukrainian SRs M. Hrushevsky, demanded to document the seriousness and urgency of the Ukrainian claims to the central government, to legitimize the Council as "the body of the will of the land", which would have "the right to constitution"[4].

The Congress was convened by the Council on April 7–8, where delegates from the provinces of Ukraine, the Ukrainian public organizations of Petrograd, Moscow, the Crimea, the Kuban, Kholmshchyna, from peasant, labor, trade union organizations, parties and national minorities were represented. called for broad national-territorial autonomy of Ukraine, preparation of its Charter. V. Vynnychenko wrote that the convening of such an all-Ukrainian congress was the first step towards the organization of statehood[5]. The con-

[1] Мироненко ОМ. Витоки українського революційного конституціоналізму 1917–1920 рр. Теоретико-методологічний аспект: моногр. Київ: Ін-т держави і права ім. В. М. Корецького НАН України, 2002. 260 с.

[2] Мазепа І. Україна в огні і бурі революції. 1917–1921: Ч. І Центральна рада. Гетьманат. Директорія. ІІ Кам'янецька доба. Дніпропетровськ: Січ, 2001. С. 44–45.

[3] Українська Центральна Рада. Документи і матеріали: У 2 т. НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 1. 4 березня–9 грудня 1917 р. Київ: Наук. думка, 1996. С. 235–246; Винниченко В. Відродження нації: Репринтне відтворення видання 1920 р. Ч. І, ІІ, ІІІ. Київ: Політвидав України, 1990. Ч.1 С. 224.

[4] Грушевський М. С. Твори у 50 т. / Редкол.: П. Сохань, Я. Дашкевмч, І. Гирич та ін. Т.4. Кн.1. Серія "Суспільно-політичні твори (доба Української Центральної Ради: березень 1917 – квітень 1918)". Львів: "Світ", 2007. С. 157–164.

[5] Винниченко В. Відродження нації: Репринтне відтворення видання 1920 р. Ч. І, ІІ, ІІІ. Київ: Політвидав України, 1990. Ч.1. С. 87; 93.

gress defined the form of the state structure of Ukraine – national-territorial autonomy within the federal democratic republic of Russia, observing the main constitutional principles: full protection of the rights of the nation and national minorities, inviolability of the Ukrainian territory, establishment of its borders "in accordance with the will of the border people", Ukraine's participation in international conference[1]. The National Congress replenished the composition of the Central Council, turning it into a national representative body, authorized it to create the Regional Council (Parliament) with the territorial representation, the development of the autonomous Ukraine. Thus, the Congress played the role of a peculiar constitutional authority, which defined the most important at that time the constitutional principles of the future Charter, legitimized the UCR.

The Central Rada began its legislative work from political appeals and appeals to the Ukrainian people, from appeals to seek all the rights that it "naturally belongs to." At its March meetings, the UCR considered issues and adopted resolutions on the nomination of candidates to the vowel provincial zemstvo council, adopted decrees on increasing the role of the Ukrainian language, entrusted the Scientific Society in Kyiv with the study of the ethnographic boundaries of Ukrainians in the Russian Empire, and others. So began to create political sources of constitutionalism, the beginning of legal regulation of new social relations.

From the first general meeting of the UCR, it begins its transformation into a parliamentary institution: the formation of organizational structures, the legal design of its competence. At its session on April 22–23, she considered and adopted, with minor amendments, the "Order of the UCR" – a regulation that defined it as "the representative body of all organized Ukrainian people", the powers and procedure of the general meeting, the UCR Committee as its permanent body. This "Order" became, by definition, a member of the Committee, P. Khristyuk, as its "internal constitution"[2]. The meeting adopted resolutions on the organization of provincial, county and city Ukrainian councils, on taxation "to cover expenses that are in need of our national needs", the size and mechanisms of taxation[3]. April 26, under the chairmanship of M. Hrushevsky, the Committee heard a report by the Commissioner of Galicia and Bukovina D. Doroshenko on the situation in the province. The meeting discussed and approved the nominees proposed by the provincial and county commissars. On April 28, the Committee adopted the "Statute on provincial, district and rural Ukrainian councils". M. Hrushevsky, presiding at the meeting, expressed the opinion on the complexity of the transition "from the national to the territorial principle of rep-

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[1] Українська суспільно-політична думка у 20-му столітті. Документи і матеріали. у 2 т. / Уклад. Т. Гунчак і Р. Сольчаник. Б.м.: Сучасність, 1983. Т.1. С. 283–285.

[2] Христюк П. Замітки і матеріали до історії Української революції. 1917–1921 рр. Т. 1–3. Відень (Б. в.), 1921. С. 57.

[3] Українська Центральна Рада. Документи і матеріали: У 2 т. НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 1. 4 березня-9 грудня 1917 р. Київ: Наук. думка, 1996. С. 71–72.

resentation" in the Central Rada[1]. Consequently, the Council's legal framework expanded rapidly, and its powers and decisions became national and parliamentary. At the Committee meeting on May 3, M. Hrushevsky and V. Vinnichenko defined the competence of the UCR as a parliament[2].

The third general meeting of the UCR of April 7–9, one of the main issues discussed the economic policy of the Russian Provisional Government, strongly advocated the extension of the competence of the Council on the country's economy, urgent resolution of the agrarian question[3]. Its leaders had a fairly clear understanding of the urgent need for a legal settlement of the most painful socio-economic relations, but this was hampered by the desire for understanding with "Russian democracy." The Fourth General Assembly of the Council June 1–3, after hearing the report of the head of the delegation to Petrograd, adopted a resolution that strongly condemned the position of the Provisional Government that rejected the Ukrainian demands, stubbornly did not recognize the authority of the Central Rada. The resolution consolidated the decision of the meeting to appeal to the entire Ukrainian people with the call "to immediately lay the foundations of the autonomous regime in Ukraine"[4].

And Universal briefly and clearly taught the essence of the aspirations of the Ukrainian people to "order their lives", to give order to the laws. Already June 15, the URC Committee adopts the organization of the General Secretariat, chooses its main body, headed by V. Vinichenko, outlines the organization of his work, defines the scope of his mandate – "to manage internal affairs, financial, food, land, grain, inter-ethnic and other within Ukraine and to comply with all resolutions of the Central Rada, which deal with these matters "[5]. Consequently, the resolution of its Committee fixed the distribution of powers between the "interim parliament" and the government. The members of the Central Council stated: "With the rapid development of democratic processes, the growth of the" size and strength of our moral authority, "she" becomes a true national government "," revolutionary parliament "to convene Constituent Assembly[6]. And the Universal, the resolutions of the Council in essence, and not in form, acquired the importance of basic constitutional laws.

This conclusion is confirmed by the minutes of the meetings of the fifth general meeting of the Central Council from June 20 to July 1. The meeting welcomed the formation of the General Secretariat, elected four commissions to consider cases concerning the composition of the Council, the preparation of the Statute of the Autonomous Ukraine, the convening of a congress of repre-

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[1] Українська Центральна Рада. Документи і матеріали: У 2 т. НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 1. 4 березня-9 грудня 1917 р. Київ: Наук. думка, 1996. С. 74–78; 78–79.

[2] Там само. С. 74–78; 78–79; 81;89.

[3] Там само. С. 82–83.

[4] Там само. С. 100–101.

[5] Там само. С. 105–106.

[6] Дорошенко Д. Мої спомини про недавнє-минуле (1914–1920): В 4 ч.: Галицька Руїна. – Доба Центральної Ради. – Доба Гетьманщини. – Доба Директорії. 2-е вид. Мюнхен.: Укр. вид-во, 1969. С. 316.

sentatives of the peoples of Russia, and others. Commission on the elaboration of the Statute was headed by the lawyer M. Levitsky.[1] In the speeches the deputies came to the conclusion: "UCR is the legislative body", "it is necessary to create their own laws", only those laws (from Petrograd) will be valid in Ukraine, "which the UCR says"[2]. Adopted on June 27 by the general meeting, the Declaration of the General Secretariat defined the Central Rada as the supreme legislative authority, and the General Secretariat as the executive body, "to which it transfers its full power in this area"[3]. At the suggestion of M. Hrushevsky, the meeting made fundamental changes to the legal status of the UCR Committee – it "must be" the Small Central Rada ", carrying legislative functions between the two sessions", passing the functions of the executive power of the government[4]. The decision of the meeting was determined by the composition (from representatives of factions), the competence of the Small Council. The meeting resolved the further fate of UCR talks with the Provisional Government, discussed the draft II Universal. Part of the deputies proposed "not to negotiate" with the Russian government, not to waste time and to continue its own law-making[5]. But by voting, the head of the Ukrainian delegation, V. Vinnichenko, received the authority to continue the negotiations, which resulted in the "Resolution of the Provisional Government on the approval of the General Secretariat" and the UCR Universal II[6]. In it, she refused to "measure the unauthorized implementation of autonomous Ukraine to the All-Russian Constituent Assembly." Thus, the Constitutional process started as a constituent part of the state was interrupted by the Central Rada.

However, the deepening of the country's socio-economic crisis, the growth of anarchy dictated the continuation of state-building, the legal settlement of burning socio-political problems. It was with their decision that the Central Council was delaying, losing time. Its sixth session on August 5–9 reviewed a wide range of issues: replenishment of the Council by representatives of the Council of Workers' Deputies, non-Ukrainian organizations, the Government's report and its program, the present moment, the convening of the Ukrainian and All-Russian Constituent Assembly, economic policy, measures in land, labor, and foodstuffs, etc. In the adopted resolution, the condemned condemned the "Instruction" of the Provisional Government, which did not allow "the democracy of Ukraine to form power over the entire territory" of the country, but agreed to reduce the number of Secretaries, to other significant and, as the following events show, unjustified concessions to the Russian authorities. The Council ignored the issue of organizing the Ukrainian army,

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[1] У складі Комісії спочатку нараховувалося лише 2 правника, згодом до них прєдналося ще 12 "знавців державного права" і вже в липні Комісія налічувала 100 осіб.

[2] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 1. 4 березня-9 грудня 1917 р. – К.: Наук. думка, 1996. С. 106–116; 116–120; 122.

[3] Там само. С. 157–158.

[4] Там само. С. 116; 143–144; 262.

[5] Там само. С. 151.

[6] Вісти з УНР. 1917. №20/21

the potential strength of the Free Cossacks, and the decision of its congress on October 3–7 in Chyhyryn.

During the next two and a half months the general meeting of the UCR was not convened. Instead, its powers and functions as a "temporary parliament" were increasingly scrutinized by the Small Council. Thus, in August-September 1917, she accepted the resignation of the government, approved its new composition, developed measures for the preparation of the convening of the Ukrainian Constituent Assembly, the improvement of the state of food affairs, approved the appeal to the people in connection with the Kornilov rebellion, approved the budget of the General Secretariat, his friend's declaration and so on[1].

Since October, the Small Council is launching an active legislative work, first of all, on the legal provision of the convening of the Ukrainian Constituent Assembly, the definition of their competence, the development of "electoral ordination"[2]. However, the October armed uprising under the leadership of the Bolsheviks in Petrograd solved the fate of both the Provisional Government and the Constituent Assembly. In response to threatening events, the Small Council creates the National Committee for the Protection of the Revolution in Ukraine, which is responsible to the Central Rada. Thus, the Small Council and this time took over and its constituent powers.

In the resolution on power in Ukraine, adopted at the extraordinary meeting of the Small Council on October 26, it was a question of the need for the authorities to move "into the hands of revolutionary democracy", condemning the uprising in Petrograd.

The Bolshevik uprising in Kiev led to the withdrawal of Bolshevik representatives from the Council. However, the UCR maintained popular support, as evidenced, in particular, by the results of the elections to the All-Russian Constituent Assembly: the parties represented in it received 70 percent of the votes, while the Bolsheviks only 10[3].

The seventh session of the Central Rada on October 29 – November 2 heard a speech by M. Hrushevsky about the activities of the Small Council, the Commission for the elaboration of the Statute. The chairman of the UCR has identified the next two main goals: the formation of the Ukrainian Democratic Republic in Russia and the convening of the Ukrainian Constituent Assembly. He called the draft Constitution of the UCR Commission a draft constitution – "The Constitution of the Ukrainian Republic recognizes that the Ukrainian Constituent Assembly has the highest sovereign power. She gives part of the power to the federal parliament of Russia "[4]. Consequently, despite the Bolshevik revolution in Russia, the UCR chairman remained a supporter of federalism, dependent on the All-Russian Constituent Assembly and an illusory hope for the convening of

[1] Там само. С. 258–259; 260; 263–264; 266–269.

[2] Там само. С. 334–339; 346–350; 353.

[3] Український вибір: політичні системи XX століття і пошук власної моделі суспільного розвитку / В. Ф. Солдатенко. К.: Парлам. Вид-во, 2007. С. 148–149.

[4] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 1. 4 березня-9 грудня 1917 р. – К.: Наук. думка, 1996. С. 374.

the Russian parliament. Yet the session decided to extend the competence of the General Secretariat, reviewed the bills on the Ukrainian Constituent Assembly, on the land issue, adopted a resolution on the unification of Ukrainian lands. On November 7, the Small Council adopted the Third Universal, which proclaimed the Ukrainian People's Republic, the authority of the Central Rada and the General Secretariat[1]. The Universal declared the independence of the supreme power of the UPR, unrestricted in the sphere of internal state life, legislation, administration and court. Only in relations with other states of the UPR was limited by provisions on federated relations with Russia. The Universal opened a qualitatively new stage in the state-building activities of the Central Council, defining the territory of the republic, its borders, and clearly formulated the idea of the unity of the Ukrainian lands. The existing land ownership right was abolished, the death penalty was set, the 8-hour working day was set at the enterprises, declared its intention to seek peace in every possible way, to defend all the freedoms gained by the revolution, and so on. Thus, the III Universal became an important source of the constitutional right of the UPR, which contained constitutional and legal requirements and had at that time the highest legal force in its territory. In its content, the Universal is a constitutional-constitution, which, in particular, legitimized the Central Rada as the parliament of the republic[2].

The very fact of the emergence of a new state, the definition of its democratic foundations, becoming a historical phenomenon, opened the prospect of active constitutional law-making. Small Council of UCR has formed a commission to consider bills. On November 10, she presented for discussion a draft law on elections to the Constituent Assembly. In the Small Council the draft was discussed on November 10, 11, 16, the result of which was the approval of Sections I and II of this vague (article 183) constitutional law, election of the chairman of the election commission[3]. For a week the Commission submitted for consideration the elaborated bills of the government – about postponement of compulsory military service, amnesty, considered and approved by the Small Council. In the mode of its extraordinary sessions, resolutions were adopted on the attitude to the Russian People's Commissars, the armistice and peace in the First World War[4].

Already on November 25, there were laws on the exclusive right of the Central Council to issue legislative acts of the UPR and the procedure for issuing laws on the maintenance of the Council at the state expense[5]. The laws adopted by the Small Council in early December: on the state funds of Ukraine, on the Main Treasury (Treasury) of the UPR, on the State Bank of the UPR, on the liquidation of the No-

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[1] Там само. С. 398–401.

[2] Гончаренко В. Д. Утворення Української Народної Республіки як важливий етап на шляху до незалежності України // Право України. 2017. № 11. С.36.

[3] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 1. 4 березня-9 грудня 1917 р. – К.: Наук. думка, 1996. – С. 407; 411–412.

[4] Там само. С. 407; 411–412; 432; 440–441.

[5] Там само. С. 451; 477–478.

ble and Peasant Banks, on the sugar monopoly, on school board, were of great importance for state building and constitutional law-making. , about Jewish community councils, etc.[1]. Another important step in the division of powers into legislative, executive and judicial proceedings was the adoption of the Law "On the Establishment of the General Court" with jurisdiction, "which belonged to the Government Senate"[2]. The adopted laws contain important norms of constitutional law, laid the legal foundations for further legislation of the UCR, the legal system of the state. The Law on the Establishment of the General Court stipulated that the Constitution of the UPR will be adopted by the Ukrainian Constituent Assembly. A month before the deadline for their convocation, its draft prepared by the Council of the Commission and dated December 10[3] was published in the press – "News from the UCR", "People's Will", "New Council" and others.

The draft Constitution of the UPR consisted of 8 sections – "General Decrees", "The Rights of Citizens of Ukraine", "Relations of the Ukrainian Republic to the federal bodies", "The authorities of the Ukrainian Republic", "National Assembly of the Ukrainian Republic", "On the Cabinet of Ministers of the Republic of Ukraine" "General Court of the Ukrainian People's Republic", "National organizations". It clearly defined the legal principles of Ukrainian statehood, the sovereignty of its people, determined the territory of the republic and its indivisibility, proclaimed the granting of land, volosts and communities the rights of broad-based self-government, legal personality and the inalienability of the rights of citizens of the state. Despite the fading appearance of the future Russian parliament and Cabinet of Ministers, the project defined a range of their powers and exclusive powers of the authorities of the UPR. The project envisaged the establishment of a parliamentary republic in Ukraine. Section IV formulated an important constitutional principle of separation of powers: "The Ukrainian National Assembly, which directly exercises the highest legislative power …, form the highest executive and judicial authority of the Republic of Ukraine." The composition of future meetings is formed on the basis of "general, equal, direct, secret and proportional voting". The last section of the draft provided for the consolidation of national-territorial autonomy for national minorities within the republic, the formation of the highest bodies of the national union – the National Council and the National Council, their representation in the higher organs of the UPR.

The original rules on the judicial protection of the Constitution were formulated in the section "General Court

[1] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 1. 4 березня-9 грудня 1917 р. – К.: Наук. думка, 1996. С. 496; 497; 511–512; 515; 527.

[2] Центральний Державний архів вищих органів влади і управління України, ф.1115, оп.1, од. зб.6, арк.149.

[3] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 2. 10 грудня 1917 р. – 29 квітня 1918 р. – К.: Наук. думка,1997. – С. 5–11.

of the UPR" of the project, according to which this supreme judicial institution was declared "the highest guard of the Constitution and the right of the Ukrainian Republic …, of the judges elected at the level of the National Assembly and judges of the lands of the Republic of Ukraine" (Article 56). The important authority of the General Court was determined by "observing the consistency of the laws of the National Assembly of the Ukrainian Republic with its Constitution …" (Article 59). Article 62 contained a provision: in case of recognition by the General Court of unlawful or inappropriate Constitution of the acts of self-governing bodies or executive bodies of the UPR, they shall lose their effect immediately.

In the draft Constitution, the issue of ownership, the limits of its use, socio-economic rights, the procedure for convening Constituent Assembly, etc., were conveyed, the constitutional consolidation of which was still debated at the general meeting of the UCR and the meetings of the Small Council. There is no doubt that the project was the highest achievement, the apex of the constitutional process of 1917, initiated by the resolutions of the All-Ukrainian Congress, the three Universal of the UCR, its laws and regulations, which contained constitutional and legal norms. This process in the considered project has gained the real meaning and design, initiated the establishment of the rule of law in the UPR.

The cardinal legislative solution required numerous acute socio-economic problems, first of all, land issues, although it was raised and discussed at previous sessions of the Central Rada. It was the land issue that was central to the work of the eighth session of the "Interim Parliament" December 12–17[1]. Considered the draft "Provisional Land Law", introduced by the government. He caused passionate debate and criticism from peasant deputies. At the last meeting of the general meeting, a parliamentary commission was elected from 23 deputies, who had to finalize the bill[2]. With this task, the Commission coped and the Provisional Land Law was submitted for consideration at the last, ninth session of the Central Council on January 17, 1918. It was discussed only at the meeting of the factions. In connection with the offensive of the Soviet troops to Kiev, M. Hrushevsky advised the assembly to approve the bill as a whole, which was done[3]. However, according to Vinnichenko, "the rural proletariat did not believe in promises and laws of land, more believing in real facts …", the wealthy peasantry "scolded on all sides of the Central Rada and campaigned on all sides against it"[4]. The adopted law did not finally solve the land issue and the Council continued to lose its support among the peasantry.

[1] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 2. 10 грудня 1917 р. – 29 квітня 1918 р. – К.: Наук. думка,1997. – С. 16–38.

[2] Там само. С. 35.

[3] Там само. С. 113.

[4] Винниченко В. Відродження нації: Репринтне відтворення видання 1920 р. Ч. I, II, III. – К.: Політвидав України, 1990. Ч. II. – С. 373.

Undisputed achievement of the lawmaking activity of the UCR was the development and adoption of a law on national-personal autonomy. The bill was prepared by the General Secretariat and sent to the Legislative Council Commission in December. His discussions and amendments were continued at the meetings of the Small Council until January 9, 1918.[1]. The law provided "to each of the inhabitants of Ukraine the nations … the right to national-personal autonomy, that is, the right to self-organization of their national life …"[2]. The developers of the law evaluated it as a "small constitution" for national minorities, the "Declaration of the rights of nations". Another thought was D. Doroshenko, who wrote in memoirs: only the Poles sought to organize themselves on the grounds of protecting their national interests, the Russian-speaking population did not want to admit to being a national minority. As a result, the law, which was so proud of the leaders of the Central Council, "in reality, did not cause any recognition from those who had the good fortune – from the national minorities …"[3].

The laws and regulations of the Central Rada on the introduction of new secretaries in the government, the Law "On Ukrainian Money", the formation of the Committee on the Demobilization of the Army, and the Law "On the Establishment of a Popular Army" on January 3, 1918, were of great importance for constitutional-legal regulation. the composition and procedure for the election of judges of the General and Appellate Courts, the organization of prosecutorial supervision, etc.[4].

The logical development of state and law-making in the UPR became the IV Universal of the Central Rada, approved by its ninth session[5]. It proclaimed the independence and independence of the republic, all the democratic freedoms set forth in the previous Universal, were confirmed by the established Council of Ministers to begin negotiations on peace, establish state control over banks, trade, to ensure the transfer of land to the hands of the working people, etc. The chairman of the UCR has expressed the hope that the proclaimed state independence will become a solid ground for ensuring our statehood and our social construction[6].

The work of the session took place in the face of a real threat of seizure by

[1] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 2. 10 грудня 1917 р. – 29 квітня 1918 р. – К.: Наук. думка,1997. – С. 82; 87–88; 88–90; 93; 98–99.

[2] Там само. С. 99–101.

[3] Дорошенко Д. Мої спомини про недавнєминуле (1914–1920): В 4 ч.: Галицька Руїна. – Доба Центральної Ради. – Доба Гетьманщини. – Доба Директорії. – 2-е вид. – Мюнхен.: Укр. вид-во, 1969. – С. 328–329.

[4] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 2. 10 грудня 1917 р. – 29 квітня 1918 р. – К.: Наук. думка,1997. – С. 58; 62–64; 78–79; 88–92.

[5] Там само. С. 101–102; 105–106.

[6] Грушевський М. С. Твори у 50 т. / Редкол.: П. Сохань, Я. Дашкевмч, І. Гирич та ін. Т.4. Кн.1. Серія "Суспільно-політичні твори (доба Української Центральної Ради: березень 1917 – квітень 1918)". –Львів: "Світ", 2007. – С. 259.

the Russian troops of the Pedagogical Museum, where the UCR was held. However, while already in Zhytomyr, the Small Council did not stop work on draft laws: on March 2, the Temporary Statute on public works was adopted, the law on the establishment of the time calculation in a new style, the Coat of Arms of the UPR, the Law on the monetary unit and the printing of credit state tickets, the law on the citizenship of the UPR and others.[1]. In the last days of his stay in Volyn, the Small Council adopted a number of draft laws, in particular, – adopted the Law "On the division of Ukraine on the earth", which abolished the existing division in the provinces and counties, laws on the administrative status of Kiev, the punishment of war and insurrection against UNR[2]. Consequently, the Mala Rada accepted, in fact, the constitutional laws in those extreme conditions without following the special procedure for their adoption. After the return of the leaders of the Central Council in Kyiv, her active law-making activity is restored. On March 19, a report of the Chairman of the Electoral Commission M. Moroz on the results of the elections to the Ukrainian Constituent Assembly was heard at the meeting of the Small Council, and the resolution on their convocation was adopted on May 12, 1918.[3]. The course and consequences of the election were discussed at subsequent meetings of the Small Council, in fact by the end of April. The draft law of the Government of V. Golubovych did not stop. Thus, from March 30 to April 11, several times were discussed at the Legislative Commission and the Minority Council meetings of the government budget "Draft Law on the Procedure of State Expenditures in 1918", the bill "On Issue for the Circulation between the Peoplehood of the Signs of the State Treasury", as well as "Minor Bills ", Adopted by the Small Council[4].

The legal basis for the activities of the Central Council concerned several interesting bills submitted by the Legislative Commission – an inquiry commission, "which will collect information and investigate various cases of violations by local authorities of laws, increase of the salaries of members of the Small Council, the integrity of the members of the members Council and Constituent Assembly, about the right to purchase books and various publications by the Library of the Central Council, etc.[5].

With great delay, the Council discussed and adopted bills on financial and economic problems, introduced repeated amendments to the annual budget, draft bills on the allocation of funds for the needs of local self-government bodies, land committees, the formation of the High Economic Council of the UPR "to unite all the state -economic measures of the government, as well as preliminary consideration of all bills of financial and eco-

[1] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 2. 10 грудня 1917 р. – 29 квітня 1918 р. – К.: Наук. думка,1997. – С. 165–166; 171–174.

[2] Там само. С. 179–180; 181–182.

[3] Там само. С. 216.

[4] Там само. С. 236; 237.

[5] Там само. С. 246–247; 258; 282.

nomic nature "[1]. But in the absence of time, the last laws did not come into force.

Conclusions Laws of the UPR reflected and, to a greater or lesser extent, consolidated the plurality of overdue constitutional relations, the diversity of their objects and became the source of its Basic Law. Adopted on the last day of the Central Council Constitution of the UPR[2] took into account the achievements of world and national state-legal thought[3]. She legally ordered the revival of Ukrainian statehood.

[1] Українська Центральна Рада. Документи і матеріали: У 2 т. – НАН України, Ін-т історії України, Центр. держ. архів вищих органів влади і управління України. Т. 2. 10 грудня 1917 р. – 29 квітня 1918 р. – К.: Наук. думка,1997. С. 265; 281; 293; 301–302; 307–309.

[2] Там само. С. 330–335.

[3] Там само. С. 15; 165; 174.

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FREEDOM OF EXPRESSION, ELECTRONIC MEDIA AND CYBERCRIME – A RAPIDLY EVOLVING LEGAL LANDSCAPE

Access to the Internet and electronic social media have become essential for the effective exchange of diverse opinions important for the practical realization of the freedom of expression. The Budapest Convention of 2001 remains the most important international document in the area of fighting cybercrime which has a direct effect on the use of electronic media. If universal Internet access is to be recognized internationally as a universal right, a derivative of the right to freedom of expression, perhaps, it is the right time to entertain the idea of an international framework convention to guarantee a minimal standard of practices acceptable for the exchange of information and opinions on the Internet.

L'accès à l'Internetet les médiasinformatiques de socialisation sontdevenus indispensables à l'échangeefficace de vuesdiverses qui sontimportantes pour la mise en œuvrepratique de la libertéd'expression. La Convention de Budapest de 2001 reste le document international le plus important dans le domaine de la luttecontre la cybercriminalité qui a uneffet direct surl'utilisation des médiasinformatiques. Si l'accèsuniversel à l'Internetest à êtrereconnudans le plan international en tantqu'undroituniversel, un dérivé du droit à la libertéd'expression, peut-être, le moment estvenu pour considérerl'idéed'une convention-cadre internationaleafin de garantir des conditions minimales des pratiquesacce ptablesd'échanged'informations et d'opinionssurl'Internet.

Freedom of expression, including freedom to receive and generate information is a fundamental human right protected by the European Convention on Human Rights (Art. 10) and the EU Charter of Fundamental Rights (Art. 11).

The exercise of this right carries a set of duties and responsibilities whose legal nature has evolved via legislative process and judicial practice over hundreds of years. Historically, other than speaking in public, the right to receive and impart information was limited to printed media, radio and TV broadcasting and cinema outlets whose operation was licensed and regulated by the State which created a body of case balancing the right of the State to protect safety and security of its citizens against their right to impart any information to their liking.

Invention of the Internet-based social media changed the landscape dramatically and forever. A marginal cost of publishing of a piece of information

as well the marginal cost of receiving a piece of information is virtually zero creating a dramatically (an absolutely) different information and news distribution environment.

Anybody with a personal computer or a smart phone can access virtually any source of information which is available on the Internet. Simultaneously, a growing share of business and government services has moved to the Internet which led to an ever growing amount of losses and disruption generated by cybercrime. A good example of this issue was the ransomware Wannacry where private and public organizations in 150 countries became its victims on an unprecedented scale.

At present, the Council of Europe Convention on Cybercrime (also known as the Budapest Convention of 2001) is the main instrument on cybercrime helping its members, which include most of the EU countries, the US, Japan, Australia, Canada and others. The Europol, the EU's law enforcement agency, has a Joint Cybercrime Action TaskForce which includes the FBI and the US Secret Service which plays an important role in fighting cybercrime. However, Russia, China and a number of other large countries declined to ratify the Budapest Convention giving two major reasons – either because they have not participated in its drafting process or because it infringes on their sovereignty.

Recent allegations of Russia's attempting to influence elections in the USA, Germany and other Western democracies, if even proven in the court of law, would, perhaps, for the first time, create a situation where various national and international bodies, such as Europol, will be forced to look deeply into an outcome of elections and, for that matter, any political campaign and cybercrime.

It might be useful to provide a fictional example of such as connection for the benefit of the discussion. Let's, for argument's sake, that a company in the USA, a "sworn enemy of Russia" would design and test a safe and cheap nuclear reactor which runs on fuel other than Uranium oxide and can be inexpensively manufactured for subsequent assembly in the factory environment. The EU, which is a net importer of natural gas, the fuel of choice for baseload electric generation, brings a large share of natural gas from Russia. Introduction of safe and inexpensive alternative to coal and natural gas power generation would make a large portion of natural gas and oil imported to the EU from Russia redundant. Hence, Russia, which is currently accused of trying to manipulate public opinion during most recent elections in the USA, may decide to mount a campaign to undermine substitution of coal and gas fired electric power stations in Europe with cheap, clean and safe nuclear reactors built in the USA in order to protect its position as a dominant supplier of imported natural gas and oil to Europe. In addition to keeping better technology away from the European market such a campaign would effectively undermine the freedom of expression in Europe from outside.

Historically, other than speaking freely at a neighbourhood bar, one could have tried to publish an article in the newspaper or, perhaps, approach a TV news channel. In other words, in fact, one's ability to speak freely was rather

limited. Free speech protects one's right to speak but it does not force others to listen. Electronic social media platforms such as Facebook, Tweeter and others made it possible to use somebody's page within the platform as a speaking page. One can also create his/her own free blog at Worldpress or Tumblr. However, each Web platform is a private space and one has to behave within the rules of the platform where free speech is receives only as much protection as the provider is willing to provide.

Freedom of Expression (Art/ 10 of the ECHR of 1950) has evolved through the interpretation given to its texts by the European Court of Human Rights (the Court) and the European Commission of Human Rights (the Commission). In the case of *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, the Court, for the first time, acknowledged that Article 10 of the ECHR had to be interpreted as importing on states a positive obligation to create an appropriate legal environment to protect freedom of expression on the Internet. In *Delfi AS v. Estonia*, the Court held that a for-the-profit Internet provider or a platform can be liable for allowing certain extreme publications. At the same time, in a different case, the Court found that a non-commercial Hungarian provider had no positive obligation to remove certain opinions which are protected as free speech. Each case and situation warrants a different outcome in the court of law.

In June 2017, Germany, which has some of the world's toughest laws covering defamation, public incitement to commit crime and threats of violence, passed a bill under which social media companies face fines of up to EU50M if they persistently fail to remove illegal content from their sites. In Germany, where social media platforms such as Facebook, Google and Twitter became a battleground for angry debates about Germany's influx of refugees, hate crimes increased by more than 300% in the last two years. The issue became even more urgent as there was a growing concern that proliferating fake news and racist content might have swayed public opinion in the run-up to a national election. In addition to the hefty fine for companies, the law also provides for fines of up to EU5M for the person each company designated to deal with the complaints procedure if it doesn't meet the requirements of the law. Fines would be applied only should the company fail to act or refuse to set up a complaint management system. In response to passing the bill, Facebook said in a statement: "This law as it stands now will not improve efforts to tackle this important societal problem. We feel that the lack of scrutiny and consultation do not do justice to the importance of the subject. We will continue to do everything we can to ensure safety for the people on our platform". Being a major social media platform has a cost. Facebook was in the process of hiring 3,000 additional staff on top of 4,500 already working to review posts. (The Guardian, 30 Friday 2017).

Unlike printed media or broadcasting, the Internet remains an almost unregulated space. Some countries, such as China, recognized a potential influence of the Internet on the public opinion at large and have established a tight control over its content at the expense of the freedom of speech while Western

democracies struggle with dilemma of dealing with cybercrime while keeping Web-based electronic media opened to bona fide exchange of opinions and information. There is a long standing history behind modern defamation and hate speech laws which were developed when it was easy to identify a source of offending news whose author (typically a journalist or a publication) was responsible for verifying their truthfulness.

What is an ultimate goal of a social electronic platform serving as a freedom of speech medium? It would be either to earn a profit or to advance certain view when funded from elsewhere. As Mark Zuckerberg said at the Technomy conference in 2016, "Voters make decisions based on their lived experience". He further said that "There is a profound lack of empathy in asserting that the only reason someone could have voted the way they did is because they saw fake news". He further said that the information people are getting through the social system is going to be inherently more diverse than they would have gotten through news stations. However, people don't "click on and engage" with content that doesn't conform to their world view, according to a human tendency towards confirmation bias, which is a classical problem known to mass media and political experts.

It takes a lot of effort, time, expertise and, untimately, money to verify a piece of information. Facebook and other social media platform are looking into this issue but, untimately, do we want to pay for these efforts, as funding has to come from somewhere. One of the key advantages of the Internet is that it is, for most part free. Even now, a critically minded user can find diverse points of view on the Internet, as Mark Zukerberg rightfully pointed out in his statement. At the same time, obviously, Web-based electronic media platforms have to bear responsibility for spreading "socially dangerous" fakes. But, should they be brought to book for spreading potentially socially dangerous but genuine news? And, if so, who decides which opinions should be allowed to spread freely and which ones should be restricted in the Internet? And, if so, what is a mechanism for regulating such a dissemination? One of the mechanisms to limit the influence of fake news was the "disputed tag" mechanism proposed by Facebook. However, it was discovered, that this mechanism is virtually ineffective, at best.

In 2017, a new global poll conducted in 18 countries by the BBC World Service found that 79% of users worry about fake news on the Internet while 45% identified fake news as a major problem. Another poll conducted between January and April 2017 by GlobeScan found that, despite a concern over fake Internet content, a growing proportion of Internet users are opposed to government regulation. On average, I 15 tracking countries surveyed, the proportion agreeing that the Internet should never be regulated by any level of government has increased, from 51% in 2010 to 58% in 2017. The push-back against regulation comes in the context of greater advocacy for ensuring universal access to the Internet where in the 16 tracking countries surveyed on this question, an average 82% think that access to the Internet should be fundamental right of all people, up from 79% in 2010.

The countries with the highest proportions opposed to any sort of government regulation of the Internet include Greece (84%), Nigeria (82%), Brazil (72%), France (71%), Turkey and Kenya (each 70%). In a number of Western nations, apart from Greece and France, attitudes towards Internet regulation are rather mixed. Opinion in Canada, Australia, Spain, and Germany is polarised on this topic, with the proportions in favour of government intervention trailing the majorities against it by just a few points. In the UK, a narrow but stable majority (53%) continues to favour some sort of regulation. In China, a growing majority is willing to support Internet regulation by authority (67%).

As traditional mass media move almost entirely on the Internet and becomes a sub-species of the electronic social media, the Internet access is becoming a universal service similar to access to clean potable water. Water quality is constantly monitored and ensured by the government and it taken for granted by the public at large. If universal Internet access is recognized by a vast majority of votes as a universal right, a derivative of the freedom of expression, perhaps it is a right time to entertain an idea of investigating an idea of an international framework convention to guarantee a minimal standard of practices acceptable for diverse opinions and discussion on the Internet. This framework convention, not unlike the Paris Climate Accord, does not have be mandatory but, at least, it would be start of a productive dialogue in its own right.

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DEVELOPMENT OF THE NATIONAL LEGAL SYSTEM IN THE CONTEXT OF CIVIL SOCIETY REQUESTS

Summary. *The article is devoted to the present stage of development of the national legal system in the context of its ability to perform certain tasks, to reproduce the necessary functions in the given spatio-temporal dimensions, to provide the necessary requirements for effective legal regulation. It is clear that a democratic legal system will effectively protect human rights and freedoms, reproduce and implement the rule of law, and ensure a "quality" of the law into the national law.*

Key words: *legal system, legal system tasks, functions of the legal system, human rights.*

1. Introduction

Legal system of a particular society reflects its socio-economic, political and cultural identity, defines the unity of society, reflects integrity and is the one of the manifestation of the state sovereignty, an indicator of sustainable legal development. Scientists note that the national legal system defines an originality of legal life of a certain society. Therefore, it is quite clear that the legal system *as the embodiment of the corresponding reached level of development of law has to be capable for:* a) performance of mandated tasks; b) reproduction of necessary functions in the given spatio-temporal dimensions; c) providing necessary conditions of effective legal regulation.

First of all, we consider some of the urgent tasks of the current stage of development of the legal system of Ukraine. There is a growing need in the current circumstances in social orientation of legal system as a means of developing and realization of interests of subjects by enshrining defined purposes, norms and rules of conduct.

2. Literary overview

The issue of legal system arises in a wide scientific turn from 80 years of the 20th century. From this point on, this category is exposed to essential analysis, studying, generalization and, respectively, legal analytics. The legal system is studied in a domestic legal thought as a phenomenon of social reality [1,2] and as the category, which is

rather closely connected with category "legal state" [3]. The organic unity of the constitutional, social and democratic state in the focus of a national legal system is researched by the leading scientists [4]. The national legal systems, mechanism of their rapprochement and interaction were researched by domestic scientists [5]. Besides, the source law of various legal systems was carefully studied [6].

Certainly, a fateful question in the considered format is studying of a context of interaction and, the main thing – is interdependence of development of legal system and active, mature civil society that, unfortunately, had not been studied in jurisprudence.

3. Purpose and research tasks

The purpose of the article consists in underscore the need to develop the national legal system in the context of formation active and mature civil society.

For achievement this goal were set the following tasks:

1. Consider a development of the national legal system in the context of economic, social, political factors as well as cultural and world outlook factors.

2. Focus attention on national legal system that is manifestation of synergy, democratic, social, constitutional, European

3. Emphasize that "vocation", "mission" of legal system is the creation and the usage of trusted legal mechanisms in the context of the development of market economy, guaranteeing the production increasing.

4. Consider the phenomenon of legal activism, in particular, its influence on development of the legal system in the course of law-and-state changes.

4. Optimization of the national legal system

National legal system is gradually turning into one of the most important means to ensure optimum unity between political and social stability and dynamism, maintaining integrity of society, interaction of personal and public, legal and public factors, which are always in the antinomy relations, that is interpenetration and internal discrepancy.

The legal system of social, constitutional state is called upon:

1) to ensure the stability of civil consent established by social policy by means of proclaiming, implementing and protecting social and legal conditions for stimulating the active part of the population on productive work as the basis of personal well-being;

2) supporting an optimal ratio between income of an able-bodied part of society and disabled citizens;

3) providing targeted social support to ATO combatants, to the members of their families, disabled children, children deprived of parental guardianship, to orphan children, other discriminated groups;

4) reduction and restriction of scales of poverty, unemployment control;

5) providing a living wage of citizens, as one of development conditions of mature, active civil society [7, p. 12].

The tasks of legal system in conditions of the democratic social legal state are subject by influence of social and economic, political and moral, ethnonational factors.

Thus, increases social contents thereof, directed to strengthening group,

intergroup social interaction of people concerning realization of the interests. The specified functions are intended to provide existence, welfare, and sometimes – survivals of the society, realization of the rights and freedoms of the man and citizen [8, p. 149].

The significant effect on functioning of legal system is carried out by such all-social tasks as providing:

a) national security, fight against the Russian Federation aggression, elimination of its consequences;

b) social programs directed to maintenance of healthcare, social security disabled, etc., protecting and preserving children's rights [9, pp. 56–85].

Legal system promotes solution of ethnonational tasks set for society directed to preservation and development of traditions, the existence of national culture, language, originality and reproduction of ethnos, education of a civic stand.

Considerable impact on problems of legal system is exerted by scientific and technical development of all civilization. The state supports science, education, culture, uses its results, contributes to the development and ensuring intellectual potential of society, guarantees intellectual development of each personality [10, pp. 165–174].

At the same time, it takes precautionary measures to restrict a danger arising from uncontrollable emergence and usage of the modern scientific and technical achievements.

Interesting example in this context is the use of the European experience. In particular, right to the integrity of the person – the new personal right, which need is caused by scientific and technical progress, especially in the sphere of human and biological science (Art. 2 of the Charter of Fundamental Rights of the European Union 2000). This right includes awareness and the consent of the person on the use of medications, procedures and other actions within medicine and biology. One of interpretations of this right is the human right to qualitative medications. In this regard, essential improvement is demanded by the current legislation of Ukraine (The law of Ukraine "On medicines", Principles of the Legislation of Ukraine on Healthcare, etc.) that, certainly, will promote positive signs in legal system updating.

The role of legal system in the conditions of the modern state is also defined by need of ensuring self-determination of the personality, his development and socialization. At the same time law acts as objectively possible scale of social freedom, stimulates creative activity, consciousness of the person, guarantees recognition by society of the fact that each individual is born free and equal with others, and the rule of law is considered as a social phenomenon, causes inalienable rights of the person and citizen to freedom, equality, justice, worthy life, respect and inviolability [11, p. 35].

It predetermines a possibility to realize the other rights and freedoms of the person and citizen, suggests that inadmissibility of their cancellation or any restriction.

Owing to recognition of human dignity there are recognized "as untouchable and inalienable human rights, by virtue of which they make a basis of any society and also justice" [12, p. 432].

The main objective of legal system – to create accurately certain stan-

dard, stable basis for all complex of the public relations including for dynamics thereof.

In a democratic, social, legal state directed to European choice the sphere of legal regulation is realized by set of the public relations which should be streamlined by means of law and legal means.

The main direction of legal regulation in these conditions are:

a) fixing and protection of the new public relations;

b) providing favorable conditions and subsistence of individuals;

c) realization and legal protection of the vital requirements, interests of people and social communities;

d) prohibition of certain public relations and behavior (the establishment of a commercial bank by officials, employees of law enforcement agencies, their relatives (revitalization of NABU, NAPC, creation of the Supreme Anti-Corruption Court)).

e) stimulation of development of certain public relations;

f) assistance (by means of new legislation) to emergence and functioning of the new relations and public phenomena;

g) development of legal outlook and improvement of legal ideology.

Thus, the important role to carry out modern state and legal reforms is played by the functions inherent to legal system as to the phenomenon of social reality.

Scientific research of legal system assumes studying not only statics thereof, but also dynamics, how it functions, changes, how it carries out the social appointment. It is clear, that allocation of static or dynamic components of legal system has purely theoretical character, and they are in close interrelation and separately, without interaction, lose the qualitative characteristics.

Functioning of national legal system depends on all set of the public relations, economic, political, social and spiritual factors. The term "functioning of legal system" reflects action in social system thereof. To give a functional characteristic of the legal system means to define and describe ways of its action, ways and forms of influence on social relations. Stability, dynamism and systematic of the public relations are necessary conditions of progress of society.

This period of development of Ukraine's society needs effective realization integration, organizational, regulatory, guarding and other functions of legal system.

Functions of legal system in the conditions of democratic and social constitutional state are subject of influence of social and economic, political and moral, ethno-national factors.

In a socio-economic sphere, the national legal system carries out two interconnected functions:

1) contributes to the economic development and the maximum activity (employment) of the population;

2) provides socially new consumption level, promoting at the same time modern representations idea of human dignity advantage.

Due to market development, the particular importance acquires the function of legal system to ensure the social security of population, fight against unemployment, development of social partnership, creation of reliable mechanisms to protect the rights and freedoms

of man and citizen, introduction of gender relationship and their scientific interpretation in the context of world transformations.

Essence of guarantees of basic rights and freedoms of man and citizen are conditions which has to create the state for their realization.

Deregulation should not mean weakening of a role of the state and law in overcoming crisis state, help to stabilize finance, strengthening of hryvnia exchange rate, creation incentives of business activity, carrying out optimum tax policy, opposition to intentions of financial and industrial structures to change the state interests by their own clan interests that leads to growth of shadow economy, shadow law spreading and so on.

Implementation of tasks and functions of the democratic, social, legal state assumes creation and usage of reliable legal mechanisms of realization of freedom, equality and justice taking into account impossibility of existence of absolute unlimited freedom and absolute equality. These mechanisms have to define an optimum ratio of state, legal, economic components of regulation and self-regulation of public processes, and also regulate redistribution of material resources for ensuring the certain, available living standard in the country, contribute to reducing in social tension. By means of the mechanism of legal regulation, relation between subjects acquires a certain legal form. Through the rules of law, the state establishes a measure of possible and legal behavior of people.

Regulatory function of national legal system of socio-legal state is aimed at providing interaction of individual and collective, private and public factors which always are not only in the relations of interdependence but inconsistency since each of them is individually potentially internally contradictory. It is known that not only the rights and public interests are contradictory by its socio-ideological nature, but any social group and also society in general, is not uniform in the structure and entity [13, pp. 53–63].

Regulatory influence of national legal system of the democratic social constitutional state covers all aspects of management of social processes – from regulation of separate acts of behavior to coordination of all types of socially useful activity by use of economic incentives, introduction of the most perfect control systems, changes of working conditions and life, etc. Improving of the content of lawmaking process in economic sphere influenced by such factors as improvement on the basis of the Constitution system of legal guarantees of the rights and freedoms of a person in the sphere of entrepreneurship, ensuring equal rights protection of subjects of various forms of ownership, comprehensive state assistance to functioning of the new forms of managing, development and improvement which are already operating and so on. The market production mechanism is capable to function only in the stable legal space of socio-economic and political relations.

As for market economy the main functions of legal system are regulatory (sustaining the realities which have been built in economy) also effective protection of the corresponding legal relationship. In this regard there are allocated certain directions in using legal

forms – establishment of aims of economic development. The market relations cannot be "spread" from above by legislative or administrative measures. Concerning the last-mentioned it is possible to count on efficiency only where they remove barriers on the way to the civilized market, create additional economic incentives, define need of observance of the constitutional requirements on equality of all forms of ownership, on consumer protection, definition of a circle of subjects of the market relations; improvement of registration activity of competent public authorities; lawful prosecution of subjects for violation of legal acts in the sphere of business activity; standard ensuring regulatory activity of the state in economically social sphere of commodity production, the organization of investment, subsidies, grants, rent, banking, currency transactions, tax policy, etc.; a regulation of an order of permission of claims and disputes, restoration of the broken state and indemnification.

Regulatory function of legal system of democratic, socio-legal state is directed on two rather independent, but interconnected phenomena – the individual rights, freedoms and for public interests. Market relations development, state and legal regulation process have to proceed on balance between private-law and public-law methods, from the need of differentiation and interaction thereof. Legal regulation of market relations aims, in particular, streamlining of activity of the business subjects, the termination of processes of abuse of the rights and freedoms of man and citizen both from certain businessmen, and from the state [14, pp. 87–110].

In this context, present-day jurists specify that one of the main objectives of the social state is the general growth of welfare and expansion of a circle of people, using its achievements. Without that, social state is forced to fight against poverty. As production and distribution are organized by the principle of market economy, the state in various forms bears responsibility for its efficiency, in particular for:

a) deliveries reliability; b) increasing production guarantees, full able-bodied persons participation (i.e. full employment);

b) mitigation of the consequences of instability and crisis manifestations, free supply of the main food (price control, tactical policy);

c) removal of internal tension in regions and between certain spheres of life and groups of people;

It should be reminded that today's minimum wage makes 3723 hryvnias.

In the system of legal regulation the operating public law has to be combined with private law on performance of their organizational and legal functions concerning the rights and personal freedoms [15, p. 49].

Simultaneously, parameters of each of them have to be accurately determined in order to not applying the methods "authority-subjugation" where it is not necessary and also where should be disposition in relations and equality among individuals, their initiatives, property independence, free expression of will and interests. It should be noted that public and private law rather independent and therefore, there is no question on a priority of one over the other.

Despite being proclaimed human dimension of law by the Constitution of

Ukraine (Art., 21, 48), today the actual position of the person does not correspond to these ideals and prospects.

Special concern caused by unbalance of economy, extremely deformed structure of production, by its content the system of property relations is distorted, considerable part of which is based on the shadow, corrupted beginnings. There is a real prospect of fixing of these dangerous phenomena, especially in the conditions of tough external intervention from Russia.

5. Results and discussion

One of negative consequences of reforms in Ukraine, which were carried out impulsively without necessary scientific basis, is production collapse, closing and bankruptcy of enterprises, catastrophic increase in budget deficit, decline of the social sphere owing to what mass impoverishment of the people is observed. In this regard, Ukraine is defined as the country today where, respectively, the fundamental rights are not protected.

On the one hand, basic rights have a prerequisite of the existence, the efficiency of the state, that guarantees them and protects, and on the another – balance of this state and the developed civil society.

According to researchers of state studies on this dilemma, there can be only one conclusion: to carry out the thin, differentiated separation between the sphere of protection of basic rights and their restriction. The state has to protect freedom of the individual providing that sufficient protection of public interests is guaranteed [16, p. 499].

The specific legal safeguard of the rights and freedoms of the person and citizen is the efficiency of functioning, high degree of legal system integrity, which included institute of human rights [17, pp. 60–70].

However, standard and legal means of ensuring of the rights and freedoms of the person and citizen itself cannot create the actual conditions for use by everyone of the rights and freedoms. Ensuring the rights and freedoms cannot be rather effective in the absence of appropriate social and economic, political, cultural and other conditions, which define effectiveness, essence, construct of legal ensuring the rights and personal freedoms.

Experience of the developed European countries shows that there has been continuing of the process of improvement a set of measures of legal, social and economic, political, organizational and educational character which purpose is creation conditions for realization, protection of the rights and personal freedoms in operating conditions of influential civil society.

Let's consider this ascertaining on an interesting, in our view, example, namely: taking into account an initiative in law in the context of civil activism in the course of a law-state changes of the present.

Let's try to give some positions in the specified plane. Nowadays, initiative in law, in our statement, is associated with representatives and cells of civil society, representatives of certain societies, professionals (corporate) groups, groups created on the basis of age ranges, groups allocated on a sign of gender equality and so on. That is subjected circle of holders of an initiative in law can be rather wide and has no steady, constant appearance. The initiative in law can

have so-called "combined" character when it is full-filled both representatives of the doctrine, and practicing lawyers. As an example can be the institute of the constitutional complaint which was offered to studying by scientists – representatives of the legal doctrine A. Selivanov, P. Evgrafov and also judges of the Constitutional court of Ukraine: M. Gultaya, V. Skomorokhoy, A. Golovin and others.

In our opinion, the initiative in law in the most general sense can be defined as formulation of the question about necessity of amendments and additions to existing legal provisions, cancellation of some of them or adoption of new legal provisions for more effective regulation of public relations.

We also want to note that real providing an initiative in law is connected with such phenomena as civil good breeding, a civic stand, legal activity of representatives of civil society. "If the person wants his personal rights were protected the one has to realize public legal life and to take part in" [18, p. 80].

Unfortunately, recently there are more and more complaints in society on insuperable corruption, corruption schemes, slow reforms, violations of human rights.

However, from our point of view, not only economic or social factors, but also own civic stand, own ability to fight back negative manifestations of our life have to become a basis of overcoming the listed negative phenomena. That, in other words, is not expectation that someone will come and "will throw away all garbage" from your own house, but only persistent, laborious work in all spheres of activity of society. In many respects this "ability" to personal resolute actions (actions, and not just complaints) depends on civil education and consequently, civil good breeding, desire to show an initiative in all spheres of activity of the person for his (life) improvement and, especially, in the sphere of the modern law, beginning from personal awareness with it and finishing with formation of own position for the purpose of improvement law regulating processes.

Only the personality who is brought up in democracy ideals, the best samples of the developed civil society, humanity, decency, high service to mankind and devotion of a civic stand – can become the worthy member of the Ukrainian society.

Today all of us extremely need a revival of respect for the law, the principle of the rule of law, the principle right legality, increase of the authority of public opinion, formation and development of a civic stand (these factors have laid down in the "initiative" attitude towards the law in force or desirable law).

6. Conclusions

1. Thus, development of national legal system depends (this should be especially noted) on many factors: economic, social, political and also the personal legal culture, legal consciousness, legal outlook of each representative of the civil society capable to independently think, make decisions, to state publicly the opinion, to bear responsibility for consequences of the activity, to show interest in dynamic development of legal system, including by means of manifestation of an initiative in law.

2. The national legal system has to provide organic unity of development

of the democratic, social, constitutional and European state.

3. Development of national legal system assumes creation and use of reliable legal mechanisms in the context of development of market economy, creation of guarantees of development of production; the major functions of legal system are regulatory (sustaining the developed realities in economy) and protective (effective protection of the corresponding legal relationship).

4. In focus of the European vector of development of human rights is considered the phenomenon of civil activism, in particular, its influence on development of legal system in the course of a law-state changes of the present.

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LEGAL SYSTEMS IN THE ERA OF GLOBALIZATION

The world on the threshold of the 21st century moved to a qualitatively new stage of its development, which is characterized by deep changes in all aspects of human existence. These processes are described as "globalization", "formation of the post-industrial world", "information society", "transition to the noospheric path of development", and, accordingly, contradictory assessments are made, different vectors for the future development of world civilization are proposed in science [1, p. 90]. More and more scientists mention that globalization is becoming the leading trend of world development. It is even called the "cliche of our time" [2, p. 1]. This trend covers an increasing number of countries and all large groups of humanity are influenced by it. At the same time, the questions of the influence of these processes on the development of legal systems of the world, in particular, on religious legal systems, are not studied enough in world science and are practically not studied in the legal science of post-Soviet countries.

At the same time, the development and interaction of the legal systems of the world is an important factor for the effective and safe development of mankind. The modern world is changing at a faster pace. Thus, according to various ratings, only in 2015 Europe accepted about one million refugees [3], most of whom are carriers of language, religion, culture, and law which are not typical for Europe. Experience shows that the close connection of the economy, politics, culture, law and religion of different civilizations sometimes leads to unpredictable, including negative consequences. It's enough to mention a number of conflicts connected with the cartoons of the Prophet Mohammed and the Muslims in general. Therefore, the study of the impact of these processes on all legal systems, and especially on religious legal systems, whose action extends to a third of humanity, is extremely relevant.

At first, the new discourse on international changes was built around the concepts of "world", "international", "internationalization". The term "global" was included in it only in the mid-1960s, when W. Moore put into circulation the term "global sociology" [4, p. 477], and M. McLuhan – the term "global village" [5, p. 76].

Actually, the discourse of globalization in the social sciences arises in the mid-1980s, when this concept was developed and promoted by R. Robertson [6; 7]. During this period, most studies of the theory of changes focused on the new general direction – the development of theories of globalization. In 1990,

a program collection of articles "Global Culture" [8] was published, in which the works of the leading theorists of this problem were published. Since then, one after another, the fundamental monographs on globalization by L. Sklar [9], R. Robertson [10], A. Appadurai [11] and by other researchers have appeared. The content of the conceptual turn, which took place in social sciences, is clearly formulated in the introduction by M. Featherstone and S. Lash to the collection of articles "Global Modernities": the discourse of globalization emerged as "the inheritor of the debate on modernity and postmodernity in understanding sociocultural changes" [12, p. 1].

At the beginning of the 21st century a new direction of research of the problems of globalization is being formed – globalization in the sphere of law, and, in particular, the influence of globalization on various legal families of modern times. This, in particular, works by: S. Zifkaka "Globalization and the Rule of Law (Challenges of Globalization)", 2005, S. Wright "International Human Rights, Decolonisation, Globalization: Becoming Human", 2005, D. B. Goldman, "Globalization and the Western Legal Tradition : Recurring Patterns of Law and Authority (Law in Context)", 2008, V. Twining "General Jurisprudence – Understanding Law from a Global Perspective ", 2009, R. Domingo "The New Global Law ", 2011, S. Sassen "Teritory, Authority, Rights: From Medieval to Global Assemblages ", 2008, A. Slaughter "A New World Order ", 2005, P. S. Berman "Legal Pluralism: A Jurisprudence of Law Beyond Borders", 2012, C. Richards, "Globalization as a Factor in General Jurisprudence", 2012 and others.

The aim of the article is to analyze the influence of various globalization processes on the development and interaction of the legal systems of the world, first of on all religious legal systems, and the definition of further tendencies of their development.

Since the 90s of the twentieth century globalization has become a determining factor in world's development and international relations. The monolithic nature of national states and national communities is being destroyed, new competitive relations, conflicts and misunderstanding are formed between national-state communities and transnational system identities (including on a confessional basis). The world is experiencing a transition from national history to transnational one, feels the fact of the emergence of transnational living space, the universalization of the lifestyle, cultural symbols, the formation of transnational forms of behavior. Globalization destroys the identity of a homogeneous, closed, self-contained national-state space, destroys the usual boundaries of various spheres of life, including religious.

Globalization processes in the XXI century in one way or another relate to both individuals and entire nations, states, civilizations. Global transformations lead to qualitative changes in the system of sociocultural relations, actualizing a wide range of problems connected with the formation of a new culture worldwide. So, S. Huntington insists on a "clash of civilizations" [13, p. 112], the theories of F. Fukuyama threaten with "the end of history" [14, p. 57], E. Toffler develops the concept of "clip-culture" [15, p. 213], etc. The range of views on the phenomenon of

globalization is wide: from denying the mentioned process and the statement that globalization is an exaggeration both as an ideological construct and as an analytical concept (V. Raigrok and others), to a hyperglobalist (K. Omae and others) statement of the overall nature of globalization that, in their opinion, will lead to the disappearance of national states.

One of the most controversial issues is the definition of the essence of globalization. In some foreign and domestic studies, emphasis is placed on the economic aspects of globalization, the formation of a actually single global market of goods and services (C. Voltz, J. Stiglitz, D. Held), or the formation of a single information space (M. Delyagin, M. Castells), on the development of universal behavioral standards, single lifestyle, system of values (G. Diligensky, S. Kara-Muza, T. Sakaya, Y. Habermas) [16 p. 92].

A narrow view on globalization remained quite widespread in the literature for a long time – it came down only to economic processes. So, in particular, discussions about globalization, which have gained popularity since the end of the twentieth century, took place in the context of economic discourse on market liberalization, scale and global coverage of transnational corporations, and the like. In economics, even today, globalization is viewed mainly as a demonstration of the internationalization of the economics, the development of a single system of relations worldwide, changing and weakening of the functions of the national state, the activation of transnational non-state entities, including ethnic diasporas, religious movements, etc. [16, c. 21]. Legal discussion often followed in the wake of these economic and geopolitical trends [17, p. 42]. One of the main factors in resolving this discussion was the resolution of the UN General Assembly 55/102, 2000, in which, in particular, was mentioned that globalization is not only an economic process, it also has social, political, environmental, cultural and legal aspects.

All this leads to the formulation of new tasks in the framework of comparative legal studies, because "comparative law today acquires the status of the science of the future as a way of understanding different laws and different cultures in a globalizing world" [18, p. 1]. It is faced with the task of developing viable strategies for the development of a "pluralistically sensitive, globally conscious theory of law." At the same time, accusations of exaggerated eurocentricity are being addressed to the legal science and academic community. In particular, W. Twining points out that, in contrast to such a science as geology, based on universal physical laws, law is culturally dependent. This basic warning imposes huge obligations on theorists and comparativists on providing information to the "postmodern reader", the modern generation of students, on how to understand law and it's demonstrations in a truly global context [19, p. thirty].

At the ground of all theories of globalization (and this characteristic is clearly demonstrated in researches in the field of law) lies the dichotomous typology of social organization: the local versus global, which also finds expression in the discussion about the universality of the corresponding legal values, independently of the cultural

belonging of a particular society. As S. I. Maksimov points out in this regard, the globalization processes of the modern world, in which different cultures coexist and interact, make us to pay attention to the requirement of finding the optimal ratio of universal civilizational and cultural-specific moments in law, since the legal system on one hand should be based on universal legal values and principles, and on the other – should focus on a certain cultural and legal tradition [20, p. 57–58]. One of the key questions for lawyers today is the question of the scale to which globalization can mean harmonization or even unification of law worldwide. In this "intellectual labyrinth of jurisprudence" (W. Morrison), we deny the hypothesis that at a certain moment in the future there will no longer be any Hindu, Muslim, or Jewish law. These domestic complex legal systems are constantly changing and will be changed in the future, but it is unrealistic to guess that they will give up their place to a certain cosmopolitan global law someday.

Traditionally among the main trends in the development of law in the context of globalization are the following:

universalization of law, which means the reflection in national legal systems of generally recognized norms and principles of international law. The general regularity that designates the process of globalization is overcoming the characteristics of autonomous political, economic, social and religious communities. They become an element of a single common space, which has certain universal rules of interaction. Harmonization and the search for general rules of behavior come to the first place;

regionalization of law is a process of legal regulation of international relations, the subjects of which are territorial (regional) economic and political unions, international organizations, etc. (for example, the European Union, the Council of Europe, the Organization for Security and Cooperation in Europe, etc.), as well as individual regions of states that can act as participants of international relations;

changing of national law under the influence of the norms and principles of international law; in the conditions of globalization, the norms of international law on the basis of a constitutionally (legally) fixed model of the correlation of normative legal acts have greater legal force in relation to national legislation;

the mutual influence of modern legal systems, which leads to the leveling of the features of legal systems, causes their convergence, mutual integration [21 c. 8–9].

In this context the question arises on the influence of globalization on religious legal systems, which actually makes one think about the phenomenon of globalization in a larger context – in the light of its influence on the civilizational development of societies.

As we have already pointed out, the concept of globalization was initially formed as an economic theory under the influence of the processes of ever-growing interconnections and interdependence of various countries of the world thanks to ever greater economic openness and cross-border exchange of capital, goods, services, ideas, people. These processes are traditionally connected with the development of Western civilization. Quite often in the

literature it is mentioned that the process of globalization is the engine of self-affirmation and ideological hegemony of Western civilization, the spread of Western civilizational values and way of life. All these processes also affect the law, and in the way which leads to the situation "when it makes no sense to talk about independently existing legal cultures". According to this development script, legal families based on other legal traditions are doomed to gradual disappearance.

However, there is another point of view, supporters of which point the underestimation by the "universalists" of resistance to universalization from communities that do not consider themselves to be Western civilization [22 p. 41].

The discussion about the influence of globalization on the modern world inevitably raises the question on the universality of our understanding of law. In everyday legal understanding, globalization is often associated with the harmonization of rules of behavior, the creation of a single legal space. This, in turn, causes the formation of the assumption that in the conditions of globalization arise less conflicts, since relations in society are regulated by the same legal models based on universal legal values. Opponents of this point of view express doubt as to the realism of the unification of all the existing diversity. Dreams of such universalization, which globalization cherishes, go too far in their uncritical understanding of the benefits of universal standardization. There are divorced from reality expectations that the whole world will be guided by a single system of rules, use one language and have one culture.

The focus today, especially in the context of the study of religious legal systems, is whether or not the phenomenon of globalization can be based on the idea of global standardization (unification)? Or, vice versa, globalization does not deny unlimited diversity, emphasizes the pluralism of legal systems, the values founding them, and the pluralistic effects of globalization processes is more realistic? These questions also make us to look from a different angle at the attempts of theorists of the law to work out a general concept of legal thinking, to give a universal characteristic of law that would be relevant for any legal tradition, for any society. Appeal to religious legal systems shows significant contradictions in the understanding of law. The existing process of world development shows a growing variety of local decisions, despite the ongoing search for global unification. We are convinced that insisting on an anti-pluralistic view of the world and the need for a unified perception of it is extremely dangerous for global peace and well-being. "Western legal claims for universality are closed by a non-Western perspective" (C. Masai) [23]. To a certain level, when we are talking about contradictions in the vision of law between secular and religious legal families, in fact, it is a question of the "conflict of civilizations", previously described by researchers. Such an approach seems to be erroneous, since it focuses on a too narrow vision of the "Christian-Islamic" context, which does not pay attention to other globalization claims in the world. The perception of this confrontation solely as a two-sided ("Western" and "Muslim") is too simplistic and dangerous, as well as too illegible and limited.

Independently of the present nature of the existing conflict and of the specific vision of "global unification", peaceful coexistence in a globally interconnected world is impossible without providing a space that recognizes the permissibility of different visions and, accordingly, respect for them, which is, according to J.-F. Lyotard, "the pursuit of justice and aspiration to the unknown" [24, p. 67].

At the same time, researchers express a lot of skepticism about this perspective. So J.-F. Lyotard emphasizes the differences and notes that "consensus is a horizon which cannot be reached" [25, p. 61]. E. Melisaris comes to the conclusion that the study of legal issues should be aimed at discovering alternative ideas about the world, justice, as well as different models of solving practical problems by reconciling conflicting interests and satisfying the need for substantive justice [26, p. 76]. The question of law and justice as a result becomes one of those questions that determines our lifestyle, what our self-perception and our vision of our place in the world is. The existing theoretical approaches, not only among lawyers, are most often affected by eurocentricism, and therefore they are losing in an attempt to show a global picture of the world, to cover a pluralistic-sensual perspective. Legal doctrine seems to be seriously lagging behind reality, for which significant diversity remains characteristic. Global migration, ancient and current, numerous exchange processes between states, economics, societies, legal systems, at different scales and with the help of various methods ensure the transnational, essentially pluralistic, multi-ethnic, multicultural nature of legal reality through the time. The authors of legal studies, which set the tone for modern legal science, continue to behave as if globalization simply means unification, denying evidence from all over the world that global harmony is possible only through greater tolerance for diversity, and not through compulsory unification.

As recognized by W. Twining, globalization really make the world more interconnected, but it does not mean that we are inexorably moving towards a single global governance and do not indicate the disappearance of nation states as the most important subjects [27]. Rather, it should be about more and more pluralization than about global homogenization.

Thus, globalization results in more a blend, rather than a unified, branched, multi-centric world as a "hyperpluralistic transnational society". And this is an argument to develop mechanisms that allow all voices present in society to be heard, during the ongoing discussions in it in order to ensure respect for diversity. Asking the question of whether there is a basic (key) legal tradition in the world which could push out all the other law in the world, P. Glenn replies: "The answer is that there is no universal core. This is good news for the sustainability of the main, complex legal traditions of the world" [28, p. 331]. Therefore, globalization cannot hope to exist without deep respect for diversity and pluralism in the world. Accordingly, the legal systems of the world should be studied in the way of respecting the diversity as an integral element of the global legal order.

Modern processes of globalization are dragging a wider variety of social

relations into their orbit. The relationship between legal systems in the 21st century, in our opinion, is becoming one of the most important aspects of this process. At the same time, the interaction of legal systems has significant differences from the interaction, for example, of economic systems of different countries. If in economic relations there is observed the actual dominance of Western financial and economic institutions and the unification of relevant norms, then attempts to apply this approach to law leads to resistance to Western standards and to the spreading of significant civilizational conflicts in different parts of the world. The processes of globalization should be based on respect for cultural, religious and legal versatility, to ensure their protection from forced "Westernization." It is also necessary to mention the significant differences in the influence of globalization on the convergence of the legal systems of Western law (Roman-German and Anglo-American) and their influence on the religious legal systems of Muslim, Hindu and Jewish law. The latter, as a result of such features as divine character, increased stability, non-systematization of norms, specific sources of law, are almost not affected by other systems and corresponding changes. An important issue which requires further research is the reverse influence exercising by religious law on modern legal secularized systems.

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LAW AS A NORMATIVE SYSTEM: HUMANISTIC POSITIVISM OF EUGENIO BULyGIN

The article is devoted to the study of the main moments of life and work of Eugenio Bulygin – the world-famous Argentinean philosopher of law, Honored Professor at the University of Buenos Aires, the President of the International Association of Philosophy of Law and Social Philosophy (1999-2003) in the context of his main positivist idea of law as a normative system; the conclusion is made about the humanistic dimension of his understanding of law in practical terms.

Key words: *Eugenio Bulygin, normative systems, deontic logic, law, legal positivism, law and morality, humanistic positivism.*

Problem setting. Typically, positivism is considered a "rigid" position in law, which does not seek to appeal to justice or other legal values but tries to establish a clear "order" on the basis of "dry" logical analysis of legal concepts. At the same time, life and personal position of some representatives of positivism may disaprove this general opinion, as it is evidenced by the theory and bright personality of the Kharkovite by birth, and now a prominent Argentinean legal scholar, philosopher of law, Honored Professor at the University of Buenos Aires, the Honorary President of the International Association of Philosophy of Law and Social Philosophy (IVR) Eugenio Bulygin, whose 85th anniversary was recently noted [1].

Eugenio V. Bulygin made a significant contribution to the development of modern analytical philosophy of law and, above all, such its areas as normative logic and logical analysis of the problems of law. He has a clear and logically harmonical conception of law as a normative system on the basis of which he consistently defends the basic principles of legal positivism, creatively develops and complements the philosophical and legal formations by H. Kelsen, G. L. A. Hart and A. Ross. This conditions a considerable interest in his ideas all over the world.

Recent research and publications analysis. In recent times many publications have been devoted to E. Bulygin's works published by the representatives of Western philosophy of law (Guastini R., Italy [2], P. Navarro [3], M. Atienza, Spain [4], etc., and also by the representatives of post-Soviet philosophy

and the theory of law (M. Antonov, E. Lisanyuk [5], S. Maksimov [6], etc.). Based on the previous work, we seek to show the main moments of life and work of the prominent philosopher of law (a Kharkovate by birth), paying special attention to the content of his main idea of law as a normative system and highlighting certain humanistic bias in his creative works.

Paper objective. The purpose of the article is to demonstrate the main points of life and work of E. Bulygin in the context of his main idea of law as a normative system and to pay attention to the humanistic dimension of the positivist conception of law of the Argentinean philosopher of law.

Paper main body. E. Bulygin was born on July 25, 1931, in Kharkov, where he spent his childhood. His father was an engineer, and his mother was a teacher of German and French languages (she came from the aristocratic Kandib family) [6, 440]. After the World War II, he together with his parents appeared in Austria. He studied in a high school first in Austria, and from 1949 – in Argentina. After finishing it in 1953, he entered the Faculty of Law at the University of Buenos Aires, graduating from it in 1958. While still a university student, he was seriously interested in philosophy, especially in the philosophy of law. Since 1956 he works at the Department of Philosophy of Law, in 1959 he was appointed a lecturer, in 1960 he was an associate professor, he delivers the courses "Introduction to Law" and "Philosophy of Law".

In 1963 he defended his dissertation on "Validez y eficacia del derecho" ("Validity and Efficacy of the Law") and received the title of Doctor of Law. In the same year, he received a scholarship from Alexander von Humboldt and had a training in Germany at the universities of Cologne (1963), under the supervision of Professor W. Klug, and Bonn (1964), under the supervision of Professor H. Welzel.

In 1968 he received a scholarship from the British Council and during a year he conducted a research in Oxford (1968-1969) under the supervision of professor G. L. A. Hart. Upon his return to Argentina, he held the position of Ordinary Professor and taught the philosophy of law at the National University of La Plata (1970-1980) and at the University of Buenos Aires (since 1971).

The intensive research studies were embodied in the book "Normative systems" (1971), written together with C. Alchourron (1931–1996) [7]. This work was highly appreciated in the philosophical and legal community and brought its authors the world recognition. Since 1972 E. Bulygin lectured at various universities in Europe and America as an invited professor. In 1997 he was awarded the title of Professor emeritus (profesor emérito) of the University of Buenos Aires. In 1984–1986, after the fall of the military junta, he was the Dean of the Faculty of Law of this educational institution and initiated democratic reforms in it. From 1986 to 2001 he was a Judge of the National Court of Appeal of Argentina (the Chamber of Civil and Commercial Affairs). Eu. Buligin's scientific achievements were awarded with the Prizes from Guggenheim Foundation (1975) and Alexander von Humboldt Foundation (1996).

E. Bulygin's long-term active work in the International Association of Philosophy of Law and Social Philosophy (IVR), a professional organization of the philosophers and theorists of law, founded in 1909 in Berlin, also should be noted. For more than 30 years E. Bulygin was elected a member of the IVR Executive Committee (from 1987 to 2007), in 1991–1999 he was the Vice-President, and in 1999–2003 he was the President. Since 2007, he is the Honorary President of the IVR. He speaks Spanish, English, Russian, German, Italian (reads in Ukrainian), his major works are written in Spanish and English. In recent years, several of his articles have been written in Russian [8–11].

In addition to his life experience, E. Bulygin's worldview was formed under the influence of such philosophers as I. Kant, L. Wittgenstein, R. Carnap, W. Quine, A. Tarski and G. H. von Wright, and from among the philosophers of law, he was influenced to a large extent by H. Kelsen, G. L. A. Hart, A. Ross and his friend and associate C. E. Alchourron.

It was in co-authorship with C. Alchourron that the main books were written: "Normative Systems", published in English (Vienna, New York, 1971) [7] and translated into Spanish (Buenos Aires, 1975), into German (Freiburg, Munich, 1994), into Italian (Turin, 2005), into Russian (St. Petersburg, 2011, 2013) [12; 13]; "On the Existence of Juridical Norms" (Valencia, 1980, Mexico City, 1995) and "Logical Analysis and Law" ("Análisis Lógico y Derecho") (Madrid, 1991), as well as 23 articles. Such a fruitful creative symbiosis gives reason for the authors to ironically present their works as written by one character 'Carlos Eugenio Bulyrrón" [4, 245].

According to M. Atienza, the book "Normative systems" is fairly recognized as one of the most important works in legal philosophy of the second half of the twentieth century. The analysis of fundamental concepts of legal theory, such as "legal system", "gap", "contradiction in law and contradiction between the laws", etc., is a significant contribution to this discipline. M. Atienza notes: "… as it often happens with the intellectual products, these studies are, rather, not the destination point, but "only" the starting point, but such one that none of the theorists of law can not ignore. It is a contribution to the science of law, therefore, it should enter into any analogy on the themes which, without any doubt, are the central to the fundamental study of legal issues" [4, 246].

E. Bulygin's legal views represent a variant of the exclusive ("hard") positivism. He relates the following theoretical constructs to legal positivism that are based on two basic theses: the sources thesis and the separability thesis. The sources thesis proceeds from the fact that all formal sources of law that constitute the valid or positive law are social facts that can be established without reference to moral evaluations. This means that all law is human creation, an artifact. Separability thesis denies the necessary (conceptual) connection between law and morality. Moral justification of legal norms is not a necessary sign of law, and therefore, legal rules may not meet the requirements of morality [9, 236–237.]. He stands on the position of ethical skepticism (close to emotivism), according to which mor-

al judgments can be neither objective nor true, because they are evaluative judgments [9, 245].

At the same time, E. Bulygin admits a conflict between the legal and moral obligations, stating that if a person believes that it is his moral duty to leave his legal obligations aside, then he must act accordingly. Consequently, E. Bulygin's legal positivism does not deny the significance of the moral, but only puts it "out the brackets" of law as a system of norms.

M. Atienza gives a bright practical example of E. Bulygin's humanistic position. This example is about an officer who orders the soldiers to torture a detainee. According to Atienza, a Bulygin's follower should reason like this: "The order of an officer is legally valid, but morally unacceptable. Since there is no moral obligation to obey the legal norms, I am not going to execute this order on the moral grounds, even if I risk being punished for disobeying" [4, 250]. The position of Bulygin's supporter in this situation from the moral point of view is a more worthwhile advantage than the position of a supporter of natural law, for whom such an order simply will not be the law.

Such an attitude also determines the author's approach to the substantiation of human rights. According to E. Bulygin, "moral human rights are not given, but only claims and demands. For the first time, human rights become conceived only through their positivisation through lawmaking (including the Constitution) or through international law. Only after such a positivisation one can speak of legal rather than purely moral human rights" [14, 152]. At the same time, the lack of prior protection of human rights by natural law and absolute morality requires, according to the scholar, political recognition that "such rights are, in fact, fragile and therefore they are such an achievement of the mankind, that should be protected" [14, 152].

One of the main provisions of E. Bulygin's legal conception is the delineation of legal norms and normative sentencies (or propositions). Legal norms are prescriptive, they attribute proper behavior by logical tying of a set of certain life circumstances with the legal consequences. This tying is due to a set of logical formulas that give a norm a kind of degree of imperative. Unlike the norms, legal propositions themselves do not impose on communicants the forms of proper behavior: they are not prescriptive, but descriptive and only state that certain norms, imperatives exist and operate in social life [10, 148].

Accordingly, the logical structure of legal sentencies in which there is no imperative connection (duty) differs from the norms. Also different is the form of their objective significance: norms can be valid and invalid, efficient and inefficient, but only normative propositions can be true or false. Since the legal science is able to formulate the true normative propositions on the content of law, a positivist legal science free from values is possible. Only such a science corresponds to the task of impartial acquisition of legal reality.

Proceeding from the distinguishing between legal norms and legal propositions, E. Bulygin gives his answer to the problem of existence of gaps and contradictions in law and in laws. If, according to a general rule, legal positiv-

ism is based on the thesis that there are no gaps and contradictions in law, which is conceived as a closed logical system, then E. Bulygin believes that legal propositions are not always adequate to the actual legal (logical) structure. The thinker considers in this regard the categories of objectivity and truthfulness of law. Law can be considered truthful, and in this sense objective, if it gives a closed and logically consistent response to a legally significant question about the deontic status of this type of behavior. If legal sentences do not give the answer to the question ("Is one or another type of legal behavior allowed (forbidden, obligatory)?"), then we are dealing here with a gap in law; if two opposite answers to the same question are given (for example, an act is prescribed, but inaction is allowed), we see a contradiction in the law. But this does not mean that in order to fill the gaps and eliminate the contradictions in law, one has to refer to moral principles or other social regulators (as, for example, R. Dvorkin does).

According to E. Bulygin, if in the concrete system of law there are no corresponding legal sentences, or they do not become inconsistent, this does not prevent us from establishing the normative status of a particular type of behavior by formulating a new true legal sentence on the basis of the court judgment.

Recognition of legal norms happen through legal argumentation, which makes it possible to give a verbal form to those logical and legal references that already implicitly exist in this system of law. But, unlike other contemporary authors, E. Bulygin does not consider it possible to establish firm rules of legal argumentation (as, for example, R. Alexy does) or to create a special type of logic – the legal one (I. Wroblewski). The thinker distinguishes between two types of legal argumentation: justification and conviction. The first one is based exclusively on logical means, and the second – on psychological persuasiveness of arguments. A typical example of justification can be a mathematical theorem; an example of persuasion is an advertising appeal. In legal practice, these two types of arguments are usually inextricably connected – a speech of a lawyer or a decision of a judge contain both logical and psychological arguments. But psychological argumentation, according to E. Bulygin, is not a legal argumentation – it includes only means of formal logic. He considers it scientifically unreasonable to include in the definition of law any psychological, axiological and other non-logical elements [15, 11].

E. Bulygin published about 11 books and 150 articles in various languages, as well as the translations of 6 books and over 10 articles from English and German languages into Spanish. Among his books, in addition to the aforementioned, written in co-authorship with C. Alchourron, are the following: "Naturaleza juridica de la letra de cambio" ("Legal Status of the Bill", Buenos Aires, 1961); "Norme, validità, sistemi normativi" ("Norms, Validity, Normative Systems", Turin, 1995); "La pretension de correcciön del derecho. La polémica sobre la relaciôn entre derecho y moral" ("The Pretension of Correction of Law. Disputes Over the Relationship Between Law and Morality", co-authored with P. Alexy, Bogota, 2001); "Validez y eficacia del derecho" ("Validity and Efficacy of Law", co-au-

thored with H. Kelsen and R. Walter, Buenos Aires, 2004); "Las lagunas del derecho" ("Gaps in Law", co-authored with F. Atrius and others, Madrid, 2005); "Normas y sistemas normativos" ("Norms and Normative Systems", co-authored with D. Mendonza, Madrid, 2005); "Una discusiôn sobre la teoria juridica" ("The Discussion on Legal Theory," co-authored with J. Raz and R. Alexy, Madrid, 2007).

The constant interest of philosophers and theoreticians of law to the creativity of E. Bulygin is evidenced, in particular, by the fact that in 2015 one of the world's leading Publishing Houses (Oxford University Press, United Kingdom) published a volume of selected works by E. Bulygin "Essay on Legal Philosophy" [16].

The first acquaintance of the post-Soviet philosophic-legal community with E. Bulygin took place in 2003 when, as the President of the IVR, he visited Ukraine, where he held the creative meetings with the scholars from Kyiv, Odessa and Kharkiv. The first translations of E. Bulygin's articles into Russian appeared in the journal of the All-Ukrainian Association of Philosophy of Law and Social Philosophy "Philosophy of Law Issues" ("To the Problem of Objectivity of Law" (Vol. III, 2005) [15] and "To the Problem of Human Rights Justification" (Vol. IV–V, 2006–2007)) [14].

The same journal published a translation of the discussion between E. Bulygin and R. Alexy on the nature of law, which was held at the international conference "Neutrality and the theory of law" in the Spanish city of Girona in 2010) [17; 18]. During this discussion, distinguishing between the positions of the observer and the participant, E. Bulygin argued that the participants of the "legal game" are those who are interested not only in describing the law, but in solving legal problems, for example, judges, lawyers and individuals. If the position of the observer is based on the description of the law, then the position of the participant is related to the application of the law to solve practical problems. In this sense, judges are the most important actors. But in the activity of the judge it is necessary to distinguish between two different stages. In resolving a legal problem, the judge, in the first place, should take the observer's position in order to determine what the current law prescribes. There are only two possibilities here: either the existing legal rules provide for an unambiguous and clear decision in the case, or they do not. In the first case, the judge is required to apply literally interpreted norm. In this situation, only the observer's position will be acceptable to the judge.

But it may happen that the current law does not contain an unambiguous solution to the legal problem, that is, its decision is uncertain. This state of affairs may arise for various reasons. First, there can be certain logical shortcomings of the legal system, such as the regulatory gaps (when the law does not contain a solution for the case under consideration) or normative contradictions (when there are several incompatible decisions). Secondly, so-called penumbra or gaps of recognition can be referred to them. In all these circumstances, the judge must determine which decision is to be applied. This means that in the case of a normative gap, he must "create" a new norm, in

the case of a contradiction – (completely or partially) he must "cancel" at least one of those that contradicts the other norm, and in the case of a penumbra – to change the meaning of the corresponding expressions. In all these circumstances, the judge changes the existing law.

However, there may be a situation in which the law contains a unequivocal decision of the case, but the judge considers the latter to be extremely unjust, or because the legislator did not take into account any significant feature (axiological gap), or because the judge does not approve any valuable criteria of the legislation used by the legislator. In such cases, the judge may refuse to apply the existing norm and apply to another norm (in the end, created by him) that did not belong to the existing legal system at the time of the decision-making.

This means that judges take part – even if it only happens in exceptional cases – in the making of the law. Such a judge's discretion does not in any way mean arbitrariness. The judge applies his own value criteria for the creation, modification or abolition of legal rules. In this case, E. Bulygin emphasizes that all these problems are typical for application, and not for the identification of the law. This means that when the judge does not apply the norm in view of the fact that, in his opinion, its use will lead to great injustice and instead he applies another norm created by him, it can not be described as the modification of the concept of law. In such cases, the norms or rules of the legal system, and not the concept of law, change [17].

R. Alexy, in contrast to E. Bulygin, considers this description to be insufficient. In the first place, he draws attention to the claims to correctness, which the judge makes with the necessity. Further, from his point of view, this claim relates not only to positive law, but also to justice, that is, to morality. Bulygin's argument can be interpreted as a statement that the avoidance of "extreme injustice" is only a personal or subjective matter of a judge, and not something objectively necessary because the law claiming to correctness. R. Alexy points out that the positivist can agree that claiming the law to correctness includes the claims to moral correctness, and nonetheless, would deny the allegation of the necessary connection between legal validity and morality.

R. Alexy insists on the necessary nature of the connection between legal correctness and morality. When positive law permits two different interpretations: just (I1) and unjust (I2), I1 requires claiming the law to be correct. The positivists and non-positivists do not have much discrepancy on this issue, it begins where one needs to answer the question of what happens when I2 is chosen, that is, an unjust interpretation. If an unjust interpretation is chosen, then, according to positivism, such a solution is the legally perfect solution with moral defects. According to non-positivism, such a decision is defective not only from the moral point of view, but also from the legal point of view. It is legally defective, not only because the claims for moral correctness are violated in case of a morally defective judicial decision, but also because the legal claim to correctness is also violated. This leads to the need for a value or ideal relationship between law and morality. In this case, the claim to the cor-

rectness implies that the law necessarily includes an ideal dimention, as well as a real or authoritative (official) dimension. These defects in any dimension are legal defects, however, they can be adequately understood only with the help of the non-positivist concept of law. The mentioned theoretical aspect of the problem is supplemented by the practical aspect. If the defectness was only moral, it would be difficult to explain why the court of higher instance should have the power to abolish the unjust decision of the lower court in cases where a fair decision is equally compatible with positive law, as well as an unjust decision [18].

Thus, if E. Bulygin describes the adoption of legal decisions in difficult cases as a law-making act, which transforms moral considerations into the law, then R. Alexy insists not on the random and subjective, but on the necessary and objective nature of the relationship between legal and moral correctness. We believe that the use of such methodologically important concepts as the position of the observer and the participant, the differentiation of the types of gaps in the law, the claim of the law to correctness, extreme injustice, moral and legal defect of judicial decisions can greatly enrich the relevant domestic legal doctrines.

In recent years, in the journal *Philosophy of Law and General Theory of Law*, the translations of E. Bulygin's articles into Ukrainian were published ("Kant and Contemporary Philosophy of Law", 2014) [19], "Legal Norms, Logic and Truth" (2015) [20], "My View of the Rationality of Law" (2016). [21] The most complete idea of E. Bulygin's works can be obtained from two collections of his works: "Normative systems" and Other Works on the Philosophy of Law and the Logic of Norms" (St. Petersburg, 2013) [22] and "Selected Works on the Theory and Philosophy of Law" (St. Petersburg, 2016) [23].

E. Bulygin's outstanding ability as a polemist is evidenced by those discussions in which he participated in the international forums and in the pages of scientific publications. Thus, widely known are his discussions with H. Kelsen (on the problem of validity and efficacy of law) [23, 273–323], O. Weinberger (concerning the problem of the logic of norms) [23, 327–376], R. Alexy (concerning the problem of nature and the notion of law as a dispute between a positivist and a non-positivist) [23, 379–428] and other scholars. It should also be noted that along with E. Bulygin's academic success he has a subtle sense of humor and the ability to harmoniously combine various aspects of life, such as family values (he has three children and five grandchildren), rest, friendship and the studies into the philosophy of law, and these mark him out from among the others.

Conclusions of the research. According to E. Bulygin, the consideration of law as a normative system greatly broadens the horizons of its logical analysis, while at the same time envisages taking into account the activity of a man as the subject of law, whose moral position prevails over formalism of the norm in the context of judicial law-making, a complex existential choice, and the justification of human rights as a unique experience that should always be saved. Thus, the humanistic dimension of law finds its implementation in the key aspects of the legal conception of the Argentinean philosopher of law.

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ISSUES OF POWER ORGANIZATION UNDER THE DRAFT CONSTITUTION BY OTTO EIHELMAN

Abstract. *The objective of building a democratic rule-of-law state and establishing a civil society in Ukraine calls for high level of constitutional and legal regulation of the most important social relations. As emphasized in the current Constitution of Ukraine, this process draws upon "centuries-old history of Ukrainian state-building".*

During the events of the Ukrainian Revolution of 1917–1921 witnessing real state-building processes, the idea of restoration of national statehood started to acquire its material forms and the conditions for the implementation of constitutional and legal principles were created. In this context, of major importance is the constitution-building process in the Ukrainian National Republic (hereinafter – UNR) of the Directorate period (November 1918 – early 1921). The constitution-building accomplishments of those times, in particular the draft UNR Constitution by Otto Eihelman, were based on democratic principles consistent with the world achievements of constitutional law and had an impact on the further development of constitutional law in the independent Ukraine.

The purpose of this article is to investigate general and specific features and regularities of the constitution-building process in the UNR of the Directorate period and its relation to the factors of socio-political development; to analyze the challenging issues of power organization under the draft of UNR Constitution by O. Eihelman; to study the origins and nature of the state organization, the structure of the state mechanism, its set-up principles and separation of power.

The article establishes that the state structure form was underlined by democratic principles combining centralization and broad local self-government. This was the basis for building the system of power organization in a centre and in the regions and for the procedure of setting-up relevant bodies and delineating the competence between central and local government and administation bodies. The author also explains the bases of separation of power into legislative, executive, judicial, and financial as a guarantee for well-coordinated operation of the state mechanism.

The author comes to the conclusion that the main provisions incorporated in the draft UNR Constitution by O. Eihelman with regard to the power organization were consistent with the best international standards of those times and this clearly indicates that the purpose of the constitutional project was to form of constitutional and legal principles of

building the democratic, rule-of-law and social welfare state under the model that could exist in the historical contest of 20th of the XX century.

Key words: *Ukrainian National Republic of Directorate period; the draft of UNR Constitution of by O. Eihelman; UNR state structure form; UNR state form of government, separation of power.*

An important author's draft Constitution of the Ukrainian National Republic (hereinafter – UNR) of the Directorate period is placed among works of Otto Eihelman, professor of Kyiv University. The purpose of the draft was to establish such a state system which would fully meet the needs of all the masses and the highest spiritual and economic culture in the country.

The professor's constitutional and state views contained a wide range of UNR state building questions. The most important of them were regulations of the state political division, the basis of state apparatus organization and the distribution of authority which is the subject of the study of this article.

The purpose of this article is to investigate general and specific features and regularities of the constitution-building process in the UNR of the Directorate period and its relation to the factors of socio-political development; to analyze the challenging issues of power organization under the draft of UNR Constitution by O. Eihelman; to study the origins and nature of the state organization, the structure of the state mechanism, its set-up principles and separation of power.

According to O. Eihelman, the first and the most important task was to determine the way of state organization and power which will establish the order of participation of the people in government. According to his plan, this could be achieved through a definite and consistent democratic-republican principle, as well as the implementation of the principles of federalism in the state system.

It is O. Eikhelman's opinion that the nature of the relationship between the national centre and its territories can be built on a federal-state basis, namely: to divide the land into "lands" in new rational, territorial boundaries, rejecting outdated provincial boundaries.

The professor O. Eihelman considered future Ukrainian state as a "Union of Nations" consisting of separate federation constituents – the lands. At the same time, he regarded Ukraine as a "union of nations" only on condition that the lands differed in their national composition. And in identifying interterrestrial units, he proposed not to use the ethnic principle, but a territorial feature. O. Eihelman's theoretical constructions are very interesting, but it is difficult to agree with them. The blending of the concepts of "self-government" and "autonomy" is not accidental. Firstly, the theoretical elaboration of federal issues and at that time substantially yielded to the modern one. Secondly, the practice of the federal structure of states as well as the granting of autonomy to certain territories was small. Thirdly, the term "municipal autonomy" can be recognized as conforming to the notion of "local self-government". And finally, there is a tangible effect of the theory of "municipal socialism" that was spread in Europe at that time.

Under the draft of Constitution the federal constituent government was to become the main form of implementing direct democracy, involving the population of Ukraine in resolving national affairs. It was supposed to belong only to the people who had to do it in two ways: firstly, through secret and direct general elections of federal and state bodies and secondly, through a general referendum on which people should express their will on one or another issue. The main of them was the introduction of amendments and additions to the constitution.

Under the draft Constitution by O. Eihelman the UNR was supposed to be a federation that consisted of subjects – individual lands. Particular emphasis was placed on the balance between the federation and its constituents. First of all they have their own defined competence and do not interfere in the affairs of each other.

O. Eihelman regarded the federation constituents – lands as independent political units united in the UNR. In Art. 234 determined the purpose of uniting the land into a single state:

Implementation of joint forces and means of state and cultural tasks in all areas of life which each individual land itself cannot carry out and provide either in its entirety or in force to do so to the extent as it can do a federal-state organization[1].

O. Eihelman did not foresee the right to leave the lands that were to form the UNR. The most important issue of the federal-state system was the division of competency and the amount of authority between the federation and its subjects.

The developer in determining the relationship between the federation and its constituents, tried to maintain a balance between them. Article 235 read as follows: "Each of the lands has the right to sovereignly dispose of its territory in the state order in all respects and in all cases that are not expressly assigned to the function of the state federal organizations"[2]. Inviolability of the Constitution and laws of the UNR, the lands through the authorities of their government "were free to perform their functions of state power in their territories"[3]. The main principle of the activity of various branches of government in the lands will be the inviolability of the federal state system, federal laws, legal orders of the federal government, the rights of other constituents of the federation, non-use of actions that threaten the external security of the state.

The draft Constitution by O. Eihelman established general democratic principles that were to determine the legal status of the lands that comprised the UNR: the introduction of a state system on the basis of a democratic republic; distribution of power to the constituent, legislative, executive, judicial and financial control; presence of responsibility of the higher authorities and institutions of land; compliance with the subjects of the federal constitution[4].

According to the draft Constitution lands should have their own constitutions. They had the right to accept or make

[1] Центральний Державний архів вищих органів влади і управління України ф. 1065, оп. 2, спр. 293 Проект Конституції Директорії та зауважень до нього. арк. 24

[2] Там само арк. 24

[3] Там само арк. 26

[4] Там само. арк. 25

changes to it without the permission of the federal government. The combined assembly of the chambers of the federal parliament could cancel constitutional acts of land if it came to the conclusion that they contradict the Constitution of the UNR and other federal laws[1].

In accordance with the draft Constitution of O. Eihelman, every land had in its constitution to outline which state affairs in the county belong to the jurisdiction of the Zemstvo authorities. All other state affairs subjects of the federation were to be transferred to the competence of the county government, which was elected by the population. On this, the distribution of state power in the land did not end. The Provincial Government defined those cases that belonged exclusively to its competence and transferred the rest to the communities that chose their governing bodies[2].

It was assumed that the counties and communities were organized on the principles of self-government, in which councils were set up as administrative bodies and executive boards. Councils had the right to conduct referenda in their territory, to control the monetary costs and to organize the work of local officials on the basis of federal and zemsky laws. In the counties and communities, the executive authorities could be both collegial (executive) and personal (chairmen).

According to the draft Constitution, O. Eihelman foresees a division between the federation and its subjects in the financial sphere, the federal government of the UNR could part of the money needed for it to collect money from the land in proportion to the number of their population. At the same time, it was the decision of the federal parliament to determine the total amount that fell on each land, but from where and how to take it, it was already a bug of the very subject of the federation[3]. The right to determine national natural and monetary taxes in the UNR was provided to federal and state authorities, in lands – their governmental structures, in the counties – administrations, and in local communities – to local authorities[4].

As to the ideas of O. Eihelman, the system of the state apparatus, the principles of its organization and activity, the distribution of power, and the interaction between the centre and the local self-government body could be built in accordance with the state structure. Under the draft Constitution the federal-state legislature belonged to the federal-state parliament consisting of two chambers – the federal-state council and the zemstvo-state chamber. Article 56 referred to "Both chambers of the parliament have equal rights to initiatives and decisions both in legislative matters and in all other functions that have been assimilated (provided) to the parliament"[5].

The federal state chamber should have been created for 4 years by direct and proportional elections by citizens of the UNR[6]. The Zemstvo-state cham-

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[1] Центральний Державний архів вищих органів влади і управління України ф. 1065, оп. 2, спр. 293 Проект Конституції Директорії та зауважень до нього. 26

[2] Там само арк. 27

[3] Там само арк. 25

[4] Там само арк. 29

[5] Конституція України. – Офіційне видання. – К.: Право. – 63 с.

[6] Конституційні акти України, 1917–1920: невідомі конституції України. К., філософська і соціологічна думка, 1992. – 186 с. – С. 162

ber was supposed to consist of representatives of Zemsky parliaments – not less than three from each parliament term for 2 years. Both chambers of the federal-state parliament met at the same time at its session, but worked separately.

The chairs of the chambers were elected separately for each session. They also had to be appointed by their deputies and secretaries, who together with their chairman formed the presidium of the chamber. It functioned in intervals between parliamentary sessions[1]. Each chamber, as well as their united assembly, had the right to elect from among their members a consultative-preparatory commission for the elaboration of issues considered by the chambers or their united assembly. It was also allowed to set up special commissions to investigate certain cases.

Apparently, the draft Constitution included a controversial provision. Each chamber was given the right to co-opt its members from the number of qualified specialists with higher education members: in the zemstvo-state – up to 10, in the federal-state – up to 20 members. Article 53 of the draft states: "Co-opted members of the chambers perform all duties and enjoy all rights along with other members of the chamber"[2].

The competence of the federal-state parliament included lawmaking, annual approval of the budget of the country, supervision of the expediency of the general policy of the executive, the rule of law, the approval of ministers and equal government officials, the election of a part of the federal state court, the prosecution of ministers, approval of the conclusions of the federal- state financial control over the survey of the state economy[3].

The draft Constitution regulates the legislative process at the federal and state level. The right of legislative initiative was received by the chamber, federal-state Chairman, federal-state Council of Ministers, the federal-state financial control, 2 million voters[4]. They could submit their legislative proposals in both the house and financial issues only to the federal-state council. If the chamber, to which was submitted the bill, rejects it then it could be reviewed after a year. After making one chamber the bill was passed to another. In its opposition the bill could be revisited next year. He could become a law only when it "textually identical with the form" took both chambers of the federal-state Parliament[5].

The last stage of the legislative process is the promulgation of the law. Federal laws were supposed to show up to generally known in the official publication not later than a week from the time they gained legal force. Provided annual (January 1) systematization adopted laws by the federal-state constituent and legislative authorities in the past year combining them into collections in a particular order, without modifying the content[6].

The draft Constitution by Otto Eihelman contains certain requirements

[1] Конституційні акти України, 1917–1920: невідомі конституції України. К., філософська і соціологічна думка, 1992. – 186 с. – С. 163

[2] Там само. – С. 167

[3] Там само. – С. 168

[4] Там само. – С. 169

[5] Там само. – С. 170

[6] Там само. – С. 204

as to ethical conduct of members of Parliament. The chamber could discern in the speeches of the member of the "indecency of behaviour, used words or made gestures" and to impose on the offender disciplinary punishment of up to three months arrest and complete elimination of members of Parliament, deprivation of 5 years of electoral rights. An arrest for debts and criminal prosecution of MP could take place only with the chamber's permission[1].

Allowances of MPs was supposed to come at the expense of the federal-state treasure: they shall be reimbursed transportation expenses, per diem used the money to triple the size of the subsistence minimum; every two years – the money for a full set of clothes and two sets of shoes. At the time of the sessions MPs had to be settled in apartments of two rooms "with servants"[2].

Obviously, under the influence of socialist self-governing ideas O. Eihelman allowed members of the Parliament to hold different positions simultaneously. At the same time they were forbidden to be only directors, members of the board, members of the "subsidiary committees" in enterprises that have privileges on the part of the government, to participate in economic obligations with the federal state treasure, to perform contracts, supplies to him[3].

Under the draft Constitution of O. Eihelman the executive power consisted of a federal-state chairman, his deputy (vice president), the Council of Ministers, and ministries. The federal head was proclaimed the best federal executive authority for civilian and military administration. He was supposed to be elected for 6 years at a joint assembly of the chambers of the federal parliament by a majority of 3/4 of its members[4]. The final decision on this issue was also envisaged at the request of half of the voters who participated in the formation of the federal-state council by referendum. In defining such a complicated procedure for the election of the head of state O. Eihelman effectively united both the parliamentary and popular election of the federal-state chairman. The joint assembly of the parliamentary chambers had to elect a deputy to the federal state chairman, who performed his duties during the illness or after his death[5].

The draft Constitution of O. Eihelman established certain conditions for candidates for the post of the head of state. Among them were: the presence of the citizenship of the UNR, Ukrainian or non-Ukrainian origin (the non-Ukrainian had to have a residence in Ukraine not less than 20 years old), age 40, statutory education, 10-year seniority of the responsible – state, municipal service, or co-operative activities, belonging to one of the Christian denominations[6].

The federal-state chairman's authority was broad enough. The head should be the head of the UNR federal executive power. In addition to participating in the law-making process he was entrusted with important national functions including "outsourcing of the reg-

[1] Конституційні акти України, 1917–1920: невідомі конституції України. – К., філософська і соціологічна думка, 1992. – 186 с. – С. 174

[2] Там само. – С. 173

[3] Там само. – С. 174

[4] Там само. – С. 175

[5] Там само. – С. 176

[6] Там само. – С. 175

ular implementation of all branches of civil and military management in the country"; acceptance of all necessary, not contradictory laws of measures to the appropriate, logical and most expedient execution of cases in all spheres of management; provision of external and internal security of the country; the right to demand from all state and municipal bodies and institutions information and conclusions in the field of federal and state administration; the right to appoint audits of civilian and military institutions of federal state administration with the provision of auditing rights of the investigative authorities; the rights of approval of both civilian and military officials, submission of proposals to the federal and state council of candidates for the post of ambassadors of the UNR; the right to temporarily remove or dismiss all civil servants, both civilian and military, except judges and government officials of state financial control; the implementation of relations with foreign states, the signing of international agreements from the UNR, the announcement of war on behalf of the UNR, the conclusion of an armistice and universal peace; approval of extraordinary taxes not included in the budget; fulfilment of the duties of the chief ataman – the commander-in-chief of all the armed forces, the implementation of "awards with money, titles and decorations for public and state merits"[1].

The draft Constitution by O. Eihelman provided for the possibility of the federal-state chairman impeachment[2]. The right to institute this case was chamber of parliament, federal-state court, federal-state control and the court of Cassation of the UNR[3]. The removal of the chairman from his post was foreseen in three cases: when his indifference to the performance of his duties would appear, when there would be a weakening of his ability to perform his duties normally, when it would be inappropriate for the main interests of the state in the direction of his office activity.

O. Eihelman made provision of the original formation order of the UNR government. The procedure began with the appointment of ministers from candidates submitted by the combined assembly of parliamentary chambers. After that, the chairman appointed the chairman of the government and his deputy for the ministers' presentation. All appointments in the government had to be finally approved by the combined assembly of the federal parliament chambers.

Article 167 of the draft Constitution defined the issues that had to be decided by the Council of Ministers: cases, the resolution of which was granted to the Council on the basis of separate laws; cases entrusted by the Chambers of Parliament, by the federal-state court; cases brought to the attention of the government by its chairman; cases on the proposal of separate ministers; giving answers to the chambers of parliament[4].

There are the structure and legal status of federal and state ministries regulated in a rather detailed manner in the

[1] Конституційні акти України, 1917–1920: невідомі конституції України. – К., філософська і соціологічна думка, 1992. – 186 с. – С. 177–178

[2] Там само. – С. 181

[3] Там само. – С. 182

[4] ЦДАВО України ф. 1065, оп. 2, спр. 293 Проект Конституції Директорії та зауважень до нього. арк. 10

draft Constitution by Otto Eihelman. They were considered as state bodies of executive power of special competence which have power in a separate area of state administration and within the limits defined by the law the ministry had to work independently.

Otto Eihelman foresaw it is expedient to form a special body under the Council of Ministers such as a special meeting of 24 specialists for legislative codification work. Half of its members should have been elected by parliament, the second part by the Council of Ministers. The meeting was supposed to prepare bills for parliaments of federal actors at their request and on their own initiative[1].

In his draft Constitution Otto Eihelman almost did not pay attention to the definition of the structure and legal status of local bodies of federal-state power. It was supposed to make it a publication of separate laws. There was imperatively determined the need for unconditional compliance with the requirements of legality in public administration.

One of the objects of constitutional regulation in the draft by Otto Eihelman was the judicial system of the UNR. It should have been consisted of courts of general jurisdiction. The disadvantage of the draft was that it defined only the system of higher courts and almost did not bring up the issue of other judicial structures. At the head of the courts of general jurisdiction in the UNR should have been federal-state and higher cassation courts. The composition and competence of the federal state court are sufficiently outlined. The right to form this court was given to a joint assembly of the chambers of the federal parliament on candidates identified by different branches of federal state power and legislative power of the land. Each of them received a certain quota when forming the list of candidates.

Article 191 of the draft Constitution by Otto Eihelman demanded that half of the court be comprised of persons who have higher legal education and at least 6 years of seniority in court, or a doctorate in law, or a professor's degree[2]. The federal state court was headed by its chairman, who was elected by judges for a term of 3 years. It was this court that was to carry out the functions of constitutional control (Article 197) and to explain the correct application of the federal constitution. He also had to resolve misunderstandings between individual lands. His competence also included the consideration of cases of constitutional liability of the highest officials, on administrative violations and criminal cases for official misconduct in the federal authorities[3].

There was supposed the Supreme Court of Cassation of the UNR on civil and criminal cases. Its jurisdiction was distributed only in those lands that would agree to this[4]. It was believed that those lands that refuse to do so should create higher cassation courts of land or common for several lands. A rather complicated procedure for the

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[1] ЦДАВО України ф. 1065, оп. 2, спр. 293 Проект Конституції Директорії та зауважень до нього. арк. 11

[2] Там само. арк. 15

[3] Конституційні акти України, 1917–1920: невідомі конституції України. – К., філософська і соціологічна думка, 1992. – 186 с. – С. 194–195

[4] ЦДАВО України ф. 1065, оп. 2, спр. 293 Проект Конституції Директорії та зауважень до нього. арк. 18

formation of the Supreme Cassation Tribunal of the UNR was envisaged: every land that recognized its jurisdiction was given one place in its composition. The fourth part of the members of this court should have been chosen by a joint assembly of the chambers of the federal parliament, and other part – by the High Court of Cassation itself. Its members were called to be senators. They had to occupy their positions immutably for 12 years[1].

O. Eihelman did not rule out the possibility of formation of special military justice[2]. Military courts should be formed on a permanent basis for solving military-disciplinary and military-criminal cases. However, general criminal offenses of the military should have been considered by courts of general jurisdiction.

Unfortunately, his constitutional proposals do not speak about the general principles of the work of courts, the structure and legal status of lower courts, the judicial system of lands, and its relation with the federal state court are not defined.

In contrast to the generally accepted separation of powers Otto Eihelman proposed to create as a separate branch of power federal state financial control in the UNR.

The competence of the federal and state financial control should have included "revision of the correct income and the correct transfer of expenditures to the budget of the federal economy", care of financial expenses[3]. To fulfill its functions, the federal-state financial control received significant powers. Article 215 reads: "All requirements of control over the provision of information and expertise necessary for the fulfillment of their tasks with which it addresses state, public and private institutions and persons obliged to perform these institutions and persons." In appropriate cases federal and state financial control has the right to apply to the court, federal and land authorities and institutions "with a proposal to make an urgent coward or a custodial", which should always be performed[4]. According to Article 216, "in the event of the disclosure of abuses or transgressions, the control by the responsible order sends cases for violation of the corresponding criminal or disciplinary proceeds against the accused persons"[5].

The most important responsibility of the federal and state control was to be an annual revision of the budget execution of the UNR. The act of such an audit with its findings, the board of control should have sent through the federal head of state for consideration by both chambers of the federal parliament at the end of the budget year.

Conclusions: The draft Constitution by Otto Eihelman became an important step in the scientific development of the problems of the organization of power in Ukraine and its constitutional design. It constitutes a holistic document based on democratic principles (democracy, constitutionalism, division of powers, centralization and local self-government, human rights), has taken into account the world experience of constitutional legislation and the history of

[1] ЦДАВО України ф. 1065, оп. 2, спр. 293 Проект Конституції Директорії та зауважень до нього. арк. 18

[2] Там само. арк. 19

[3] Там само. арк. 19

[4] Там само. арк. 20

[5] Там само. арк. 20

Ukrainian state-building. In case of its realization this draft of the Constitution by Otto Eihelman would contribute to the formation of constitutional and legal principles for the establishment of a democratic rule of law state in Ukraine in the 20th years of the 20th century.

Ideas and provisions of the draft Constitution by Otto Eihelman may be useful in further developing the constitutional legislation of Ukraine.

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PHILOSOPHY OF HUMAN DIGNITY IN LAW

Abstract. *Human dignity is organically intertwined into the whole system of social relations, acts as the point of reference for the place of man in society, and at the same time ensuring a certain level of human dignity is recognized as the goal of the existence of the whole social organization in general. The content of human dignity always was a measure of human freedom in society, that is, his opportunities and rights, at the same time, the quantity, content, and scope of these rights are constantly changing along with the evolution and development of society. Human dignity is recognized by many states and international law norms as the main social value and source of human rights, but a day can't pass without encountering at least a single case of its violation.*

The purpose of the paper is to reveal the epistemological, ontological and axiological features of human dignity, the formation of a holistic philosophical and legal approach to its contents and its practical application as part of positive law.

The analysis made it possible to conclude that human dignity, originated as a philosophical idea, has developed in law as a principle of law (objective phenomenon) and human right (subjective phenomenon). The fundamental nature of human dignity is explained by the interrelation with human rights, in particular, with it acting as a source of rights and freedoms. At the same time, the interpretation of human dignity as a source of human rights or the root from which human rights stem does not deny, but even enhances the subjective right to the dignity of each person (human dignity).

The analysis of contemporary scientific literature, positive law, and practice of its interpretation provides for additional arguments that the idea of human dignity should be associated with the value of man and the assessment of his significance and place in society and state. Moral and legal assessment is an important tool for modeling human behavior, which acts as a basis for the requirements for human actions. These requirements are interned when they are provided, first of all, by the internal convictions of a person in their usefulness, utility and value for themselves and for other people. Thus, the formation of a person's right to dignity (human dignity) takes place (and is based on) through the awareness of a person of his value. Through the notion of the dignity of each person, a "common catalog of values" is created for all people, which later manifests itself as an objective principle of human dignity. The content of this principle varies with the change in the perceptions of the place and significance of man in society. At the same time, the principle of human dignity affects the understanding of each person of his dignity (the right to dignity). This is the way in which interconnection and interpenetration of the principle of human dignity and the right to human dignity take place, together with their

progressive development and the expansion of content in response to everchanging social conditions.

We advocate considering human dignity as a self-value and social significance of a person, which is determined by the existing level of social relations, general ideas of freedom, justice, equality and the source of human rights and freedoms.

***Key words**: human dignity, the dignity of a person, human rights and freedoms, principles of law, legal values, legal ideas.*

Human dignity acts as a concept that is intuitive to everyone, yet at the same time, it is hard to construe from a philosophical, religious, psychological, moral or legal point of view, and even more so, taking into account all of the above approaches at once at the same time. This concept includes many components and characteristics, each of which is crucial for its wholesome understanding. It is organically intertwined in the entire system of social relations, is the reference point of human rights in society, and at the same time ensuring a certain level of human dignity is recognized as the goal of the existence of the whole social organization. The content of human dignity always was a measure of human freedom in society, that is, his opportunities and rights, at the same time, the quantity, content, and scope of these rights are constantly changing along with the evolution and development of society. Human dignity is recognized by many states and international law norms as the main social value and source of human rights, but a day can't pass without encountering at least a single case of its violation.

Human dignity is recalled, in most cases, when there is a keen understanding of a gross violation of human rights. A striking example of this is the history of the legal regulation of human dignity. At the international level, this happened as a reaction to the atrocities of the WWII "crimes against humanity." These included murders, extermination, enslavement, deportation and other cruelty committed against civilians before or during the war or persecution of political, racial or religious reasons for the commission or in connection with any crime, irrespective of whether those actions were in violation of the domestic law of the country where they were committed or not, as expressly stated in the Charter of the Nuremberg Tribunal.

Today, we have witnessed the Revolution of Dignity and the social and political changes caused by it. According to F. Fukuyama, at this time, civil society in Ukraine has shown its ability to self-organize and put pressure on the authorities. This is important because you can't "achieve democracy if people do not want democracy. And this desire, including the willingness to fill the streets, risk your life and demand changes." The active formation of civil society in Ukraine promotes the understanding of people's rights, sets requirements to the authorities for their effective provision and protection, and thus contributes to the consolidation of human dignity and its implementation in everyday life.

Analysis of recent research and publications, which prompted the resolution of the problem. Modern scien-

tific literature features multiple attempts to determine the concept of human dignity. Taking into account the multidimensionality of this notion, strictly from a legal point of view human dignity can be approached as: legal (moral) ideas (Waldron J., Barak A., Bachynin V., Hryshchuk O.), legal value (Barak A., Łuków P., Bandura O., Bachynin V., Hryshchuk O., Melnyk M., Rabinovych P.), a principle of law (Garlicki L., Hranat M., Holovchenko V., Holovchenko O., Hryshchuk O.), human rights (Akhtyrska N., Barak A, Vdovichenko S., Kampo V., Korzhanskyi M., Kudriavtsev Yu., Oliinyk A., Stefanchuk R., Fulei T., Tserkovna A., E. Shyshkina, Shuklina N.), human interest (Pinker S., Suhachov S.), human needs (Fukuyama F.), primary good (Rawls J.), a source of human rights (Hryshchuk O., Sovhyria O., Shyshkina E., Shuklina N.), the content of human rights (Waldron J.), etc.

Most authors support the dual nature of human dignity, acting as an objective and universal phenomenon for all people (value, principle, the source of human rights, their purpose or meaning) and as a subjective right or interest of a particular person (dignity of a man, human being). Sometimes researchers, describing the essence of human dignity, use several of the above concepts at a time. Dual use of the notion of human dignity, which is associated with the delimitation of dignity as the basis of rights and dignity as a right, was very aptly outlined by Waldron J. who noted that on the one hand, we say that human rights "derive from peculiar human dignity" on the other hand, we suggest that people have the right to be protected from "humiliating treatment" and "contempt for personal dignity".[1]

The aim of the research. The purpose of this article is to reveal the content of human dignity as a principle (value) and a right of a human being, the formation of a holistic philosophical and legal approach to the disclosure of its content and practical application through positive law.

Presentation of the research material and its main results. Human dignity was constructed as an idea in ancient philosophy.[2] The distinctiveness of this idea is that it creates direct contradictions at every step. "We read that slavery and degradation are morally wrong because they violate human dignity. But we also read that there is nothing you can do to a person, including its enslavement and humiliation, that can take away its dignity. We read that dignity reflects perfection, aspiration, and conscience, so that only a chosen minority achieve this through effort and character. We also read that everyone, regardless of how lazy, evil, or mentally retarded, has full dignity."[3]

However, it is also fair that the historical study of human dignity should be carried out very carefully since it is unlikely that this idea has been developed consistently throughout history. In addition, we proceed from a modern

[1] J Waldron, *The Tanner Lectures on Human Values: Dignity, Rank, and Rights* (University of California 2009) 209–253

[2] More details on this Hryschuk (Atika 2007); Barak (Cambridge, 2015).

[3] S Pinker, 'The Stupidity of Dignity' (2008) The New Republic Published <http://www.tnr.com/story_print.html?id=d8731cf4-e87b-4d88-b7e7-f5059cd0bfbd> (accessed: 20.09.2018)

understanding of human dignity and skip those historical aspects that do not have a modern expression but can be expressed in the future. Therefore, our analysis is largely arbitrary. Despite this, understanding the concept of human dignity requires an understanding of its long history. Knowledge of the origins of this concept can help us to understand the prospects for its development.[1]

The purpose of this article is not a thorough historical analysis of the idea of human dignity, which has already been carried out in other research[2]. It seems expedient to confine the statement of the main methodological positions and to highlight the main *theoretical approaches to understanding the idea of human dignity, in particular: theological, philosophical and legal.*

Supporters of the *theological approach* consider the idea of human dignity through the prism of Christianity, which radically changed the attitude towards man, proclaiming the equality of people before the only God, regardless of its social status, but not yet between each other. Human dignity is manifested through the fact that man is created from the image of God and is endowed with such basic features as a soul, a mind and free will.

One of the founders of the theological (Christian) concept of human dignity was Thomas Aquinas. By systematizing his views, we can extract his approach to the idea of human dignity as – each person possesses not only dignity that is divine in its origin, but also has an inalienable natural right to dignity; the natural law orders to respect the dignity of people; the most obvious sign of the social status of the person through which the manifestation of human dignity is carried is freedom; freedom is fully respected only in civil society; the purpose of the state is to ensure decent living conditions of a person; T. Aquinas recognized people's "right to disobey" a tyrannical government, which degrades its dignity.

A philosophical approach to the idea of human dignity is most clearly represented in the philosophy of I. Kant, J. Rawls, and Y. Habermas. In particular, I. Kant introduced a holistic concept of human dignity and in actuality made it part of European culture. One of the central elements of the modern concept of human dignity was the recognition of the object of dignity as an end in itself and the recognition that the object of dignity cannot be considered solely as an instrument.[3]

J. Rawls proved that the feeling of a person's own dignity (self-esteem) is an important primary blessing and includes two aspects: 1) it involves a person's sense of self-importance and the conviction that his concept is his own good, his life plan deserves realization, and that he is respected by other people; 2) self-esteem involves self-confidence

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[1] A Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge University Press 2015) 406

[2] O Hryschuk, *Human dignity in law: philosophical problems* (Atika 2007) 432; A Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge University Press 2015) 406

[3] M Piechowiak, *Dobro wspólne jako fundament polskiego porządku konstytucyjnego* (Tom XI Studiów i Materiałów Trybunału Konstytucyjnego, Biuro Trybunału Konstytucyjnego 2012) nr 2 494

and self-realization. In addition, each person seeks to avoid social conditions that undermine its self-esteem.[1]

According to the concept of Y. Habermas, the normative source of contemporary human rights is the idea of human dignity. Human rights are considered as tools necessary for the protection of human dignity. This causes human self-esteem and social recognition of the international status of a democratic state. Human dignity is seen as a realistic utopia, the purpose of which is the realization of social justice inherent in the institutions of a democratic state.[2]

The legal approach views human dignity in two ways: as an objective phenomenon (anthropic dignity, dignity as a value, principle, source of human rights, their purpose or meaning) and as a subjective phenomenon (human right). In the literature, we can even find reasonable thought that human dignity feels "at home" in legal space, so you can analyze its legal regulation to shed light on its use in moral discourse, and a particular "law contains, envelops and formulates these ideas; it does not simply borrow them from morality".[3]

Human dignity as an objective phenomenon (anthropic dignity, dignity as a value, principle, source of human rights, their purpose or content) is considered through the interrelation with the system of human rights and freedoms. In order to explain the nature of this connection, it seems appropriate to apply the often used comparison of human dignity with a tree, "whose branches are basically human rights. Human dignity flows inside human rights, which means that it acts as the deepest cause of their protection."[4] Such a metaphor helps to understand the absolute nature of human dignity, regardless of the peculiarities of the legal regulation of human rights and freedoms, and also emphasizes its supranational or supralegal nature. Recognition of the innate and inalienable human dignity means signifies the recognition of its natural law nature. Dignity is something given (present), objective, not created, but only recognized by positive law. Recognition of dignity is the recognition of a legally significant certain property of a person, especially important for determining the conditions of human development.[5]

According to the well-known "objective formula" of G. Durig, who followed on Kant's approach to man "as a goal, not as a means," human dignity was disturbed when "a man becomes an object, that is, simple means, modest and expedient." It means "humiliation of a person into a state of things, which is completely cataloged, painted, registered, eliminated, which is brainwashed

[1] J. Rawls, *Teoriya spravedlivosti [Theory of Justice]* (1995). 507

[2] Y. Habermas, 'Koncept chelovecheskogo dostoinstva i utopia prav cheloveka'[Concept of human dignity and a real life utopia of human rights] (2012) 2 Philosophy Issues

[3] J Waldron, *The Tanner Lectures on Human Values: Dignity, Rank, and Rights* (University of California 2009) 209–253.

[4] M. Hranat, 'Znachennya lyudskoi hidnosti v konstituciinomu pravi' [The meaning of human dignity in constitutional law] (2016). Ukrainian Chronicle of Constitutional Law

[5] M Piechowiak, *Dobro wspólne jako fundament polskiego porządku konstytucyjnego* (Tom XI Studiów i Materiałów Trybunału Konstytucyjnego, Biuro Trybunału Konstytucyjnego 2012) nr 2 310–494

and can be replaced, used and disposed of."[1]

In the literature human dignity from the objective side is also called anthropic dignity. In the domestic theory of law, one of the first attempts to formulate the definition of this concept was made in 2002 by Prof. P. M. Rabinovych. Petro Moiseyevych substantiated that it endows every person, regardless of its individual characteristics. Anthropic dignity is interpreted as the self-worth of a person as a biosocial being – a unique tribal entity, which represents the highest level of life on Earth.[2]

Human dignity generates a certain quality of social relations, it "is a social value and its existence out of society is simply unthinkable".[3] Recognizing a person as a higher value compared to everything else requires the recognition of certain human rights. Therefore, the issue of human dignity – "is always a question about the rights of individuals, their real guarantees. The perception of man as the highest value includes respect for his dignity, respect, and guarantee of his personal rights."[4]

It must be agreed on that human dignity is a universal constitutional value, which is the source, basis, and principle of the whole constitutional system. This is the basic norm in logical, ontological and hermeneutical terms. Therefore, not only the other principles of the system of human rights and freedoms, as well as individual specific rights and freedoms, should be interpreted through the prism of the principle of dignity and should be used in such a way as to ensure its implementation (resulting from the constitutional determination of dignity as a source of freedom and human and civil rights), but also all other norms, principles, and values contained in the constitution must be interpreted and applied in accordance with the principle of dignity.[5]

The constitutional significance of human dignity has a central regulatory role. Human dignity as a constitutional value is a factor that unites human rights into a single whole, which ensures their normative unity. This normative unity is expressed in three ways: firstly, the value of human dignity serves as the normative basis of the constitutional rights set forth in the constitution; secondly, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; thirdly, the importance of human dignity plays an important

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[1] M. Lener, 'Liudska hidnist v Osnovnomu Zakoni Federatyvnoi Respubliky Nimechchyna' [Human dignity in the Basic Law of the Federal Republic of Germany] Shloer B (red), Liudska hidnist: shcho my rozumiiemo pid "hidnistiu", "liudynoiu" ta "liudskoiu hidnistiu"?: materialy mizhnarodnoho naukovo-praktychnoho seminaru "Liudska hidnist u pravi Nimechchyny, Polshchi ta Ukraïny" (V dele 2017).

[2] P Rabinovych, 'Pravo liudyny na kompensatsiiu moralnoi shkody' [Human right to compensation for non-pecuniary damage] (2002) 2 Yurydychnyi visnyk Ukrainy) 12; O Hryshchuk ta P Rabinovych, Pravo liudyny na kompensatsiiu moralnoi shkody (zahalnoteoretychni aspekty) (Svit 2006) 197

[3] A Beliavskyi, 'Zashchyta chesty y dostoynstva hrazhdan y orhanyzatsyi v sovetskom hrazhdanskom prave' [Protection of the honor and dignity of citizens and organizations in Soviet civil law] (Avtoref dyss k-ta yuryd nauk 1965) 19

[4] A. Vlasov, Problemы sudebnoi zashchytы chesty, dostoynstva y delovoi reputatsyy [Problems of judicial protection of honor, dignity and business reputation] (2000) 13

[5] L Garkicki, *Polskie prawo konstytucyjne: Zarys wykładu* (Wolters Kluwer 2015)

role in determining the proportionality of the statute that restricts constitutional law.[1]

We can emphasize a set of basic elements of the principle of dignity, necessary for the maintenance and realization of human dignity, such as 1) the source of human dignity is a natural right, not a positive one; 2) the principle of human dignity is immutable; 3) dignity must belong to every person and to the same extent (in the same amount); 4) human dignity cannot be considered only as one of many human rights and freedoms; 5) the essence of human dignity is the subjectivity (autonomy) of a person, that is, the freedom to act in accordance with his own will and internal self-determination and the formation of an environment in accordance with this autonomy; 6) the prohibition of placing a person in such situations or behaving in a way that could deny this dignity (negative aspect). The principle of dignity means, therefore, the prohibition of persecution, discrimination, prohibition of violation of physical integrity, prohibition of interference with freedom of thought and belief (freedom from living in fear), the prohibition on forcing self-incrimination.[2]

Recognition of human dignity is at the same time a recognition of human as an end in itself. Recognizing dignity as a source of freedom and rights encourages us to perceive human rights and freedoms, as well as the values that they serve as forming a certain whole, requiring the proportional introduction of individual elements. The reference point, which is the criterion for defining the content of freedom and rights, is the development of the good of a man as integrity, endowed with dignity. In the doctrine, we are talking about the integral nature of human rights protection, which should be considered as a whole. Moral assessments, from this point of view, can be defined as assessments based on objective, recognizable relationships of a particular state of affairs with the inherent and inalienable dignity of man.[3]

Thus, human dignity as a principle (value) is a self-value and social significance of a person, which is determined by the existing level of social relations, general social representations of freedom, justice, equality and acts as a source of human rights and freedoms.

Human dignity from the subjective point of view (the right of a human to dignity, dignity of a human being) is an internal assessment of a person of his own value, based on the consent of the dominant part of the society of moral consciousness and the readiness of its protection in all conditions, as well as expectations of respect in this respect on the part of others.

When we talk about the dignity of a particular person, then, first of all, it is about self-esteem (internal assessment) of a particular person. Self-esteem is a human judgment of the extent of the presence of one or another of its qualities, properties in relation to a certain standard, model. It can be said that this

[1] A Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (Cambridge University Press 2015) 140

[2] L Garkicki, *Polskie prawo konstytucyjne: Zarys wykładu* (Wolters Kluwer 2015)

[3] M Piechowiak, *Dobro wspólne jako fundament polskiego porządku konstytucyjnego* (Tom XI Studiów i Materiałów Trybunału Konstytucyjnego, Biuro Trybunału Konstytucyjnego 2012) nr 2 324–325.

is an internal assessment (subjective reflection) of the objectively existing (approved by the dominant part of society) human values. A self-esteem is a form of manifestation, a central component of self-consciousness, that is, the *consciousness of a person himself as an individual*: his activity as a member of society, his relations with other people, traits of character, actions, motives, goals, mental, physical, moral qualities.[1]

The perception by a person of his dignity includes intellectual, emotional and volitional moments. It is based on the self-esteem of a person and manifests itself in awareness and self-esteem as a person, personality, as a representative of a community, a social group. The inclusion of volitional moments explains the phenomenon of self-education and self-regulation, the desire for ideal and self-development.

Self-assessment is based on the autonomy of a person, which: 1) is the ultimate goal in relation to which all other values are either its components, or means of achieving it; 2) is the ideal basis for the formation of a person on the basis of rational choice of its possible actions; 3) an autonomous person creates itself and recognizes responsibility for its own life; 4) an autonomous person chooses precisely such goals in life that can create the conditions for the way of life that most fully expresses its nature as free and equal with other human beings.

People strive to be considered worthy. Dignity is recognized as one of the interests of man along with physical integrity and personal property that other people are obliged to respect. The measure of the embodiment or realization of the principle of human dignity through the interest into its subjective right depends solely on the individual.

Legal regulation of human dignity. The modern system of protection of human dignity and human rights originated with the creation of the United Nations. The preamble to the UN Charter contains a resolute commitment to endorse the belief in fundamental human rights and the dignity and worth of the individual. In the Universal Declaration of Human Rights (1948) they appeal to human dignity six times in total. One should distinguish general, normative and non-normative such appeal.

The general appeal is in the preamble, which states that recognition of the dignity inherent in all members of the human and their equal and inalienable rights is the foundation of freedom, justice and universal peace throughout the world. It was emphasized that the peoples of the United Nations have confirmed their belief in basic human rights and the dignity and worth of a human person. A normative appeal can be found in Art. 1, which indicates that all people are born free and equal in dignity and rights. They are endowed with intelligence and conscience and must act in relation to one in the spirit of brotherhood. Non-normative treatment can be found in Art. 5 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), Art. 22 (the right of a person to realize the necessary for the maintenance of his dignity and the free development of the personality of rights in the economic, social and cultural spheres) and Art. 23 (the right

[1] O Hryshchuk, Liudska hidnist u pravi: filosofski problemy [Human dignity in law: philosophical problems] (Atika 2007) 432

to a fair and satisfactory remuneration that provides a decent human existence).

Both the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966) in the preamble contained a revolutionary provision for that time: that all human rights "derive from the inherent dignity of a human person." Such wording provides grounds for several significant conclusions: human dignity is seen as a source of human rights, that is, it is raised to the level of the principle of law; human dignity belongs to everyone, regardless of legislative consolidation; the human right to dignity derives from the principle of human dignity.

The Charter of Fundamental Rights of the European Union (2000) in the preamble states that the European Union is based on indivisible and universal values – human dignity, freedom, equality, and solidarity. Chapter 1 of the Charter, entitled "Dignity" in Art. 1 "Human dignity" establishes that human dignity is inviolable. It needs to be respected and protected. Art. 4 contains the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

It must be agreed on that the logical derivation of human rights from human dignity indicates "the recognition of this human property as the fundamental source of all its rights, as well as the gradual increase in the proportion of the principle of humanism as a system-based basis among other principles of the modern institute of human rights. The specificity of this very foundation lies in the fact that the latter emphasizes the direction of the institute of human rights to create conditions for ensuring the individual uniqueness of each individual human being, its existence."[1]

The legislation of Ukraine pays considerable attention to human dignity and human rights and freedoms. Human dignity is addressed, in particular, in the Constitution of Ukraine, the Preamble of which states the need to ensure the rights and freedoms of man and decent living conditions. Art. 3 of the Constitution stipulates that, man, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value, while Art. 21 stipulates that all people are recognized free and equal in their dignity and rights. In addition, Art. 28 establishes the right to respect for dignity, art. 41 states that the use of property cannot endanger the rights, freedoms, and dignity of citizens. Art. 68 provides for the duty of everyone not to encroach on the rights and freedoms, honor and dignity of others.

The Constitutional Court of Ukraine also contributed to the interpretation of the content of human dignity in the decision No. 11-rp/99 dated December 29, 1999 (a case regarding death penalty), which stated that the inalienable right of every person to life is inextricably linked with his right to human dignity. Acting as basic human rights, they determine the possibility of realizing all other rights and freedoms of man and citizen and cannot be either limited or abolished. As we can see, the interpretation of human dignity is somewhat narrowed in this case, although the connec-

[1] S Dobrianskyi, Aktualni problemy zahalnoi teorii prav liudyny [Actual problems of the general theory of human rights] (Astron 2006) 99

tion between human dignity and other human rights is at least acknowledged, while the nature of such a connection was left behind.

This gap was later filled with the judgement of the Constitutional Court of Ukraine dated May 23, 2018, 5-r/2018, in which, reflecting the contemporary trends in the development of law and taking into account both the philosophical and legal doctrine and the experience of international regulation of human dignity, the Constitutional Court has stated, that human dignity must be interpreted as a right guaranteed by Article 28 of the Constitution of Ukraine, and as a constitutional value that fills the meaning of human existence, acts as the foundation for all other constitutional rights, the measure of determining their essence and the criterion of admissibility of the possibility restrictions of such rights. By this judgment, the Constitutional Court for the first time in the modern law of Ukraine emphasized the dual nature of human dignity as a right of a human being and as a source of human rights (constitutional value).

As we can see, the Constitutional Court of Ukraine does not abuse appeals for human dignity. Obviously, "this principle applies only in situations where there is a grave threat to human rights. Such restriction of the Constitutional Court regarding the application of human dignity is justified."[1] On the other hand, there is still a lot of work to be done to explain the nature of human dignity as a constitutional value. It is, first of all, about the interpretation of the natural and legal nature of human dignity.

The experience of the Constitutional Tribunal of the Republic of Poland can be useful when addressing this issue. For example, in one of the decisions, the Constitutional Tribunal pointed out that human dignity has a number of functions in a constitutional order: 1) providing the connection between the *Constitution* (act of positive law) and *the natural law order*; 2) acts as a determinants of interpretation and application of the Constitution; 3) acts as a determinant of the system and the scope of human rights and freedoms and the subjective right of a person with a separate legal content.[2] In another decision, it was emphasized that the application of the Constitution should be "accompanied by care for the preservation of natural human dignity. Hence, dignity cannot be considered as a feature or set of rights granted by the state. It is primary in relation to the state, as a result, both the legislator and the law enforcement agencies should respect the content contained in the concept of dignity that belongs to everyone."[3] Thus, the constitutional significance of human dignity is emphasized as the natural and legal basis for the system of values around which the Constitution and the foundations of the legal structure of the state are built.

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[1] M Hranat, 'Znachennia hidnosti liudyny v konstytutsiinomu pravi' [The value of human dignity in constitutional law] (2016) 1 Ukrainskyi chasopys konstytutsiinoho prava 64

[2] Wyrok Trybunały Konstytucyjnego z 15 października 2002 r., sygn. SK 6/02, III.6.2. URL: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20021781486/T/D20021486TK.pdf (accessed: 20.08.2018)

[3] Wyrok Trybunały Konstytucyjnego z 4 kwietnia 2001 r., sygn. K 11/00, III.2. URL: http://static.e-prawnik.pl/pdf/orzeczenia/otk_K_11_00.pdf (accessed: 20.08.2018)

Conclusions. The analysis carried in this paper made it possible to conclude that human dignity, initiated as an idea, has found its development in the theological, philosophical and legal dimensions. The philosophy of human dignity rests on Thomas Aquinas's theological ideas of divine origin and the natural and legal nature of human dignity and its relation to freedom. Substantially human dignity is revealed in the philosophy of Immanuel Kant in his imperative to treat man as "a goal, not as a means." In the legal sense, the idea of human dignity is realized as a principle (value) and human right. Value-oriented characteristic of human dignity is explained by its relationship with human rights, in particular, its source nature in relation to rights and freedoms. At the same time, the interpretation of human dignity as a source of human rights or of the human rights foundation does not deny but even reinforce the subjective right to the dignity of each person (human dignity). In this case, human dignity is absolute and is perceived the basis of the state.

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PECULIARITIES OF ARAB MONARCHIES FORMS OF GOVERNMENT (COMPARATIVE ANALYSIS)

Abstract. *The article is devoted to the research of the specifics of the modern Arab monarchies form of government. The author expounds the essence of certain contradictory tendencies of their functioning and evolution. The first among them is the conflict between an objective demand of all the Middle East monarchies (absolute and limited) to meet the requirements of political, technical, economic and social development within the process of globalization and at the same time the persistent attempts of government to preserve the medieval feudal and clerical laws and orders. The second contradictory trend is the imposition of the constitution adoption by the monarch Arab states without general public participation in this process as well as the formulation the principles of absolutism in unlimited monarchies at the legislative level. The third trend demonstrates the limited monarchies governments' perseverance to restore the absolutism. The article provides the peculiar analysis of the defining principles of the absolute and limited monarchy forms of government. There were determined such objective reasons of the limited monarchies' intent to preserve their absolute and restoration policy as the weakness of community, the absence of democratic traditions, the strengthening of Islam and its disintegration, the threat of radicalism, specific differences in political structure, traditionalism, governmental authoritarianism, advisory type of governments and parliaments, etc.*

Key words: *Arab East, absolute monarchy, limited monarchy, form of government, constitution, Islam, Shariah.*

INTRODUCTION

One of the modern problems of domestic legal science is the form of government, which since the ancient times was the object of careful study and considerable criticism of all its forms existing at that time. In the period of Enlightenment, the feudal absolute monarchy was the subject of the greatest condemnation. Marxist historiography radicaly criticised any form of monarchy. However, as in the process of legal science evolution, and also in our days there is no unity in determining the essence of the absolute monarchy, which, in fact, as a widespread phenomenon went back to the historical past. The constitutional monarchies that came to their place provide a fairly high level of well-being of the population and broad political and civil rights of a person. However, they do not stipulate acute conflict problems of international and regional significance. A number of ab-

solute Arab monarchies require a different approach, since they, on the contrary, create conflict situations in their countries, being a historical rarity [1–4]. However, social, political and economic processes in Arab countries, as well as in the western ones, and the nature and direction of their development are largely determined by the form of government of some certain states.

Today there is a lack of necessary attention of jurists' researchers to such essentially rare system of government that takes place in the monarchies of the Middle East. Thus, V. V. Sukhunos emphasizes that in our days "the monarchical form of government is practically not studied", with the work by Y. Kolomiets as an exception [5]. Domestic researchers in varyous degree touched on the essence of the legal systems of the Arab countries in general and the monarchies, in particular (D. Lukianov, Kh. Behruz, M. Burlatskyi, V. Kolisnyk, V. Konovalova, I. Protsyuk, P. Rabinovich, Yu.Todika, Yu. Shemshuchenko and others). However, the peculiarities of the systems of government of the designated states were not the purpose of their studies, and they did not perform their comparative analysis.

Considering the intensity and contradictory tendencies of functioning and the peculiarities of the evolution of the Arab monarchies at the end of the 20th – the beginning of the 21st century, the highlighting of this problem becomes very topical. Practice shows that despite the peculiarity of the Arab monarchies having the medieval feudal signs and clericalism, they are capable of turning into a powerful and effective instrument of stabilizing society and relations with the neighbors in rather complicated and acute situations. Such experience emphasizes that even with the presence of features of the absolute monarchy signs of historical backwardness and rarity, this form of government still possesses the necessary political and social potential for its functioning. At the same time, the objective requirements of globalization process are unceasingly pushing Arab absolute monarchies to their transformation into constitutional monarchies. The acuteness of such processes stipulates destabilization not only in the Persian Gulf region, but in the whole world. And the need for prevention of possible unwanted incidents and conflicts also determines the relevance of a careful study of the problem.

The purpose of this scientific publication is an attempt to study the peculiarities of the systems of government of the Arab monarchies, to identify the defining features of the absolute and limited monarchies, the peculiarities of their division into distinctive types, as well as the identification and characterization of the main tendencies of their evolution. On the basis of the above, the author considers it necessary to investigate the meaning and the types of forms (systems) of government of the Arab monarchies, absolute and limited. The explanation of this position, in her opinion, is in the absence of a special comparative analysis of the form of government of the monarchies of the Middle East, and secondly, in the acute relevance of this problem.

The novelty of this study is to highlight and group the defining features of the forms of government of absolute and limited monarchies and inherent in both types of groups, as well as in the formulation of three contradictory

trends in the functioning and evolution of the studied states. The materials of this article are valuable to comparativists, researchers of the Arab states, teachers of the discipline "Comparative Law", and students specializing in "International law" and especially Masters degree seekers who listen to additional advanced courses of practical "Comparative Law".

1. MATERIALS AND METHODS

For a detailed study of the features of the form of government of the Arab monarchies, the author used a variety of theoretical methods. The comparative analysis itself is already one of the most powerful and effective means of research, which in the nineteenth century became an independent legal training discipline. With this aim, a number of normative acts and scientific sources were analyzed, their comparison was made and appropriate conclusions were drawn. The author had to proceed from that fact that the bulk of the definitions of the form of government in various publications was made "on the European models and values of the Western civilization", and from the fact that different approach and scientific instrument is needed to study the form of government of the monarchies of the Persian Gulf [1]. Under such circumstances, it was necessary to take into account the specifics of the Arab countries.

The comparison of the contents of the Constitutions of different countries made it possible to identify the features of their use by the rulers of the absolute monarchies to preserve truly absolute powers and restoration tendencies in the limited monarchies. It is thus established that Saudi Arabia is theocratic, most conservative and traditionalist one in the number of absolute monarchies [6], the UAE is a federal, limited monarchy of a special type [7], Morocco is just a constitutional monarchy [8], Kuwait is a quasi-constitutional monarchy [9], Jordan is an intermediate between dualistic and parliamentary monarchy [10]. Comparison of the Main Laws provided the identification of the decisive features of the form of government of the absolute and limited monarchies, the previous Constitutions with the following and the latest ones, the trends in the evolution of their content. Comparison of the views of different researchers on the essence of a particular form of government showed the differences in the characteristics of the type of monarchy [1; 5; 11].

2. RESULTS AND DISCUSSION

2.1. Factors of formation and evolutionary tendencies of the monarchies

In the legal science there are many definitions of the monarchical form of government in general, and of the absolute and limited, in particular [1; 4; 12–14]. At the same time, any classification is inherent in conditional character [1]. Various researchers of the same problem often achieve opposite evaluations. And this has an objective character, including the highlighting of the essence of the Arab monarchies. Indeed, despite the common language, religion, culture, everyday life, the traditions of the Arab peoples, there are international contradictions and the inability to reach a political unity between their states. Not the common features, but above all the radical socio-political differences of the Arab countries cause great difficulties in defining the types of their political

systems and turn into the results with "largely conditional and not always indisputable character. This especially concerns the form of government" [3].

Some scientists see the preservation of the absolute monarchies in the low level of economic development of the Arab countries, in religion; others see it in preservation of the feudal order and outdated forms of social organization, in adapting the archaic form of government to the conditions of the present time and gaining some flexibility, in "oil prosperity", in planting on monarchism in the Middle East by the United Kingdom and the United States [1; 3; 4]. The formation of the Arab monarchies was conditioned by historical factors, internal influences and the pressure of international circumstances. This process clearly shows the role of historical circumstances in shaping the "current status of the Head of a state" of the Persian Gulf. The powers of the monarch as Head of the state were formed in these countries in parallel with the process of its formation, the development of dynastic ties and influences of tribal traditions. "The still existing dynasties of Kuwait, Bahrain, Qatar and the UAE appeared in the conditions of the tribal system". This process clearly shows the formation of "the current status of the Head of the state" [1].

Despite this, contemporary absolute monarchies are compared with traditional feudal states. However, they do not exist due to exploitation of the peasantry, but using oil deposits and financial resources. Yesterday's feudal clans have become industrialists and financial campaigns that require forceful power [1; 4]. Under such conditions, the monarchy appears in society as a strong integrating and stabilizing institution, at the same time turning into statism and authoritarianism [3; 15]. A certain role in the formation of Arab monarchies was played by yesterday's metropolies, which sought concentration of post-colonial power to neutralize the disintegration tendencies of the multi-religious and multi-ethnic world.

In practice, only the state could solve these problems and for the legislative provision of such possibility it became necessary to adopt the Constitutions and create a bureaucratic apparatus [3; 4]. The Islamist movements, the results of decolonization, the impact of international politics, the demands of the globalization process, the internal socio-economic and political crisises pushed to this. In addition to the general in this issue, there were also some other factors. Thus, the UAE Constitution was dictated by the need for a legal formulation of the federation; in Oman it was the need to legitimize the concentration of secular and spiritual authority in the hands of the ruler, as well as the guarantee of absolutism by Great Britain and the United States; in Saudi Arabia it happened on the basis of the religious flow of Wahhabism and under pressure from the United States [1; 3].

If in the proclamation in the Constitutions of the absolute monarchies the broad human rights of an individual some lawyers see "a tendency toward their democratization" [1], then in the limited monarchies the opposite, restoration tendencies are seen. Widely using the right to impose the state of emergency or martial law for an indefinite period, the monarchs of Morocco, Jordan, Bahrain and Kuwait actually turned

to the absolute form of government. Morocco and Jordan do not extract oil, and that caused the frequent crises [14]. The King of Morocco, Muhammad V, in 1956 established the absolute power in the country, and the Constitution of Morocco in 1962 established a "feudal regime"; the Constitution of 1970 further strengthened the power of the monarch. And only a referendum in 1992 approved the dualistic monarchy. The King of Jordan in crisis conditions dissolved both chambers in November 1974, after that, up to 1989, there was no Parliament in the country. The actual establishment of the absolutism through the dissolution of Parliaments and introduction of the state of emergency took place in 1975 in Bahrain and in 1976 in Kuwait. Kolomiets states that "the movement of the monarchy to parliamentarism is not an irreversible process, but it can lead to resuscitation of the pure genius absolutist tendencies". That is why so-called limited monarchies, in spite of the existence of the Constitutions in them, are, in fact, absolute monarchies [1].

2.2. Indicative features of the form of government of the absolute Arab monarchies

Legal scholars consider the absolute monarchies of the Persian Gulf to be a rarity in the modern conditions [1; 2]. To a certain extent, this rarity, unlike the medieval European absolute monarchies, is in the existence of the Constitutions in the Arab absolute monarchies. Most researchers attribute Qatar, the United Arab Emirates, the Sultanate of Oman and Saudi Arabia to the Arab absolute monarchies. For the first time in Qatar, the Constitution was granted by the monarch in 1970. This Constitution pursued the goal of constitutional consolidation of power under the ruling dynasty. The Main Law did not limit the absolute power of the monarch and provided for the preservation of the legislative and executive power in his hands and was only a tool for regulating the activity of the existing under the monarchy the executive and consultative apparatus [1]. Since 2003 the new Constitution, also conferred by the Emir, is in force in the country. It proclaims Islam a state religion, and Shariah is the basis of the law (article 1), secures the hereditary power of the al-Thani dynasty (articles 8, 14), and declares human rights without foreseeing a mechanism for their realization (article 37–58). The document declares the principle of the separation of the branches of power, the creation of the Advisory Council of al-Shura and calls it the Parliament and the legislative body (Preamble, articles 61, 62). Article 61 imposes on the Radu al-Shura the exercise of "the legislative power", the essence of which, according to Art. 77, is to comply with "the state policy, approval of the state budget and control of the executive power". The Council has the right to amend the draft the budget only with the permission of the government, i.e. the Emir (article 107). Members of the Council of al-Shura and the government, taking office, swear an oath to the monarch "to be loyal to the Emir and the state". The executive power belongs to the Emir who appoints, heads and dismisses the members of the government, who are his advisers (articles 65, 72). Emir as the Head of the government himself straightly directs the elaboration of the draft laws, after that he approves them. Thus, the Constitution of 2003 left the

previous form of government in Qatar, hiding its content in unrealistic declarations and maintaining the absolute monarchy [16].

The second absolute monarchy is the Sultanate of Oman, in which the role of the Constitution is fulfilled by the Basic Law of the Sultanate of 1996. Until this year, the Koran was considered the Constitution of the country. Art. 5 of the Constitution states that "The form of government is a hereditary monarchy in the form of a sultanate that is inherited in man’s line" of the ruling Al-Sa’ida dynasty. The Constitution does not even concern the principle of the separation of powers and the existence of a legislative body, and only mentions the existence of the advisory Council of "Oman" consisting of two bodies – the Consultative Council and the Council of State (article 58). The law provides for the appointment by the Sultan the members of the Council of State and the election of the Consultative Council by three percent of the population. The main function of the Council of "Oman" is to elaborate the recommendations to the Sultan and the government headed by it (article 43). The whole legislative and executive power fully belongs to the Sultan, who is the Head of the state, the Prime Minister, the Supreme Commander of the Armed Forces, the Minister of Foreign Affairs, of the Defense and Finance, the Supreme Justice and the Supreme spiritual person of the country (imam) (article 41). The personality of the Sultan is inviolable, and his decisions are final [17].

The third absolute monarchy – the theocratic one – is the Kingdom of Saudi Arabia, in which the King acts as the embodiment of the power of the Saudi family, historically dominant in the political life of the country. The special position of the family of the Saudis was enshrined in the act of a constitutional nature – the Basic Nizam of the authorities in 1992. The Constitution of 2010 reaffirmed the theocratic nature of the system of government. Article 1 of the Main Law declares that "the Constitution is the Book of Almighty Allah and the Sunnah of His Prophet". Article 7 also emphasizes that "The power in the Kingdom of Saudi Arabia is based on the Book of Almighty Allah and the Sunah of His Prophet, which form the basis for this Provision and other acts". Article 55 emphasizes that "the King carries out the national policy in accordance with the norms of Islam. He controls the application of Islamic Sharia and legislative norms…". Article 5 of the 2010 Constitution states that "the system of government of the Kingdom of Saudi Arabia is a monarchy. The power belongs to the sons of the King – the founder of the state Abdel Aziz Abdel Rahman al-Faisal Al Saud and to the sons of their sons". The state power of the kingdom consists of the judicial, executive and legislative power, the King is the highest authority of all these powers. The King is the Head of the Council of Ministers, and he determines the Regulations on the Council of Ministers. He decides on the formation and reorganization of the Council of Ministers. By his decree the King appoints the deputies of the Head of the Council of Ministers, members of the Council of Ministers, and also dismisses them from their duties. The Main Law provides for the establishment of the Advisory Council. The King has the right to dissolve

and reorganize the Advisory Council, as well as convene joint meetings of the Advisory Council and the Council of Ministers (article 56). Human rights are foreseen without a mechanism for their practical implementation (articles 23–43). [6].

The United Arab Emirates (UAE) is the fourth, federative, absolute monarchy, consisting of seven independent monarchy principalities: Abu Dhabi, Dubai, Sharjah, Ras al-Khaimah, Ajman, Al-Fujairah, Umm al-Kayvayn, which, in accordance with the 1996 amendment to the Constitution of 1971, constitute a "limited monarchy of a special type" (article 1), the elective, mixed monarchy, a hybrid form of government, "a peculiar symbiosis of the monarchy and the republic" [5; 13; 18]. Each principality retains considerable independence. It is precisely collectivism that determines the "feature of the type", while "limitation" is in the voluntary refusal of the seven absolute monarchs from the part of their powers in favor of the principle of collective absolutism. For the circle of the prerogative of these seven, the specified refusal does not at all come off and does not in any way violate the general essence of absolutism. Islam is proclaimed the state religion of the federation, and Sharia is the official source of law (article 7).

The principles of separation of powers and the election of the state bodies are not recognized. The latter are formed by the appointment or delegation by the Heads of Emirates. The UAE's federal authorities consist of the Supreme Council of the Union, the President of the Union and his Deputy, the Council of Ministers, the National Council and the Supreme Federal Court. The highest body of state power is the Supreme Council of the Union of Emirate rulers, which defines the general policy of the UAE, approves the Union laws, ratifies international treaties, introduces and abolishes the state of emergency, declares war, approves the Prime Minister appointed by the Head of the state, as well as the Head of the Supreme Court and its members, exercises supreme control over the affairs of the union, etc. (articles 45, 47). All decisions of the Supreme Council are binding and final. The Supreme Council of the Federation shall elect from among its members the Chairman of the Council and his Deputy, who is the President and Vice President of the country. The President manages the activities of the Supreme Council, appoints the Prime Minister and accepts his resignation. Legislative acts are adopted by the Council of Ministers, which approves the bill and presents it to the National Council, the President of the Union and the Supreme Councils (article 110). The President signs the law after the agreement with the Supreme Council and issues it (article 45). Articles 13–44 formulate human rights without providing the mechanism for their implementation [7]. Ya. Yusef saw in the United Arab Emirates a "too constricted monarchy, close to the absolute forms and rule, with an advisory body appointed by the ruler himself" [19].

All indicated as to the essence of the form of government of the Arab absolute monarchies, as well as undetermined here because of the limited scope of this article, the analysis of the literature on the constitutional practice of the authorities of the studied countries, re-

veals the following features inherent to them:

1) semblance of the combination of absolutism with constitutionalism: the state has the Constitution but at the same time remains the absolute monarchy;

2) legal consolidation of the principles of absolutist form of government in the Constitution;

3) proclamation of Islam as the state religion;

4) proclamation of the Koran and Sunna, Sharia the basis of the legislation in particular, and the legal system in general;

5) replacement of the legislative bodies by consultative, advisory ones, qualification of the latest as the legislatures or Parliaments;

6) proclamation of human rights in the Constitutions without a mechanism for their practical implementation;

7) existence of a variety of forms of the absolute monarchies: just an absolute monarchy, theocratic, limited one of a special type or trimmed monarchy;

8) combination of the principles of inheritance of power and its election;

9) coexistence of the features of the absolute and dualistic monarchy;

10) imposition of the Constitutions by the rulers with the aim of regulating the activities of the monarchical executive and advisory apparatus;

11) penetration of the entire system of government by the idea of the rule of Sharia and Islamic doctrine is a characteristic feature of the statehood;

12) impediment of social development by clerical forces by imposing on the monarchs the established stereotypes of government;

13) emergence and strengthening of the tendency of alienation of the state from the society;

14) presence in the system of government the elements of feudal arbitrariness of the early Middle Ages;

15) arbitrary termination of the Constitution by the rulers for an indefinite period of time.

2.3. Features of the limited Arab monarchies

The Kingdom of Morocco, in accordance with the October 2011 Constitution, is called the constitutional monarchy with the democratic system of parliamentary government (General Provisions, Article 1). However, in practice, the King retains real power, that allows admitting the presence of the dualistic monarchy in the country. The Main law confirms the heredity of the power of the ruling dynasty (article 43). Islam is recognized as the official religion of the state (article 3). King Amir Al Muliminin controls the respect for Islam, is the Head of the Supreme Council of Ulema and performs religious prerogatives (article 41). He is the Head of the state, he appoints the Head of the government from among the representatives of the party which obtained the majority in the elections, as well as the ministers; he heads the Council of Ministers, has the right to dissolve both chambers of the Parliament which consists of two elected chambers by the general vote – the Assembly of Representatives and the Assembly of Councillors (articles 47, 51, 60, 61). The government is responsible before the Parliament – the "kingdom". The monarch has the right to declare the state of emergency (article 59). [8].

In accordance with the provisions of the Constitutions of 1952 and 2012 imposed by the monarch, the Hashemite Kingdom of Jordan is a hereditary monarchy (Article 1). Legislative power belongs to the King and the National Assembly consisting of the Senate and the House of Representatives (article 25). Senators are appointed by the King, and the Representatives are elected by general direct elections. The King can dissolve the House of Representatives, the Senate and deprive the Senator of his title (article 34). The Head of the state is the King, who has broad powers in the field of legislative and executive powers. The King appoints and dismisses the Prime Minister and Ministers (article 35). All decisions of the Prime Minister are approved by the King. However, the government is responsible to the House of Representatives, which can give it a vote of no confidence and resign (article 51). The Constitution contains article 124 – "The Law on Defense", according to which, in case of emergency, the operation of ordinary laws is suspended and the royal decree introduces the state of emergency in the territory of the entire country or a part of it. The broad legislative and executive powers of the monarch reflect the dualistic nature of the monarchy, and the government's responsibility to the House of Representatives reflects its parliamentary nature; in this connection some researchers define the system of government of Jordan as an intermediate between the dualistic and parliamentary "and even somehow closer to the last", i.e. as dualistic-parliamentary [1; 10].

Kuwait was called a quasi-constitutional monarchy, in which there is an absolutist political regime with the elements of parliamentarism, but with the absence of political parties in the country. The granted by the monarch Constitution of 1962, proclaims the system of governance democratic, in which the source of power is people. At the same time, the freedom to form associations and unions is guaranteed only "on the national basis", not political one. The system of government is based on the principle of the separation of the branches of power. In accordance with the Constitution, the legislative power belongs to the Emir – the Head of the state – and to the unicameral National Assembly, two thirds of which are elected directly by secret ballot, and one third is appointed by the Emir (articles 51, 52). Only competent men born in Kuwait have the right to vote. The Head of the state is the hereditary Emir, who actually possesses the full power. He appoints the heir to the throne, may dissolve the National Assembly, initiate, approve and adopt laws; he establishes a state of war (articles 69, 107). The laws are adopted by the Emir and the National Assembly and approved by the Emir. The executive power belongs to the Emir and the Council of Ministers (article 52). According to the Constitution, Emir, after traditional consultations, appoints the Prime Minister and dismisses the ministers on the recommendation of the head of the government (article 54). Government members are jointly responsible before the Emir and before the Parliament for the general policy of the state. The Council of Ministers defines the general policy of the country and monitors its implementation [9; 20–22].

The first Bahraini constitution was imposed by the King in 1973, and in 1975 it stopped its action. According to granted by the King October 2002 Constitution, Bahrain is a hereditary constitutional monarchy with a democratic regime (Preamble). The Main law consolidates the inheritance of the power of the dynasty of Hamad Bin Isa al-Khalifa. Islam is proclaimed a state religion, which, along with Sharia, is the main source of legislation and the "Code of Laws and the way of life" (articles 4, 5). The Constitution proclaims the principle of the separation of powers into legislative, executive and judicial (article 32). The Legislature has the King and the National Assembly, while the executive is the King, the Council of Ministers and Ministers (article 32). The Head of the state is the King, who appoints and dismisses the members of the Advisory Board by a decree, and also heads the Supreme Judicial Council. The King can amend the Constitution, propose bills, approve laws and make them public. The Head of the State determines the procedure for elections to the Chamber of Deputies, convenes and closes the National Assembly, has the right to dissolve them, as well as to introduce a state of war (articles 35, 42, 64, 123). The King, thanks to the ruling family, actually controls all spheres of life of the country. All this qualifies the form of government of Bahrain as just a constitutional monarchy [23].

Indicated above regarding to the form of government of the Arab limited monarchies, on the same grounds as the absolute ones allows determining the following inherent features:

1) the constitutional monarchies of the Arab East, as well as the absolute monarchies, are characterized by a variety of types: just a constitutional monarchy, a dualistic monarchy, an intermediate between dualistic and parliamentary monarchy; quasi-constitutional monarchy;

2) combination of the features of dualistic and parliamentary monarchies;

3) absence of clear signs of the difference between a dualistic monarchy and a parliamentary monarchy;

4) legalization of succession of the dynastic power;

5) tendency to manifestations of absolutist forms of government and conscious pursuit of them;

6) abusing by the monarchs the right to dissolve the Parliament;

7) introduction of the state of emergency by the rulers without specification of the term;

8) approval of Islam the state religion by the Constitutions;

9) actual superiority of the powers of the ruler in dualistic monarchies over those stipulated in the Constitution;

10) imposition of the Constitutions by the monarch in limited monarchies, as in the absolute ones;

11) significant limitation of the legislative and controling powers of the Head of state in the parliamentary monarchy;

12) realization of the overwhelming majority of the powers of the ruler by the government in the parliamentary monarchy, the responsibility of the government to the parliament;

13) absence of any dualism in this system;

14) deprivation of the discretionary power from the Head of a state.

CONCLUSIONS

Thus, among the eight Arab monarchies there are four absolute ones: Qatar, UAE, Oman and Saudi Arabia, one of which is theocratic, and the other one is the limited monarchy of a special type, that does not change the essence of absolutism. Four other forms of government are limited monarchies, in particular, Bahrain is just a constitutional monarchy, Morocco is a dualistic monarchy, Kuwait is a quasi-constitutional monarchy, and Jordan is an intermediate between dualistic and parliamentary monarchies. The forms of government of absolute and limited monarchies are inherent in their numerous defining characteristics. The monarchical Arab states have to adapt the mechanism of power and political superstructure to the global trends of world development. Absolute monarchies have their Constitutions, which fundamentally differ from the former absolute monarchies of Europe. However, these Main laws only formulate the principles of absolutist regimes. The Constitution of monarchies, absolute and limited, is used by the Heads of the states in the interests of the ruling elite of the countries. Moderated and changed by the rulers without public control, they provide the monarchy with a wide space to fight for the preservation of the powers of the monarchs. The distinction between the official provisions of the Constitutions and the actual situation in the constrained monarchies makes it difficult to determine their type, attributing to absolute, dualistic or parliamentary monarchies. The Constitution itself confers all power exclusively on monarchs – legislative, executive, judicial, and often – religious. The Main laws declare that the Koran and Sunnah rise above them, and Sharia is the most important source of law. Using them, the rulers of absolute monarchies seek to preserve this system of government, and the limited – to return absolutism.

The governments of the Arab monarchies are trying to solve acute crisis problems using the methods that have caused these problems. The weakness of the civil society, lack of democratic traditions, the rise of Islam, its disintegration into numerous flows, the threat of radicalism, specific distinction of political structures, traditionalism, authoritarianism of governance, the consultative and advisory nature of the governments and "Parliaments", etc., impede the process of democratization of the forms of government which is foreseen by the Constitutions.

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LOCAL SELF-GOVERNMENT SYSTEM UPON DRAFT CONSTITUTIONS OF UKRAINIAN PEOPLE'S REPUBLIC OF 1917, 1918 AND 1920: SOURCES, MAIN RISKS AND HISTORICAL IMPORTANCE

Nowadays, the local self-government reform in Ukraine is a determinant component of the decentralization of power which prompts for a comprehensive reflection on the national constitutional ideas of introducing a democratic system of local self-government under the Ukrainian People's Republic (hereinafter referred to as the UPR). The research of the local self-government system, provided for in the draft UPR Constitutions, makes it possible to establish a historical connection of the state-building processes of the UPR with the present, to deepen knowledge on the history of local self-government in Ukraine, as well as on the problems of the timeline of the domestic constitutionalism.

Domestic scholars have placed the emphasis on the study of the actual functioning of local self-government in the UPR, mostly in the context of the activities of the Ukrainian Central Council (hereinafter referred to as the UCC). Recently, V. Verstiuk, I. Verkhovtseva, V. Gvozdyk, V. Goncharenko, V. Yermolayev, O. Kopylenko, M. Miroshnychenko, O. Myronenko, V. Rumyantsev have addressed this problem. However, attempts at the constitutional settlement of the local self-government in the UPR did not become the subject of a special historical legal study.

The article is aimed at revealing the historical experience of the constitutional settlement of the local self-government system through evaluation of the draft UPR Constitutions of 1917, 1918 and 1920. The study of the draft Constitutions of the UPR days provides an opportunity to establish sources, principles and criteria of local self-government which their developers were guided by.

Ukraine has a long history of local self-government organization with the Zaporozhian Sich and city self-government under Magdeburg Law, which was in force in Kyiv until 1835. Under the legislation of the Russian Empire, the zemstvo self-government was in place on the territory of the Ukrainian provinces since 1865, and in 1871 the city self-government was introduced. In the

territory of Galicia, which was part of the Austro-Hungarian Empire, the povit (county) and rural self-government functioned since 1866. In the city of Lviv, the city self-government began its activities guided by its own Statute of 1870.

At the end of the nineteenth century, fundamental provisions concerning democratic principles of introducing local self-government in Ukraine were formulated by a founder of the modern national constitutionalism M. Drahomanov.

M. Drahomanov's constitutional ideas were developed in M. Hrushevsky's writings. Under the UPR conditions in 1917–1918, he developed principles of the theory of a democratic, social, law-governed state based on national and personal autonomy and local self-government. He believed that a free self-government community but not the state could be a guarantor of human rights. Due to the local self-government development, a process of the decentralization of power and ensuring social justice will take place[1] M. Drahomanov's constitutional ideas were developed in M. Hrushevsky's writings. M. Hrushevsky's constitutional draft of 1905 was based on the principles of a representative government and broad national and territorial decentralization. Under the UPR conditions in 1917–1918, he developed principles of the theory of a democratic, social, law-governed state based on national and personal autonomy and local self-government[2].

At the beginning of the Ukrainian Revolution in the spring of 1917, political parties, public organizations and their leaders had different visions of introducing a new local self-government system in Ukraine. Thus, amongst the UCC leaders, there was a debate as to whether to support the zemstvos reformed by the Provisional Government or to introduce their own system of local self-government. Leading political parties having the most numerous factions in the UCC (i.e. the Union of Ukrainian Autonomous Federalists, Ukrainian Social Democratic Party, Ukrainian Radical Democratic party, Ukrainian Party of Socialist-Revolutionaries), had no clear introduction program of a new local self-government system. Their ideas coincided only in the fact that the local self-government system should be based on democratic principles.

On June 20, 1917, the UCC created a Constitutional Commission consisting of eight people to make a draft constitution. The Commission included members of the UCC representing political parties and public organizations: M. Levytsky – a chairman of the Commission, M. Shrah, Y. Kasianenko, B. Babych, S. Yefremov, M. Stasiuk, V. Boiko, O. Chaikivsky[3]. On June 23, the UCC adopted the Instruction on Constitutional Commission, according to which the Commission had to consist of 100 members – representatives of national groups, political parties, public organizations, territorial units. According to party membership, the Commis-

[1] Марія Мірошниченко, Василь Мірошниченко, *Історія вчень про державу і право: Навчальний посібник* (Атіка, 2001) 178

[2] Ibid. (pp.180–181).

[3] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 1 (Наукова думка 1996) 110.

sion members were mainly representatives of the left socialist parties[1].

On July 29, 1917, the UCC approved the first draft of the provisional Constitution of Ukraine, drafted by the Constitutional Commission, – "Statute of Supreme Administration of Ukraine". It provided for an autonomous state and legal status of Ukraine in federal Russia and provisional supreme bodies of state power – the Ukrainian Central Council and General Secretariat. However, the draft Constitution did not envisage provisions on a local self-government system[2].

After the adoption of the Third Universal of the UCC dated November 7, 1917, the Constitutional Commission resumed its work on drafting the Constitution. The Commission members supported the necessity of entrenching a democratic self-government system in the Constitution since the Third Universal contained an order to the General Secretariat "to take all measures in order to consolidate and extend the rights of local self-government" – the implementation of a local self-government reform[3].

On December 10, 1917, the UCC considered the draft UPR Constitution according to which Ukraine had the status of autonomy in federal, democratic Russia. The draft did not include a separate chapter concerning local self-government. According to Art. 6, the UPR "gives its lands, volosts (counties) and communities the right to extensive self-governance while respecting the decentralization principle"[4]. Local self-government activities were regulated by Art. 23 of Section IV "Authorities of the Ukrainian Republic". It stated that "all sorts of local affairs shall be governed by elected councils and councils of communities, volosts and lands"[5]. Under Art. 9, the right to vote in elections was gained by persons who attained 20 years old. Citizens of the Ukrainian Republic received equal electoral rights regardless of their sex, origin, education or property qualification (Art. 9–10). According to Art. 23, in their activities, local self-government bodies "cannot be restricted or tightened by any executive bodies of the Republic"[6]. The draft provided for judicial guarantees of local self-government activities. The right to repeal decisions of self-government bodies contradicting the Constitution was vested in the General Court of the UPR[7].

As a matter of experience of parliamentary activity of the UCC and in order to expand the range of subjects of legislative initiative, the draft UPR Constitution of 1917 recognized the right of local self-government to the legislative initiative. Art. 37 provided local self-government consisting of at least 100,000 voters the right to submit bills to the National Assembly[8]. How-

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[1] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 1 (Наукова думка 1996) (p. 126).

[2] Тарас Гунчак, *Україна: перша половина XX століття. Нариси політичної історії* (Либідь 1993) 100.

[3] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 1 (Наукова думка 1996) 401.

[4] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 2 (Наукова думка 1996) 5.

[5] Ibid. (p.7).

[6] Ibid. (p.7).

[7] Ibid. (p.10).

[8] Ibid. (p.8).

ever, in practice, under the UPR, local self-government did not submit any bills for consideration by the UCC[1].

Section VIII "National Organizations" in Art. 67 prescribed funding national unions – bodies providing national and personal autonomy of national minorities, at the expense of the state budget and local self-government budget. Disputes between national unions and local self-government bodies had to be resolved in court[2]. The mentioned rules came into force with the adoption of the Law "On National and Personal Autonomy" (Art. 5, 10) dated 9 January 1918[3]. Consequently, the draft UPR Constitution of 1917 relied on the national state, legal traditions and basic democratic principles of local self-government organization. The draft did not take into account the experience of reforming the zemstvo self-government by the Provisional Government of Russia but envisaged the introduction of a new administrative-territorial division and a new self-government system.

The Fourth Universal of the UCC dated January 9, 1918 proclaimed the implementation of the local self-government reform "to set up such authority at the local level that people would have confidence in and that all the revolutionary democratic strata of people would rely on"[4]. For this purpose, under M. Hrushevsky's leadership, efforts were taken to draft a new administrative and territorial division of Ukraine which envisaged the introduction of 30 lands and three cities – Kyiv, Kharkiv and Odesa with a status of individual districts[5]. On February 10, 1918, the Council of People's Ministers of the UPR (hereinafter referred to as the CPM) adopted a resolution on the necessity of drafting a bill on a new local self-government system, taking into account the administrative-territorial division of the UPR into lands[6]. On March 6, 1918, the UCC adopted the Law "On Administrative-Territorial Division of Ukraine" which provided for "the establishment of new self-government bodies and authorities" resulting from the elimination of provinces, povits (counties) and volosts and introduction of the division of the UPR into lands. According to Art. 2 of the mentioned Law, the territory of the UPR consisted of 29 lands and three cities – Kyiv, Kharkiv and Odesa[7].

After the adoption of the Fourth Universal, the Constitutional Commission was headed by a deputy head of the UCC A. Stepanenko. In its work, the Commission relied on democratic constitutions of the European countries and the USA, the Third and Fourth Universals of the UCC, Laws "On National and Personal Autonomy" and "On Administrative-Territorial Division of Ukraine". As for consolidating the local self-government system, the most important source of the draft UPR Constitution of 1918 was the draft UPR Constitution of 1917. M. Hrushevsky was one of the leading authors of the draft

[1] Віктор Єрмолаєв, *Організація і регламент діяльності Української Центральної Ради*, *Право України*. 2017. № 11.65–6.

[2] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 2. 11.

[3] Ibid. (p.99).

[4] Ibid. (p.103).

[5] Анатолій Слюсаренко, Микола Томенко, *Історія української конституції* ("Знання" України 1993) 71.

[6] Ibid. (p.163).

[7] Ibid. (p.181–182).

UPR Constitution of 1918[1]. On April 27, 1918, A. Stepanenko proposed to introduce the draft Constitution for urgent consideration and approval of the UCC[2]. On April 29, an incomplete composition of the Small Council of the UCC began consideration of the draft UPR Constitution – "Statute on State System, Rights and Freedoms of the UPR" in private session. After a brief discussion, the UCC adopted the "Statute on State System, Rights and Freedoms of the UPR" in the statutory wording proposed by the Constitutional Commission, but the UPR Constitution did not come into force in 1918[3].

The UPR Constitution of 1918 did not contain a separate section on local self-government activities. Art. 5 included a conceptual provision on local self-government activities on the decentralization principles proclaiming that: "Without violating its unified power, the UPR grants its lands, volosts and communities the rights to extensive self-government while respecting the decentralization principle"[4]. As M. Miroshnychenko accurately notes, the essence of the concept is as follows: not the state gives its powers to local authorities, on the contrary, local self-government institutions do not prevent the central authority within its powers provided for by the Statute to deal with "all matters that remain outside activities of local self-government bodies"[5].

Territorially, the UPR Constitution of 1918 established a three-tier system of self-government: a land, volost, community. A community had to be the primary subject of local self-government. The introduction of a community was intended to create a local self-government unit which would have been as close as possible to local residents, would have had information about their needs and could effectively have addressed their social and economic issues, guided by the interests of a community. In addition, the term "community" symbolized restoration of national historical traditions of Ukraine.

According to Art. 11, the right to participate in elections of local self-government bodies – "a civil and political authority" – was vested in the UPR citizens who attained 20 years old on election day. The UPR citizens received equal electoral rights regardless of their sex, origin, education or property qualification (Art. 11–12). According to Art. 20 and 21, the right to participate in elections of local self-government bodies was vested in the UPR citizens. The UPR Constitution does not contain a rule concerning an electoral system which had to be followed at local elections. However, given that the All-Ukrainian Constituent Assembly was formed according to the proportional electoral system and the National As-

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[1] Любомир Винар (ред), *Державний Центр Української Народної Республіки в екзилі: Статті і матеріали* (Фундація ім. С. Петлюри в США; Веселка; Фундація родини Фещенко-Чопівських 1993) 306.

[2] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 2 314.

[3] Анатолій Слюсаренко, Микола Томенко, *Зазнач. твір*. 70.

[4] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 2 330.

[5] Марія Мірошниченко, *Ідея конституційної держави в стратегії державотворення за доби Української Народної Республіки, Право України*. 2017. № 11. 54.

sembly was established according to Art. 27 of the UPR Constitution, it can be assumed that the Constitutional Commission was inclined to introduce the proportional system of self-government elections.

Under Art. 26, elected councils and boards of communities, volosts and lands were proclaimed local self-government bodies of Ukraine. The Constitution did not include a list of authorities of local self-government bodies, except that they had to have absolute power at the local level[1]. The UPR Government could only monitor and coordinate the work of local self-government but did not have to interfere in its activities. As stated in Art. 46, the Council of the People's Ministers "shall order all matters that lie outside activities of local self-government institutions"[2]. Disputes between the local administration and self-government had to be settled by the UPR Court.

According to Art. 39, local self-government bodies consisting of at least 100,000 voters had the right to the legislative initiative[3]. However, the institution of the legislative initiative of local self-government has not developed in both Ukraine and foreign countries. Nowadays, among European countries, it is implied only by the constitutions of Andorra and the Czech Republic[4].

[1] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 2 331.

[2] Ibid. (p.334).

[3] Валерій Смолій (ред), *Українська Центральна Рада. Документи і матеріали*, Т 2 333.

[4] Олександр Лавринович, *Шляхи удосконалення системи суб'єктів законодавчої ініціативи: досвід держав – учасниць ЄС та українські перспективи*, *Право України*. 2011. № 3. 170.

Consequently, the UPR draft Constitution of 1918 took into account the basic democratic principles of local self-government. The UNR Constitution of 1918 provided for a three-tiered system of self-government, democratic electoral system. Guided by the decentralization principle, local self-government received absolute power at the local level. The Constitution provided for the judicial guarantees of local self-government activities.

It must be admitted that the UPR Constitution of 1918 contained certain gaps in the settlement of local self-government. In particular, it did not establish the status of local councils as regulatory bodies and boards as executive self-government bodies. The Constitution lacks rules regarding the electoral system, local councils deputies' term of a mandate, separation of powers between self-government bodies of lands, volosts and communities, formation of the local self-government budget. However, such shortcomings are explained by the fact that drafting of the UPR Constitution was not finalized.

The Directory of the UPR did not recognize itself as a successor to the UCC. However, in the process of constituting a new state agency, it largely relied on the UCC state-building experience. On August 30, 1920, the Council of Ministers set up a Government Commission of 16 people to draft the UPR Constitution. The Commission was headed by the UPR foreign minister A. Nikovsky. The Commission scrutinized the draft UPR Constitutions of 1918 and those by the All-Ukrainian National Council and O. Eihelman[5].

[5] Анатолій Слюсаренко, Микола Томенко, *Зазнач. твір*. 92.

However, under difficult military and political conditions, S. Petliura's Government was not able to authorize and implement the Basic State Law of the Ukrainian People's Republic drafted by the Commission.

Developers of the draft UPR Constitution of 1920 did not abandon the ethnographic principle of the administrative-territorial division of Ukraine into lands. However, unlike the draft UPR Constitution of 1918, the territory of Ukraine had to consist of 10 lands according to Art. 4[1]. Under Art. 5, lands could claim an autonomous state-legal status as part of the UPR. As it was envisaged by the Law "On Administrative-Territorial Division of Ukraine" dated 1918, the cities of Kyiv, Kharkiv and Odesa were granted a special status[2].

Local self-government activities were regulated by Section VII of the draft UPR Basic State Law of 1920. Art. 133 established local self-government functioning in the following administrative and territorial units: a community, volost, povit, town and city[3]. Furthermore, this article mentions "higher self-government units" but does not name them, although according to Art. 4, they should have been lands. Guided by Art. 134, local self-government bodies of communities, volosts, towns and cities had to be formed by an electoral system similar to the one that the State Council, the UPR Parliament, was elected by, but taking into account the residence permit[4]. According to Art. 3, the State Council was elected by general, equal, direct elections by secret ballot and on the proportional electoral system[5]. Local self-government bodies of povits and "higher self-government units" had to be elected by indirect elections by communities, volosts, towns and cities on the proportional electoral system. It should be noted that in accordance with the legislation of the Provisional Government of Russia in 1917, the zemstvo self-government was formed under a similar electoral system.

Based on the decentralization principles, the draft UPR Constitution of 1920 did not allow verticalsubordination of local governments and also proclaimed the self-government autonomy in relations with local administration. However, according to Art. 135, local self-government had to comply with orders of the state administration. Art. 133 established the scope of local self-government powers as follows: "addressing issues of local property and needs within its territory"[6]. Local self-government bodies had the right to establish "taxes and duties which are necessary for their government"[7]. According to Art. 131, local self-government bodies could defend violated rights at the Supreme Administrative Court of the UPR. Art. 133 of the draft UPR Constitution of 1920 stated that local self-government activities would have been regulated in more detail by a separate law[8].

Consequently, the draft UPR Basic State Law of 1920, as well as the draft

[1] Анатолій Слюсаренко, Микола Томенко, *Зазнач. твір.* 95.

[2] Ibid. (p.95).

[3] Ibid. (p.115).

[4] Ibid. (p.115).

[5] Ibid. (p.95).

[6] Анатолій Слюсаренко, Микола Томенко, *Зазнач. твір.* 115.

[7] Ibid. (p.115).

[8] Ibid. (pp.114–115).

UPR Constitution of 1918 took into account the fundamental democratic principles of local self-government. The UPR Constitution of 1920 provided for a complex four-tier local self-government system and a two-tier municipal self-government system. The self-government formation was carried out by democratic elections on the proportional electoral system. Guided by the decentralization principle, local self-government bodies received absolute power at the local level. The UPR Constitution of 1920 provided for judicial guarantees of local self-government activities. At the same time, the UPR Basic State Law of 1920 contained a number of gaps in settlement of local self-government. In particular, it did not regulate the status of local councils as regulatory bodies and boards as executive bodies of self-government. The UPR Constitution of 1920 neither established local council deputies' term of a mandate nor regulated separation of powers between self-government bodies. However, such gaps are due to the fact that the details of local self-government activities had to be enshrined in a special law. Comparing the UPR Basic State Law of 1920 with the UPR Constitution of 1918 in the part of the consolidation of local self-government, it should be noted that it is characterized by a clearer legal certainty and completeness of constitutional and legal rules.

Conclusions. Thus, democratic constitutions of the European countries and the USA, as well as constitutional ideas based on national traditions and own state and legal experience of Ukraine became sources of the local self-government institutionalization. The UPR did not use the legislation of the Provisional Government of Russia of 1917, which envisaged the introduction of a democratic system of the zemstvo self-government. Analysis of the draft UPR Constitutions of 1917, 1918 and 1920 provides grounds for arguing that the local self-government system was based on the ethnographic principle of the administrative-territorial division of Ukraine into lands and taking into account interests of national minorities. The primary subject of local self-government had to be a territorial community that could effectively have addressed social and economic issues of local residents. The local self-government system envisaged by the draft Constitutions should have operated on the basis of democratic principles of self-government such as decentralization, collegiality, electivity, organizational, material and financial independence within certain powers, a combination of state and local interests, the judicial remedy of self-government. Developers of the draft Constitutions took into account the criteria necessary to ensure the functioning of local self-government such as a legal formality, material and financial basis, opportunity to coordinate local interests with regional and national ones. At the same time, it must be admitted that the draft UPR Constitutions are not devoid of certain gaps in regulation of the local self-government institution. Attempts of constitutional consolidation of the local self-government system under the UPR testify to the historical aspiration of the Ukrainian people to build a democratic, legal, social state and civil society.

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THEORETICAL AND LEGAL ASPECTS OF THE STUDY OF HUMAN BEHAVIOR

Formulation of the problem. Philosophical ideas about the nature, peculiarities, motives and causes of human behavior derive from Ancient India and China, although in prehistoric times people created the notion of the world and the forces that rule this world and man. The existence of such views and ideas is evidenced by the material remains of ancient cultures, archaeological findings, although the primitive mode of production and the oldest forms of organization of society left only indirect evidence of this.

Today there is no answer to the question: when did people feel the need to control their behavior consciously? It is assumed that the objective conditions of the existence of the primitive society have created a rigid determination of behavior that does not allow deviations: acts, actions of an individual were conditioned by the collective will and natural needs [1, p. 5]. The prevailing view is that the first moral norms were manifested in taboos. They were means of controlling the animal in humans and correcting his behavior. The violator of taboo felt responsible for his behavior, since the primitive man did not distinguish himself from others, and his self-consciousness manifested itself as a group consciousness. Fear of unknown at that time was one of the motives of responsible behavior, determined by the relationship between man and society. Its formation is associated with the development of man as a social being, in the conditions of social relations, when the behavior of a person acquires social significance and therefore regulated by social norms [2].

State of research. Modern philosophical comprehension of human behavior is available in the works of B. S. Afanasyeva, Ya. I. Gylynskyi, A. G. Zdravomyslova, E. M. Korzhevyi, N. F. Naumova, G. V. Osipova, Zh. T. Toshchenko, S. F. Frolova, V. M. Shepel, V. A. Yadova and others. Legal human behavior has been the subject of research since the 1960s, but studies were conducted within one of its forms: lawful or unlawful (deviant) behavior. The general theoretical-philosophical, and legal basis for the research was developed by such scholars as S. S. Alekseev, V. K. Babayev, S. N. Bratus, A. M. Vasiliev, V. K. Gyshuk, T. Z. Garasymiv, V. M. Gorschenov, D. A. Kerimov, M. I. Kozyubra, V. N. Kudryavtsev, V. V. Lazarev, P. E. Nedbailo, V. S. Nersesyants, A. S. Pigolkin, P. M. Rabinovych, I. O. Samoshchenko, Yu. A. Tykhomyrov, V. A. Tumanov, A. F. Cherdantsev, L. S. Yavich and others.

Statement of the main items. Today it is generally accepted that cycles, phases, types and characters of social

organisms are inherent to the historical process, there are two approaches to the classification of the concepts of history:

– civilization, where the historical process is considered as a complex configuration of civilizations and cultures which coexist, or constantly change one another in the time. The general principle of such an approach is the constant repetition of the rhythmicity and cyclicality of the historical process;

– chronological (monochromatic), where historical epochs in chronological sequence are the object of the study. This is a linear conception of the development of history, where the history of mankind is regarded as a single history of the main and universal development, with common tendencies and laws [3, p. 26–49].

Representatives of the civilization or cyclical approach (M. Ya. Danylevskyi, K. Leontev, A. Spengler, A. Toynbee) considered diverse cultures as self-sufficient organisms whose life cycle is expanded in accordance with the internal laws of development. According to this view, each culture is experiencing birth, growth, flowering and death, which occurs as a result of the disintegration of the target causes of its development. Thus, M. Ya. Danylevskyi believed that the basis of culture is an ethnic factor. Cultures cannot influence one another, that is, he denied the possibility of cultural diffusion, at the same time, the cultural process seemed to him quite dynamic. Insisting on the cyclicality in the development of cultures, M. N. Danylevskyi does not deny the factor of linear evolution, arguing the stagiality in the development of cultures: at first there were autochthonous cultures, and then the "monobasic" and "polybasic" types of cultures, for example, the Romano- Germanic [4, c. 478].

O. Spengler states that humanity has a certain pace and life expectancy, various forms of culture exist, each having its own idea, life, and death. The driving force of change is the soul of a culture that stands out, realizes itself, its potencies, and then dies. The purpose of the development and existence of culture is a struggle "against the external forces of chaos and internal unconsciousness, where these forces were lurked," but when this goal is attained, culture dies, transforming itself into civilization. Civilization is seen by the philosopher as still culture, which impedes the development of new, young and viable cultures, imposing on them obsolete forms. O. Spengler, however, does not indicate the factors that determine the life span of culture, the inevitability of its extinction and decline [5].

A. Toynbee also supported the idea of local development of cultures, relying on the factor of religious affiliation. He thinks that the driving force of development is the challenges that are met by culture and civilization either through perishing or bloom. That is, external challenges lead to certain changes, but these changes do not always take the form of an adaptive response. The philosopher also differentiates between the conceptions of "technical progress" and "development" of civilizations. In his view, civilization exists through the constant efforts of a man, who is the "agent" of change [6].

The linear approach used in our study was developed by the German philosopher Carl Jaspers in philosophy, who emphasized the commonality of

history activated by the introduction of "dormant" societies to the "axial age", which sheds light on the entire history of mankind, and thus in a way that something emerges similar to the structure of world history. At the same time, "axial time indicates disappearance of the great cultures of antiquity that existed for millennium. He dissolves them, absorbs them, regardless of whether the bearer of something new is people of ancient culture or other peoples. K. Jaspers admits that for many people who are at the level of "natural" existence, collision with the axial time meant extinction. The source of movement is the activity of the minority, who entrain the rest of the people. Thus, according to K. Jaspers, history is "a constant and persistent advance individual people". Under the age of perturbations and contradictions a person is born, and continuous communication of people contributes to spiritual advancement. This advancement is the basis of those changes that embraced the life of the peoples who perceived the ideas of the "axial time". At the same time, the human mass impedes development ("paralyzes all the initiatives"), and this can explain the ambiguous and uncertain history of events [7].

With the development of civilization, formal mechanisms of ensuring orderly, cultural-legal behavior started developing, but not based on the mercy of a certain person, idea or good will. Such behavior reflected social, civic thinking that blocked the energy of evil in relations and led to civilized social relations [8]. Further development of society led to the expansion of knowledge about the laws that affect people and their behavior. This was facilitated by the emergence and development of writing, although the most ancient written monuments do not contain integral philosophical systems, they do not reflect ontological and epistemological problems.

The development of philosophical ideas about human behavior would not be complete and understandable without studying the heritage of the ancient civilizations of the Ancient World, which had an exceptional role in the history of mankind, that is defined as the axial time or the axis of history. "Axial time" is a philosophical and historical category introduced by K. Jaspers as a means of comprehension of the unity of history, which is one of the most important in modern historical thought. Jaspers' reflections on history are organically intertwined with the general context of his existential philosophy and are intended to help deepen awareness of the present.

Man is viewed from such an angle as a historical being, and history itself involves a sense that permeates time, provides consciousness of human behavior. Although modernity raises the question of having a higher meaning in history, given that the former shrines had a local significance and were not able to secure the spiritual unity of all mankind, which is necessary in the conditions of the globalization of public life. The question of the semantic unity of all history, without which it crumbs on an incoherent set of events, is posed by Jaspers in the first place as a question of the possibility of meaningful human behavior in the modern world. However, the origins and purpose of history, which unite humanity into a single whole, are not truly known, and

its unity is the subject of "philosophical faith", different from its religious confessional neutrality and the existence of rational justification. As the empirical embodiment of the ideal axis around which the history of all mankind unfolds, Jaspers points out the axial time – the period from about 800 to 200 BC, when different regions simultaneously had powerful spiritual movements connected with China, first of all, with the activity of Confucius and Laozi, in India – thinkers of the Upanishads and Buddha, in Greece – philosophers and tragedians. Despite the local peculiarity of these processes, it was essentially the only spiritual movement that mattered for all mankind and formed the type of a person that exists to this day [9, p. 32].

The most important characteristic of the axial time, Jaspers considered the breakthrough of mythological worldview, when the primary principles of life began to fluctuate, a person realizes the fragility of his being; salvation religions arose associated with the idea of a transcendental sole God. The struggle against the myth is also carried out from the part of rationally explained experience: unconsciously adopted beliefs become the subject of critical attention, a spiritual struggle begins, during which every one tries to convince the other, substantiating his ideas. The axial time is the end of the direct relation of a man to the world and to himself, it is no longer closed in itself and therefore open to new boundless possibilities. K. Jaspers poses the question of mortality, the tragic guilt that grows in one common question – the meaning of human existence, which ceases to be self-evident data. Generally all these changes in human existence the philosopher calls spirituality, from which begins the general history of mankind. Initially, axial time is limited geographically, but gradually becomes comprehensive. By the achievements of the axial time, according to Jaspers, humanity lives today, as each of its new rise is accompanied by an actualization of the experience of the axial era [10].

At the same time Jaspers observes that nobody gives a convincing explanation of the fact of the axial time, and the philosopher himself does not see the ways of such an explanation. "The actual circumstances of the threefold appearance of the axial time are close to the miracle; indeed, an adequate explanation, as we have seen, is beyond our capabilities. The hidden meaning of these facts cannot be detected empirically, as someone else has established the meaning. The statement of this question only shows what we do with these facts, what they mean for us. And if, in our conclusions, the shifts steal in that allow us to suppose that we mean the existence of some plan of providence, then in fact, these are only symbols" [9, p. 48].

Thus, the first rational attempts to explain human behavior as a way of liberation from karma appear in the philosophy of Ancient India, in particular in orthodox and unorthodox schools and systems of Indian philosophy. In the philosophy of Ancient China, much attention was paid to the clarification of such principles of human behavior as humanity, obedience, observance of the ritual, as evidenced by the works of Chinese philosophers: Guangjun, Confucius, Laozi, Mengzi, Mozi, Xun Kuang, Han Fei, Zhuang Zhou, Shen Buhai and others.

Chinese philosophy has created an original conception of a man and the world, which is associated with the deification of heaven, earth and all nature as a medium of human existence. Chinese mythology reaches the second millennium BC. The principle that ruled the world was distinguished from the myth and was transmitted by the word "sky" (tian), while all nature was recognized as animate, and every object, place and phenomenon had their own devils [11, p. 112]. Spirits could open the future of a man, influenced the activities and behavior of people. Along with this, peace, calm and justice were considered derivatives of the idea of "golden mean" – the highest principle of human behavior. From this principle the requirements of avoiding extremes, as well as the principle of "zhen" derived – human kindness and love between people, fulfillment of duty and ritual.

The development of understanding of human behavior as a combination of freedom and responsibility is reflected in the philosophy of Antiquity, in particular in the writings of Aristotle, Heraclitus, Homer, Democritus, Epicurus, Pythagoras, Plato, Socrates, Cicero and others.

The culture of ancient Greece demonstrated the adversity and subordination of human behavior to the rules of customary law. The phenomenon of the competition assumed that its participants – subjects of equal rights, one social status, belonging to a single social community – the world of the Hellenes. In the conditions of the implementation of the principle of formal equality, it was possible to influence decision-making on the issue under discussion only in one way – the logic and argumentation of evidence. Legal equality blocked the economic inequality of citizens, provided an optimal measure of the ordering of social relations. The rule of law was guaranteed by the goddess of justice – Dike, who forbade behavior that contradicted the principle of equality of rights and responsibilities.

A crime against a citizen was equal to a crime against the state, therefore the state acted as the subject of retaliation. A man was perceived as a contradictory being, there are two beginnings in the basis of behavior: apollonymic – creative (on behalf of the god Apollo – the organizer of civilized life), and the dionysic – destructive (on behalf of the god Dionysus – the patron of winemaking and orgy). The order and harmony, morality and law, lawful behavior were understood according to the mythology of the Apollo principle; chaos, destruction, deviant behavior, crimes were relevant to the mythology of Dionysian. Since the confrontation of order and chaos is universal, they were accepted as the ontological basis of being, in which the unity and struggle of opposites declare themselves as a source of development [12, p. 106].

Human behavior at the period of the Middle Ages was studied through the combination of faith and reason in the writings of Augustine Aurelius, Bernard of Clairvaux, John Chrysostom Duns Scotus, John Scotus Eriugena, Peter Damian, Pseudo-Athanasius of Alexandria, Tertullian, and Thomas Aquinas.

Christianity has made significant changes in public morality and practice, since it offered the God who sacrificed himself for their sake instead of sacrificing oneself for the sake of the gods.

Christianity created institutions that were voluntarily founded outside the political power, and which balanced a variety of social interests. Creating a single church organization of people and religious communities spiritually united Europe, so during the Middle Ages people began to relate to themselves not by geographic affiliation, but saw themselves as part of the Christian community. Although the church used unwarranted cruelty, religious wars and the Inquisition, one should agree that there is "no sufficient reason to believe that people of the Middle Ages outside the Christian revelation would be more humble and more merciful. Cases are made not only by saints, but mostly of real, terrestrial people according to their perception and understanding. Christian world perception directed a man to the value of voluntary and independent behavior that needed a new religious community and monastic self-government. That was first of all a man with an effective spiritual self-discipline" [13, p. 39].

Humanist conceptions of human behavior in the philosophy of the Renaissance are found in the works of Dante Alighieri, Janozzo Manetti, Leonardo Bruni, Lorenzo Valla, Nicolas Cusa, Marcilio Ficino, Pico de Mirandola, Pietro Pomponazzi, Nicollo Machiavelli, Erasmus of Rotterdam, Vernardino Telezio, Hugo Grotius, Michelle Montaigne and others. Anthropocentrism as the main feature in the understanding of human behavior in the Ukrainian philosophy of the Renaissance is found in the writings of such philosophers as: Ivan Vyshenskyi, Vitalii from Dubna, Yevchy Knyagynytskyi, Zhelyus, Yurii Rogatynets, Kyrylo Tranquillion-Stavrovetskyi, Kasiyan Sakovych, Stefan and Lawrence Zizania, Gerasym Smotrytskyi, Petro Mohyla, and others.

Humanism as a system of views on a man as the highest value approaching the level of the God became the driving force in the development of law of the Renaissance (XII–XVI centuries). Philosophy of humanism opposed the scholastic outlook of the Middle Ages, the cult of freedom of reason. Thinkers of the Renaissance argued that the God gave a man a free will, a person is the creator of himself and his destiny, and therefore he guides his behavior and is responsible for it. Ontological problems for humanists fall into the background, but the main thing is the doctrine of a man, the question of ethics, morality, the doctrine of true nobility and human dignity [14].

Two approaches were developed to determine the place of the Renaissance in history and philosophy: the Burghard concept (its author is Jakob Burghardt, who analyzed this era as special, closed). The scientist has determined that this era is characterized by such features as individualism, secularization of thinking and spiritual emancipation of an individual, the cult of arts, the idea of moral and political cynicism, rehabilitation of the physical nature of a man, revival of the ancient heritage, etc., Representatives of the other approach are K. Burdach, J. Geysing, F. Maze and others. According to F. Maze, the era of Renaissance and Middle Ages should not be divided into two different historical periods. Renaissance with its great restoration of Antiquity was considered as the final stage of the Middle Ages [15, p. 80].

The Byzantine-Slavic Christian philosophy, which defined the content of the spiritual life of the previous period, gradually exhausted itself. The Ukrainian lands under the protectorate of Poland were involved in interethnic dialogue, the new culture was organically assimilated and transformed on the basis of domestic culture. Until the middle of the XV century there were no higher education institutions in Ukraine, so many Ukrainian boys continued their education at Western European universities after graduating from local schools. Abroad, they not only received education, but also were concerned with new humanistic ideas. Among the main features of the pre-Renaissance thought in Ukraine are a critical attitude to the orthodox doctrines of Christianity, the conversion to the real life of a man, proclamation of the power of reason, the ability to know the forces and laws of nature, and put them at the service of a man.

In the development of the Renaissance ideas in Ukraine there are three stages: by the middle of the XVI century – typologically coincides with the early Italian (socio-political issues, questions of ethics and aesthetics); from the second half of the XVI century – to the beginning of the XVII century – early humanistic ideas in connection with the reformist, as well as the ideas of the Byzantine Revival; second third of the XVII century – the beginning of the XVIII century – a complex of humanistic ideas in much less interweaving with the reformist (officially the latter were rejected) [15, p. 80].

It must be agreed that the most important contribution of Ukrainian humanists is their achievements in the history of philosophy, socio-political sciences and ethics. History is regarded by them not as a realization of a predetermined Divine ordinance, but as a human action. Humanists extolled a man, interpreted him as the creator of history, proclaimed equal to God. In the Middle Ages, fatalism has been discarded and it was given way to historically predetermined actions of a man that become active subjects of an action. In the writings of Ukrainian thinkers, the idea of human activity is based on the principles of wisdom, reason, knowledge and education. Like the representatives of Western European humanism, Ukrainian humanists turned to the consciousness of the people for the cultivation of patriotic feelings, love for the Motherland.

Patriotism of Ukrainian thinkers proved to be sympathetic to the Motherland of Ukraine-Rus, while the divine origin of power and state was denied. The state appeared as that which was not given by God, but arose as a result of an agreement between people who obeyed the chosen ruler voluntarily. The Ukrainian humanists had a close principle of the common good of the people, according to which patriotism, service to the state, social activity were based on subordination of private interests to the common good [16]. Domestic humanists of that time were among the first in Europe proclaiming that the good of the people was the highest law and the purpose of state power, and also developed the idea of natural law, substantiated by higher than human laws, which can be changed if necessary.

In the philosophy of the Reformation era, faith was defined as a way of saving the soul and its manifestation in

the concept of human virtuous behavior, which was reflected in the writings of Martin Luther, Ulrich Zwingli, Thomas Munster, Philip Melanchthon and Jean Calvin.

The Reformation was an important step in the transition from the theological and corporate orientation of law to its doctrinal-theoretical understanding, formation of the legal world outlook and the first massive breakthrough in legal consciousness. Freedom of faith, proclaimed by reformers, led to the emergence of new principles of intellectual and moral freedom of a man on new moral and social benchmarks. The reformers proclaimed new theological postulates, including the personal attitude of each man to the God, the possibility of individual searches of faith, the priesthood of all believers, the absurdity of the separation of the clergy from the laity. [17] It was proclaimed the inalienability of human rights and freedoms, which were perceived not through the prism of the antique Roman legal tradition, but through the anti-authoritarian religious movement that embraced Europe at the beginning of the seventeenth century.

The split in the Catholic Church has given this public movement solely a religious form, but this form has changed the whole integrity of the social system. Protestant spirit was the era of gradual entry into the era of total capitalization (socialization) of consciousness and the whole system of social relations. One more distinctive feature of the Reformation was that it, with its religious movement in the basis, was conditioned by the Renaissance with its dialectic of secular and Christian humanism, and its historical result – the epoch of Enlightenment, a true spiritual revolution in secular culture, rising to an unprecedented height thanks to the rapid development of philosophy, science, art and secular morality. Thus, the opposite and even the antagonistic spheres of spiritual culture entered into interaction and changed the direction of development not only of human behavior, but of the whole of European civilization. When the discourse of the Renaissance generated various forms of religious skepticism, the cult of reason, and the spiritual liberation of a man from the chains of dogmatic thinking in the environment of the intellectuals, the reformation imperative, denying the refinement of the humanistic approach, was characterized by a desire for total ideological domination and subordination to all aspects of secular life by rigid revolutionary-religious norms of Protestant morality [18, p. 9]. The creation of new models of behavior is associated with the Reformation, they provoked the development of bourgeois and socialist relations, the formation of the principles of liberal and social democracy.

The ideas of Christian humanism and individualism, which formed the basis for the Reformation, became the foundation of the Protestant doctrine and caused mass social movement as an opposition to feudalism and the Catholic Church. It was the first public manifestation of new social tendencies aimed at the political and cultural liberation of a man. Protestantism was the result of a radical change in the established system of ideas due to the progress of the previous religious-philosophical, ethical and legal thought. This is largely explained by the fact that the Catholic Church has undergone significant

changes in the XV–XVII centuries, due to which it collided with the early Christianity.

Catholicism has created an extensive structure, the central idea of which was the doctrine of the impossibility of a man's salvation without the help of the church. A man appeared as not capable of salvation by his own efforts, good deeds or perfect behavior. Consequently, contrary to Catholicism, the principle of sola fide – of one faith becomes the central one in Protestantism; the church's claims to a leading role in the spiritual life of a person were also questioned. The Protestants believed that salvation was achieved only by faith, and faith itself is obtained only in direct contact with the God. Thus, the church was superfluous in the cause of salvation, the need for mediation between a man and the God disappeared. In Protestantism, good deeds were recognized as never substituting faith, because "faith itself is so powerful that no good deeds can equal it" [19].

Conclusions. Human behavior in society is a complex anthropocultural phenomenon, which is determined by a number of internal and external factors. The most important means of social regulation of human behavior are social norms, through which society sets the requirements for a man that must be followed in his behavior; they direct, regulate, control and evaluate human behavior. Normal social existence of a man is possible when he, having chosen a form of behavior, sticks to these generally accepted rules, which are based on social values, ideals of society.

Human behavior is seen as an externally objectified manifestation of personal values of a man based on social values dominant in society and internized by a person in the process of socialization. A generic phenomenon in relation to it is legal behavior of a man – an externally objectified manifestation of personal values of a man based on the legal values and norms dominant in society and provided by state coercion.

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INNOVATIVE LEGAL VIEWS REGARDING STAGES DEVELOPMENT E-GOVERNMENT

Abstract. *Based on the research and generalization of the array of data from leading foreign and domestic scientists, the article considers the stages of the development of electronic governance in Ukraine and in the world, carries out their general theoretical analysis, and proposes an author's innovative legal views about this issue. It has been established that electronic management (like other complex social systems) is characterized by a complex process of creation, implementation and development that presupposes a certain sequence of stages. Each of these stages is characterized by: a specific goal, a set of criteria for achieving it, tasks, time frames and resources that have been involved; all these factors are united by the final goal of the system and the condition of maintaining its integrity. It is concluded that even a brief overview of the stages of the development of e-governance indicates the close attention given to this issue, both in Ukraine and in other countries, and therefore, first of all, it is necessary to understand that it is a question of informatization of state authorities, all its levels and all administrative processes.*

Key words: *electronic control, stages, information, state, information and communication technologies, Internet.*

INTRODUCTION

Electronic governance (as well as other complex social systems) is characterized by a complex and continuous process of creation, implementation and development, which involves the presence of a certain sequence of stages. In the process of realization of all the stages, it is possible to highlight a number of typical features such as a specific aim, a set of criteria for its achievement, tasks, timeframes and resources that were involved. For all these factors, the final aim of the system and the integrity of its integrity are common. Realizing the importance and necessity of introducing the latest information and communication technologies into state processes, it is necessary to pay more attention to the stages of this process: their improvement and optimization. Therefore, one can suppose that those or other achievements in the field of e-governance should be determined by the innovational legal views on the stages of its development. As for domestic science, the stages of e-governance development can not be considered suffi-

ciently studied as well as a lot of researchers have not reached a common view on the core issues of such topic.

1. REVIEW OF LITERATURE

Insufficient scientific research of the stages of the development of e-governance is due to the complexity of conducting their general theoretical analysis, dealing with both domestic and international practice. Some aspects of that issue were studied by researchers such as M. Castells, S. Madnick, V. Maugis, M. Siegel, E. W. Welch, Z. A. Ataev, V. M. Babayev, O. A. Baranov, A. V. Baranovsky, O. M. Beketova, N. Wiener, S. L. Gnatyuk, A. Golobutsky, V. P. Gorbulin, N. V. Hryciak, M. S. Demkova, S. V. Dzyuba, D. V. Dubov, A. V. Yefanov, I. B. Zhilyaev, O. V. Karpenko, E. L. Klepets, O. Yu. Kudryavtsev, V. V. Marchenko, R. S. Melnik, A. M. Mytko, Y. Misnikov, O. A. Ozhevan, S. K. Polumienko, T. V. Popova, G. G. Pocheptsov, E. A. Rogovsky, I. A. Ruban, A. I. Semenchenko, L. V. Smorgunov, E. M. Styrin, S. A. Chukut and others.

The aim of the article is general theoretical analysis of the stages of e-government development in Ukraine and the world, based on research and generalization of data by leading foreign and domestic scientists, as well as the proposal of the author's innovative legal approach to the development of the issue.

2. MATERIALS AND METHODS

The research uses both general scientific and special legal methods and ways of scientific cognition, in accordance with the formulated aims and tasks. This allowed us to analyze carefully all issues related to the stages of e-government development in Ukraine and in the world.

Thus, the dialectical method has allowed to characterize various forms of modern e-governance concepts, as well as how it is linked and interacts with other legal phenomena. The comparative legal method was used to study and to compare foreign experience and an amount of data from leading foreign and domestic scientists. The method of analysis and synthesis has helped to establish that e-government (like other complex social systems) is characterized by a complex process of creation, implementation and development, which involves the presence of a certain sequence of stages. Each of these stages is characterized by: a specific goal, a set of criteria for its achievement, tasks, timeframes and resources that were involved. All these factors are combined by the final aim of the system and the condition of preserving its integrity. Using the method of interpretation it became possible to bring the author's innovative legal views on the stages of development of e-governance. Using the systemic method, it was established that all essential elements of e-governance are reflected in the stages of its development, which increases the interest in its theoretical understanding and research. The method of generalization has been proved the fact that even a superficial review of the stages of the development of e-government shows the special attention given to this issue – both in Ukraine and in other countries – and therefore, first of all, it is necessary to realize that it is a question of informatization of state bodies power: all its levels and all governing processes.

3. RESULTS AND DISCUSSION

E-government (as well as other complex social systems) is characterized by a complex process of creation, implementation and development, which involves a certain sequence of stages. Therefore, achievements in this area should be determined in terms of their stages and their periodization.

Studying international experience, the study of the stages of e-governance development will depend on time periods, among which are the following:

– The first period – technical, 50th years of the twentieth century. The first electronic computers, technical and network tools, etc.

– The second period – the software one, 1950–1970. Appearance and development of software systems, operating systems, programming languages.

– The third period – informational, post-industrial, period of knowledge economy, 1970–1990. Work with structures and databases, construction of automated information processing systems.

– The fourth period – intensive informatization, 1990–2000. Gains momentum of development of information processes, information systems improve and enlarging the circle of its users.

– The fifth period – progressive informatization, 2000's and up to today. The phased spreading of information technology in all spheres of public life, the implementation and legislative reglamentation of innovations, governments and other public authorities in their activities are increasingly using information and communication technologies and transition to e-governance [1, p. 37].

According to the leading researchers of that problem (M. S. Demkova, M. V. Figel), the implementation of e-governance takes place in four separate stages, or stages of development, as they are called by the authors. At the first stage, the use of the network is carried out by state authorities. Basically, they post information about themselves in order to increase the convenience for citizens and business partners. Such sites provide one-way communication, these days thousands of them have already been created and work successfully. At the second stage, they turn into tools for two-way communication, and citizens are given the opportunity to set new information about themselves. The third stage is characterized by the fact that all sites make it possible for the official and valuable exchange of information that is quantified. To extend license validity, to pay a fine or to register for training courses – a list of similar services is quite diverse. The last, fourth stage includess the availability of a portal for integrating the whole amount of government services and ensuring free access to them – not based on the actual structure of departments and agencies, but taking into account real needs and functional aspects [2, p. 95–96].

A well-researched study of the stages of e-government development is also done by the Ukrainian scientist and scientist O. Yu. Kudryavtsev. He emphasizes on the data by the Department of State Economics and Administration of the United Nations and the American Foundation for Public Administration, according to which the first stage is considered by which state authorities and institutions implement elements of

their presence on the World Wide Web – the beginning of the state's web presence. It is characterized by the fact that various agencies at different levels of government create official sites and information pages to inform citizens about the structure and principles of their activities.

The second stage is a deep web presence. Users are provided access to a much larger amount of data which is regularly updated and supplemented. The prospect of obtaining all the necessary information regarding with the activities of many state bodies is now no longer glamorous, but quite realistic. During that period, it is important to control the quality of the information which is provided for the public access.

The third stage is an interactive presence. The interaction of citizens with state institutions is deepened and intensified. The key changing is the attitude of a citizen to the state.

The fourth stage is active interaction. Its beginning is marked by a change in roles and opportunities: from that stage citizens can not only passively receive and evaluate information provided by the state, but also virtually act as a subject of economic, social and other relations. Receiving various blanks, forms and other documents online, carrying out economic activity – the list of advantages, as we can see, is greatly supplemented.

The fifth stage is a fully integrated web presence. A single portal greatly enlarges the capabilities of all parties: government agencies implement all services and connections through a single resource, and citizens get extremely important data and act as subjects in the public administration system.

According to O. Yu. Kudryavtsev, the fifth stage completes the formation of the system of e-governance. In the opinion of the researcher, future practice will bring a new understanding of the mechanisms and principles of virtual government activity and will lead to further development of information and communication technologies [3, p. 21–25].

Also, based on the study and synthesis of a large amount of scientific research and literature on this issue, the following thought has arisen about the generally accepted stages of e-governance development, namely:

1. Cybernetic office. Changes are at an initial stage, e-governance is mainly used for providing e-services. The lowest level of development, typical orientation to internal activity.

2. Bureaucratic structure. There is an integration of different ministries, the issue of privacy and security is raised. The competence of the government is to provide services. A somewhat higher level of development, but still remains an orientation towards internal activity.

3. Service agency. The model is complicated by new benefits and opportunities that citizens receive. The questions are how to distinguish these opportunities and ensure the best quality of services provision. Although the orientation moves towards external action, this is still a relatively low level of e-government development.

4. Completely e-government [4, p. 465–466].

Regarding the stages of e-governance development in Ukraine, they also have certain features. Implementation of e-governance in Ukraine is char-

acterized by a complex and continuous process, which involves the presence of a certain sequence of stages. Each of these stages is characterized by a specific goal, a set of criteria for its achievement, tasks, timeframes and resources that were involved.

The Resolution of the Cabinet of Ministers of Ukraine dated February 24, 2003 №208 provides:

– creation and integration of electronic information systems and resources into the Single Web portal of executive bodies and provision of information and other services through the electronic information system "Electronic Government";

– creation of electronic information system "Electronic Government";

– ensuring compliance with the requirements for the protection of information available through the Single Web portal of executive bodies and integrated web sites, electronic information systems and resources of executive bodies;

– development and improvement of the list and the procedure of providing information and other services using the electronic information system "Electronic Government", etc. [5].

Implementation of this act actually meant the implementation of the first one of four stages of implementation of e-governance technology in Ukraine. The content of the totality of measures of the first stage consists of the following documents: the Resolution of the Cabinet of Ministers of Ukraine of July 17, 2009, №737 "On Measures to Structure the State, including Administrative Services" [6], which approved the Temporary procedure for the provision of state, including administrative services; Resolution of the Cabinet of Ministers of Ukraine dated May 20, 2009 №486 [7] which established the Commission on the improvement of the procedure for the provision of state and administrative services; Resolution of the Cabinet of Ministers of Ukraine dated June 17, 2009 № 682-r [8] approving the Concept of the Draft Law of Ukraine "On Administrative Services"; Decree of the President of Ukraine dated 03.07.2009 № 508 "On measures of ensuring the observance of the rights of individuals and entities for obtaining administrative (public) services" [9].

The second stage (development of e-governance services) is aimed at the development of various services in all spheres of public life, the organization and functioning of state institutions, as well as for the complete reorganization of all administrative processes [10].

The third stage of communicating of the state with citizens shifts towards two-sided cooperation. It is envisaged that public authorities in their activities will implement and reproduce typical departmental technological solutions, create commmon portals for ministries, various departments and services. All types of transactions no longer require direct contact with a particular institution, their implementation is through the mentioned portals.

The fourth stage is the transformation of state bodies and the construction of an information society. It provides the creation of a portal that integrates the whole range of public services and provides access to them. A typical feature – changes are made taking into account real needs and functional aspects, and not because of the actual structure of government institutions [11, p. 36–39].

The Resolution of Cabinet of Ministers of Ukraine of December 13, 2010 "On Approval of the Concept of e-Government Development in Ukraine" provides three stages of its development: I – 2011–2012, II – 2013–2014 pp., III – 2014–2015. The first stage includes:

– development of the necessary legal regulatory and technical regulatory framework, in particular regarding the provision of administrative services in electronic form, as well as common standards, protocols and regulations on the interaction of e-governance subjects, their harmonization with international standards;

– ensuring the functioning of the websites of executive bodies of all levels on the basis of common standards;

– creation of a single national system of circulation of electronic documents;

– creation of the National Register of Electronic Information Resources and Web sites of public authorities and local authorities at all levels;

– ensuring the provision of services by public authorities and local governments in electronic form to citizens and business entities using the Internet, in particular, registration of business entities, submission of reports;

– creation of a unified informational system containing a register of administrative services provided by executive authorities and local self-government bodies and information on the conditions for their receipt;

– Creation of a Single Web Portal for Administrative Services;

– creation of special centers (points) of providing services, centers of service for the citizens (call centers);

– creation of conditions for participation of citizens, their associations and business entities in the process of preparation of state decisions;

– Creation of a special web-portal in order to ensure the transparency of the use of public finances;

– ensuring the development of the National Confidential Communication System.

At the second stage it is planned:

– organization of the provision of services in electronic form in all spheres of public life;

– full-scale reengineering of administrative processes in state authorities and local self-government bodies;

– creation of favorable conditions for the involvement of public organizations in the management of public affairs;

– development of technologies of interactive interaction between public authorities and local self-government bodies with citizens and business entities;

– implementing of typical organizational and technological decisions in the field of e-governance in the activities of state authorities and local self-government bodies;

– ensuring the transfer of electronic documents to state archives, museums, libraries, their long-term storage, maintenance in the actual condition and providing access to them.

At the third stage it is supposed to create:

– integrated web portals of executive bodies designed to carry out relevant transactions;

– single informational and telecommunicational infrastructure of state authorities and local self-government bodies;

– a single web-portal for e-governance as the only access point for all types of electronic services for citizens and businesses, taking into account the needs of citizens and functional aspects;

– national depository of electronic information resources [12].

The Resolution of the Cabinet of Ministers of Ukraine № 649-r of September 20, 2017 "On Approval of the Concept of E-Governance Development in Ukraine" does not at all establish any stage of the development of e-governance. It only mentions general provisions, for example, that the implementation of the Concept is for the period up to 2020 and is intended to support the coordination and cooperation between state authorities and local authorities in order to achieve the necessary level of efficiency and performance of e-governance development, advancement of the idea of reforming public administration and decentralization on the basis of the widespread use of modern information and communication technologies throughout the country, and promote the implementation of urgent priorities which were defined by the Strategy of sustainable development "Ukraine-2020" [13].

Therefore, although the options of defining the stages of e-governance development in Ukraine and in the world are undoubtedly quite correct, it is still considered expedient to put them in somewhat modified form.

The prime position of the first stage of e-governance development is the study of foreign experience of those countries that are pioneers in its implementation, namely the analysis of all the actions and processes which they have used. As an example, we can recall the United States, which is the undisputable leader in the procedural approach to fixing changes in society (therefore, it is not surprising that that country was one of the first in developing e-governance systems) [14].

Among the European countries, it is worth mentioning Great Britain, which since 2000 has been implementing the program named "E-Citizen, e-business, e-government". This is one of the components of the project "Strategic structure for the servicing of society in the information age", which aims to develop and use all types of electronic public services provided via the Internet, mobile communication, digital television, call centers. The program provides citizens with a very wide range of services online: getting certificates and documents, filing in complaints and applications, filling in tax declarations, answering various requests [15, p. 267–269].

The second stage is to sum up the real opportunities for developing e-governance and determine its necessity in each country. For an adequate assessment it requires to take into account individual aspects, namely, those problematic issues that form the basis for the successful development of e-governance. It may seem that the need for e-governance is undoubtable in its top priority, but one should not forget that today there are still a number of countries that have not passed the initial stages of their development. In such cases, it would be advisable to postpone this issue to less difficult times.

And only in the third stage, it's worth doing directly creating web resources for government agencies with information about their goals and objectives. It is a period of intense forma-

tion, development and implementation of key components of e-governance.

The fourth step is to create conditions where all the benefits of e-Government are possible at any time and anywhere, and free, unrestricted and secure access to them. It includes:

– development of a national concept of e-governance;

– budget planning, which includes all the necessary costs for the successful implementation of e-governance;

– creation of scientific schools, powerful enterprises in the field of information and communication technologies and an extensive information and technological infrastructure;

– spreading of information and communication technologies in all spheres of social and economic life and state bodies;

– the formation of a system of public services for citizens, businesses and civil servants;

– creation of universal classifiers, directories and data schemes;

– identification of priorities for transforming public services into digital form;

– creation of an infrastructure which will provide various bodies of state power with interaction with each other, as well as with organizations and citizens in the issues of providing public services;

– establishing a procedure for collecting and processing necessary information for the definition and control of target indicators of the performance of public authorities: creation of a universal system of planning and monitoring of the effectiveness of the implementation of state programs and projects, as well as access to this information by citizens and the formation of a single regulatory and normative-technical base, including universal standards, protocols and regulations of interaction of subjects of e-governance, legal definition of electronic state services and others.

Thus, on the example of Ukraine, the legal regulatory basis should be grounded on such normative legal sources as: the Constitution of Ukraine; Strategy of information society development; Medium-term program of information society development; Short-term program of information society development; State budget of Ukraine; The basic principles (concept) of information society development; National Strategy for Sustainable Development of Ukraine; The Law "On personal data", the Law "On e-commerce", the Law "On administrative services" and others.

The aim of the fifth stage is to ensure digital and information literacy of citizens, first of all through the creation of information-oriented system of education. Formation of a fully developed personality is one of the most urgent tasks of the present, the achievement of which greatly contributes to the use of education in the latest communication technologies. The essence of such education is to create free databases of structured professional knowledge in certain subject areas. The active introduction of the latest information technologies in all spheres of public life is hampered by the very low level of computer literacy among the population, while the increase of its level of access to computer equipment and to the Internet, the sufficient competence in the field of information and communication

technologies and awareness of electronic services will increase demand for the use of electronic services.

The sixth stage is about creation of the first elements of interactivity – organizing such a system in which the goal is achieved due to the exchange of information by elements of that system. It means that institutions provide information about their activities, and web pages of government agencies become tools for two-sided communication. This allows citizens to report relevant information (for example, address change) without direct applying, phone call, or messages to fixed structures.

The seventh stage is the introduction of full interactivity i.e the ability to perform operations (services) online. It means not just the information, but the maintenance and support for such a service is not only for the central authorities, but also for the city and district centers. As an example we shall point out the Internet portal iGov.org.ua, which was created by a team of Ukrainian IT volunteers jointly with the public organization ICT Competence Center. Due to this resource, Ukrainians will be able to access to government services in electronic form without personal interaction with the relevant services.

The eighth stage involves the creation of united portals of various departments and services that were created at the third stage in the form of web resources.

The ninth stage consists of the creation on the basis of previous, united portals, but not limited by the territorial borders of a certain country, but those operating in the scale of certain unions, associations or even continents.

And, finally, the tenth stage of e-governance development. It consists of the creation of a fully-fledged electronic government system based on common standards as a single point of access, where the highest level of development of e-democracy is the introduction of an electronic system of expression of will and the possibility of providing of a variety of services. In this case, all e-governance infrastructure will require special security, which is achieved by the proliferation and continued use of technologies such as electronic signatures and certificates, as well as smart cards.

In general, at the final stage of the development of e-governance is most clearly should be shown its connection with e-democracy, the virtual state, the persistent information society, as seen by Spanish sociologist M. Castells [16, p. 193–197].

Implementing and adhering of the stages of e-governance development will cause the radically rethinking of the role and structure of government agencies. Citizens will manage and services and information will be provided to the public according to their needs and requirements. People will be able to personalize access to the portals of public services, as well as to use not only state services, but also commercial websites and public portals. It will contribute to the formation of the information society and such models of governance, where citizens will be more involved in the decision-making process [1, p. 97–99].

CONCLUSIONS

Summarizing all of the above and based on our own vision of the stages of e-governance development, the follow-

ing conclusions should be drawn. Thus, worldwide the study of the stages of the development of e-governance, was started back in the 1950s of the twentieth century, and continues to that day. In Ukraine, implementation of the Resolution of the Cabinet of Ministers of Ukraine "On Measures of Creating an Electronic Information System "Electronic Government" dated February 24, 2003 No. 208 actually meant the implementation of the first of four stages of e-governance technology. But despite the undoubtedly correct direction in determining the stages of the development of e-governance, it is nevertheless considered expedient to put them in somewhat modified form and to develop a newly-legal views on them, which will allow us to rethink the roles and structure of e-governance. Because these development stages shows all the fundamental, staged and key elements of e-governance and increase interest to its theoretical comprehension and research.

So, we can say that even a superficial view on the stages of e-governance development shows the special attention given to this problem – both in Ukraine and in other countries. Recently, in Ukraine, the authorities are often discussing the implementation of e-governance, but, unfortunately, most of the time, the creation of such a system stops at the first stage. Therefore, first of all, it should be realized that it is about informatization of public authorities: at all its levels and all the management processes.

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STATE-LEGAL SCIENCES AND INTERNATIONAL LAW

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THE SIGNIFICANCE AND CONSEQUENCES OF THE EXISTENCE OF THE PRINCIPLE OF THE INNOCENCE OF THE TAXPAYER IN THE REGIME OF ADMINISTRATIVE AND TAX REGULATION

Legal regulation of tax relations is carried out in the conditions of using the methods which are in public spheres of law. The organization of the behavior of the participants of relations by the provision of authoritative prescriptions includes a certain organization of actions, both of which are authority and of those which are obliged. The use of the imperative method in tax regulation also provides a certain imbalance in the distribution of rights and obligations by subjects representing different parties of tax legal relations. In these conditions, the legal status of the subjects of power is based on the enshrining of mostly rights as compared with duties. At the same time, the legal status of obligated persons is formed mainly due to the obligations. At the same time, such situation does not exclude, but on the contrary, objectively determines the realization by the payer his or her duties under the conditions of the presumption of innocence. Without this, it is objectively impossible to achieve a balance of interests in tax relations. Taxes and fees should be received on the basis of that.

Ensuring the principle of innocence of the taxpayer should be guaranteed, as by a narrow sectoral or institutional legislation (Art. 4 of the Tax Code of Ukraine – the presumption of legitimacy of the taxpayer's decisions), and as at the junction of different spheres of law. It can be most clearly seen while comparing tax and administrative legislation. We can recall a fundamental change in the implementation of such a principle even at the time of the appearance of administrative courts and the replacement of the trial of tax disputes from economic to administrative jurisdiction. Solving of tax disputes in the mode of economic management provided the delegation of the obligation to prove one's own position exclusively to the payer. It means that legislation is based on the presumption of guilt

of the payer. In conditions when during the tax audit primary documents were seized from the taxpayer by the tax authority, it was impossible to prove the objectivity and legitimacy of one's claims. In the regime of administrative jurisdiction, the duty of proving is imposed on the subject of power, which is the supervisory authority, and ensures the implementation of the principle of the innocence of the taxpayer.

These days the problem of ensuring the proper functioning of power institutions is becoming especially urgent. The proclamation by Ukraine of the European vector of development, without concrete steps of ensuring the fight against corruption, it will be an "empty" declaration that will have no basis. At the same time, it should be noted that an important demand in fight against corruption in our state is a public inquiry, the goals and objectives of which are quite understandable – the establishment of social (and in particular public organization) without systemic exercising of corruption. In turn, the fight against corruption includes a whole range of measures that can shown in the entire palette of the variability of their exercising. In that case, we suggest paying attention to specific measures of financial control, which serve as an effective and systemic tool, both for preventing and fighting corruption.

Thus, the legal regulation of activities on the submission and verification of declarations of persons, who are authorized to perform the functions of the state and local government is implemented through such a specialized regulatory act as the Law of Ukraine "On the Prevention of Corruption". Section VII "Financial Control" received its formalization in the framework of the relevant Law of Ukraine.

Determination of the aim and goals of the declaration has as its task to distinguish between declaration, as an institution of tax accounting, and a specific anti-corruption declaration institute, which is implemented in the way established by the Law of Ukraine "On the Prevention of Corruption".

Declaring as a form of financial control is a complex procedural activity. At the same time, despite the pronounced procedural nature of the institution of declaration, it includes both procedural prescriptions and substantive prescriptions. Their ratio can be shown through such general philosophical categories as form and content. If the form determines the algorithm of carrying out the duties and rights which are assigned to the subjects, then the substantive aspect determines the material basis of the legal regulation of the declaration activity. The greatest number of norms of the institute of declaration, as a specific kind of financial control, is a procedural prescription. Procedural provisions form a clear and consistent algorithm of exercising one's own rights (powers) and obligations, both obligated subjects (declarants) and controlling entities (in particular, National Agency on Corruption Prevention – NACP).

According to the Law of Ukraine "On the Prevention of Corruption", control over the declaration of income is entrusted to a specially created body – the National Agency for the Prevention of Corruption. Naturally, any legislative regulation concerns the harmonization of the behavior of persons who are participants in a relations, to the regulation

of which the relevant legislation is aimed. Analyzing this problem, we would like to highlight certain problematic aspects relating to the legal status of representatives of the empowered and obliged party of this legal relations. We believe that it is necessary to proceed from the fact that the state has authorized the main participant who has been empowered and which should exclusively represent it's interests in these relations – the National Agency for the Prevention of Corruption. The rest of the bodies listed by the law as special do not replace the NACP by fulfilling its powers, but contribute to the implementation of the powers of the latter.

Naturally, there is always a place for discretion in legal regulation. But, unfortunately, in some cases they acquire such a subjective value, which emphasizes the absence of any legislative grounds explaining the legitimate activities of empowered subjects, which, at their own discretion, consider it to be possible to exercise the powers assigned exclusively to the NACP. This is especially clearly demonstrated by the Regional Economic Protection Departments of the National Police of Ukraine. The demands of these bodies to exercise powers that do not belong to them have already become an established tradition. It is based on references to numerous norms of the Administrative Code of Ukraine, the Law of Ukraine "On the National Police", the Provision "On the National Police of Ukraine", decisions of the Constitutional Court of Ukraine and a number of by-laws acts which contain norms of a general nature and certain slogans (the National Police, its' officials have the right to collect evidence, take steps to identify criminal and administrative offenses, draw up protocols on the commission of offenses, etc.), on the basis of which to demand relevant documents regarding to a subject of the declaration. References to the provisions of the Law of Ukraine "On the Prevention of Corruption" are also contained. But the latter have no link with the activities of the National Police cause there is the NACP for this.

We would also like your attention to be paid to the absence of a normative regulation of the procedure for conducting checks of such declarations by the national police. In contrast, by the NACP was designed the procedure for monitoring and fully verifying the declaration of a person authorized to perform the functions of the state or local self-government (approved by the Decision of the National Agency for the Prevention of Corruption No. 56 dated 10.02.2017). According to clause 4 of section 2 of this procedure, officials of the Department of Economic Protection of the National Police of Ukraine, in the event of non-provision of a declaration or non-reporting about the material changes in the property status, can draw up an administrative offense report only after receiving a written notification from NACP as a specially authorized subject in the field of anti-corruption. All mandatory actions at conducting such an audit should be carried out exclusively by NACP officials. The decision of prosecuting a person is made on the basis of explanations from the subject of the declaration, which one must provide after receiving the corresponding letter of the NACP.

Such requirements are fully correspond to the provisions of the norma-

tive acts which regulate the powers of the national police. Thus, in accordance with clause 1 and clause 4 of the General Provisions "On the Department of Economic Protection of the National Police of Ukraine", assigning to this body duties that do not belong to it, or go beyond its competence, is not allowed. Moreover, references by officials to the legislation regulating the powers of both the national police as a whole and the Department of Economic Protection of the National Police of Ukraine in the context of the authority of these bodies to inspect electronic declarations looks artificial, because in each case these are references to the possibility of such inspections only in cases of delegation provided for by the law. But the current legislation of Ukraine does not include such a delegation.

In accordance with the powers given to it, this body ensures the functioning of the Unified register of declarations of persons empowered to perform the functions of the state or local self-government. This register contains the Form of notification of significant changes in the property status of the subject of the declaration. According to Clause 1 of this form, the subject of the declaration has a duty to declare in the event of a significant change in the property status. The latter is receiving by the subject of the declaration of a lump-sum income or the purchase of property in an amount exceeding 50 minimum subsistence levels, established for able-bodied persons on January 1 of the year in which notification is given. In the case when the value of the property exceeds this limit and was paid partly, the notification of significant changes in property status is applied after the transfer of ownership of such property. In this situation, we would like to emphasize that the fundamental point in declaring property is the moment of changing the ownership.

There are often cases where the subject of the declaration transfers funds that exceed 50 minimum subsistence levels and constitute the total value of the acquired property. But the ownership of this property arises after a certain period of time, comes after the ownership get a certain legal formalization by displaying in the corresponding property registers. Most frequently it happens with individual objects of building and the controlling authorities link the occurrence of the declaration obligation with the transfer of funds (which in such a case becomes an advance pay character) or the acceptance of the object to exploitation. At the same time, it does not always correspond with the registration of a person’s ownership to such an object. Only the latter can cause the corresponding public debt, the realization of which is the object of control in the mode of preventing corruption.

The declaration of income and control over these bodies NACP today became conflict, contradictory by nature in many cases. Proceeding from Part 2 of Art. 52 of the Law of Ukraine "On the Prevention of Corruption" the obligation of declaring is related to the receipt of a lump-sum income. Very often, income means the salary, which makes it possible to proceed from the content of the rules regulationg the taxation of income and salary in accordance with tax legislation. In some cases, while defining this, they refer to the norms of the Tax Code

of Ukraine, which also enshrines the concept of income. In Part 2 of Art. 52 of the Law the concept of "income" is used. In the Law itself, the content of the concept of "income" for the purposes of Part 2 of Art. 52 of the Act is not directly given. The Constitutional Court of Ukraine in subclause 3.1 of clause 3 of the decision of June 29, 2010 No. 17-rp / 2010 noted that one of the elements of the rule of law is the principle of legal certainty, which provides that limitation of the fundamental rights of a person and citizen are possible in practice only under the condition of predictability of exercising of legal norms established by such limitation. That is, the limitation of any right should be based on criteria which will allow a person to distinguish legitimate behavior from illegal, to predict the legal consequences of one's behavior.

Personal income is a subject of taxation. In Art. 164 of the Tax Code of Ukraine, it is established that the total taxable income is any taxable income accrued (paid, provided) in favor of the taxpayer during the reporting tax period. For recognizing the income of an individual as taxable income, it is necessary that the individual need to be actually the ultimate beneficiary, and not the borrower.

It should be noted that the Tax Code of Ukraine regulates relations arising in the sphere of levying taxes and fees, in particular, defines an exhaustive list of taxes and fees levied in Ukraine, and the procedure for their administration, the list of payers of taxes and fees, their rights and obligations, the competence of regulatory bodies, powers and duties of their officials during the administration of taxes, as well as responsibility for violation of tax laws. Thus, without a corresponding blanket norm in the Law, exercising of the provisions of the Tax Code of Ukraine to relations which does not represent the subject of its regulation is erroneous.

It causes several problems. Firstly, it is about the uniformity of income once again. Considering salary as income, it should be taken into account that in many cases it should be paid in two parts. In this case, there are two ways. The first is that each of the components of salary (the advance and the main part) exceeds 50 subsistence levels. In that case there is a duty to declare: when a person receives each part or when one receives the salary in general (the amount of the advance and the main part). At first look, the final holistic object, which cause certain legal consequences, arises in the second case. It is still that way the object of taxation is determined by the Tax Code of Ukraine. Receiving an advance does not cause a tax debt. But a direct link of the legislation on the prevention of corruption to such an approach in tax regulation is hardly consistent. To prevent corruption, it is important not to obtain a holistic object in the understanding of the Tax Code, but to receive funds in the amount of (50 subsistence levels), which causes the obligation of being declared. The second is the case if salary is paid in a lump-sum in excess of 50 subsistence levels. At first look it is obvious that this situation objectively causes the obligation of being declared. But not everything is so simple, because one needs to take into account two circumstances: a) receiving income through a tax agent; b) a clear understanding of the "income".

Art. 52 of the Law of Ukraine "On the Prevention of Corruption" connects the obligation of declaring income with the case when the subject of the declaration receives income, that is, this is not about accrued income, but about the income received. In our opinion, this circumstance is based on a very deep theoretical position – the definition of tax. In many tax law textbooks, tax is associated either with a change in the form of ownership or with a change of an owner. In our opinion, this is a superficial approach. In case of understanding the content of the tax through the transformation of property, we should consider the payer as the owner of the funds which one received and from which he paid a part in the form of tax. But it is not so. Ownership includes the possession of the owner of the authorities for owning, using, disposing. Are they inherent to the taxpayer? If, for example, the income tax was paid, the payer would receive the full amount of the accrued income, after which he would remove 18% from it and transfer as the tax debt on this tax – then it would really be possible to relate the nature of the tax to property relations and in such way to explain its content. But the payer receives and can only dispose of "net income", which remained after the tax agent (more often the company's accounting department) had already withdrawn the tax on income, military tax, etc. Based on this, we can form a definite intermediate conclusion – the obligation to declare in accordance with the Law of Ukraine "On the Prevention of Corruption" arises not about accrued income, but about funds which the subject of declaration can dispose of, funds which were received.

And finally, on the declaration of income in the corruption prevention regime and about the place of income received in the form of salary in it. On our opinion, the latter should not be considered as an object of declaration at all. We proceed from the fact that the direction of regulation of the behavior of participants in a relationship by one or another set of legislative norms which are collected in a code, a law, etc. has a goal which must be implemented by all norms of such a law. Proceeding from the preamble of the Law of Ukraine "On the Prevention of Corruption", the subject of regulation of such law is the legal and organizational basis of the functioning of the corruption prevention system in Ukraine, the content and procedure of the use of preventive anti-corruption mechanisms, and the rules of eliminating the consequences of corruption offenses. According to Part 1 of Art. 1 of this law, corruption is defined as using by a person of the official authority or related opportunities granted to one in order to obtain an unlawful benefit or to accept such a benefit or to accept a promise / offer of such benefit for oneself or for other persons or, accordingly, a promise / proposal or provision of unlawful benefit to the person or at one's request to other individuals or legal entities in order to persuade this person to unlawfully use the official authorities empowered to one or related features. With any coloring of the content of salary, its' declaring in no way accords to the purpose of this law, and there can be no basis for extending the declaration of such income as wages to the declaration of income in order to prevent corruption.

Thus, the Law of Ukraine "On the Prevention of Corruption" provides for the legislative establishment of the relevant fuses for obtaining unlawful benefit with the use of official powers and related opportunities. It should be added two clarifications. Firstly, the fact that in the vast majority of cases, the payment of salary is associated with the fulfillment of the tax debt for the transfer of funds from the tax (and the fulfillment of the duty of reporting and the declaration itself) not directly by the payer – by the subject of the declaration, but by the tax agent (in the case of the only source of income – solely by the tax agent). That is, in this case, the payer as a subject of declaration cannot be considered as a subject of an offense at all. Secondly, identifying thus the salary with the income received as a result of corruption offenses, we must come to the conclusion about the place of the state (or rather the territorial community) in complicity in the offense.

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GLOBALIZATION PROCESSES IN UKRAINE: PROBLEMATIC ISSUES

The article analyzes the the world globalization processes, their positive and negative role for Ukraine. The main attention is paid to the analysis of negative processes, their harmful effects on developing countries, including Ukraine. Not having the opportunity to consider in detail all the harmful effects of these processes (due to the limited scope of the article), such phenomenon as precarious is analized.

The article provides a number of specific proposals for the implementation of a number of measures that will help reduce the harmful effects of globalization for Ukraine.

Key words: *globalization, danger, negative, processes, precarious.*

Formulation of the problem. With final choice of Ukraine by the western vector of development the question of the state place in a globalized world is increasingly raise in literature (economics, political science, sociology, law) [1]. This is absolutely correct direction of research, as globalization accelerated in Ukraine and we certainly need to calculate the consequences. Nevertheless analysis of scientific achievements in mentioned problem shows that the vast majority of studies on globalization consider it as indisputable and undeniable benefit for Ukraine. In our opinion such a one-sided view of the problem is false because globalization processes (despite their recognized positive aspect) "hide" a significant number of negative phenomena for our society. Therefore we propose to focus on the reverse side of globalization.

Presentation of the main material. Category globalization (Latin origin *globus* – ball, French origin *global* – universal) has two meanings: 1) covers the globe, worldwide; 2) comprehensive, taken as a whole; general; scale; full; universal [2]. Globalization is understood as a process (or set of processes) which embodies a transformation in the spatial organization of social relations and actions evaluated in terms of their extensiveness, intensity, dynamics and impact and generating transcontinental or interregional flows and networks of activity, interaction and execution of government functions [3, p. 38]. Process of globalization is the transformation of certain phenomena to worldwide, planetary, something that concerns all the earth, globe [4, p. 38].

In political and legal dimension the official interpretation of globalization was given by UN Secretary General Kofi Annan in his report on the 54 session of the General Assembly. He proposed to understand the globalization as a complex cross-border interactions between individuals, enterprises, institu-

tions and markets which manifests in expanding flows of goods, technology and financial resources, in steady growth and impact of international civil society, in the global activities of transnational corporations, in significant expanding the scale of cross-border communication and information exchange especially via the Internet, in the cross-border transfer of diseases and the environmental consequences and in increasingly interconnectedness of certain types of criminal activity [5].

Today we can say: globalization touched all aspects of social relations in all countries. It affects the consciousness of every human in civilized countries and that effect as shown by current trends in society will only increase. Admittedly, globalization is an integral part of the modern world. For humanity as a whole it is a positive phenomenon, but for individuals, groups and even countries and it can be dangerous. Globalization is internally contradictory process. On the one hand, it opens up new possibilities for political and public management discourse. And on the other hand it exacerbates existing or creates new problems that are now defined as "challenges". In fact they are external manifestations of worsening problems generated preliminary stage of world development that did not find adequate solutions to the global public-management practices. Directly it concerns general issues related to the emergence of new factors in world development and questions the possibility of normal functioning of the mechanisms of reproduction of social life, the stability of international relations, and the sustainability of the world order [6].

We are convinced that the process of globalization is an objective form of social development culmination of which has become a kind of Utopia – "World without any Borders". However, despite the obvious positive result for the "global" society from the completion of the process of globalization this process itself combining economic, sociological, cultural and legal space of various sovereign states is "painful" for individual nations, social groups and individuals. As you know, the process of adaptation to the new is always difficult for a person.

We believe that the modern state as the highest social and political form of human society should develop tools to control globalization processes in the country. So, now one of the priorities of Ukraine is the introduction of new management arrangements aimed at ensuring the sustainability of the process of Ukraine's integration into the world community that would prevent or minimize the harmful effects of globalization for the country as a whole and for ordinary citizens.

The above-mentioned definition of globalization UN Secretary General highlighted not only some form of globalization, its positive effects, but also negative consequences, but not all. So what is globalization danger for Ukraine? To answer this question we need to define the so-called "sphere of influence" of globalization. Of course the best interests of mankind lie in the economic sphere so all the processes of globalization are derivatives of these interests. Thus, globalization led to: 1) increase openness and interdependence of economies, economic and technological convergence countries; 2) forma-

tion of a single world production; 3) development of e-commerce; 4) establishment of markets for labor, goods, information technology based on the gradual removal of trade barriers; 5) the rapid growth of the world market; 6) a dramatic increase in speed and movement of capital; 7) the intensification of global financial transactions; 8) global stock market capitalization; 9) the formation of planetary scientific information space, global information infrastructure; 10) the intensification of international transactions; 11) the unification of doing business; 12) forming a new system of global governance; 13) the increasing number of supranational institutions regulating the world economy, intergovernmental and non-governmental organizations; 14) access to advanced technological achievements of mankind for developing countries and others.

But, again, it is not so simple. Globalization hides a significant risk especially for countries with weak economies and undeveloped social sphere (remember at least dangers listed by UN Secretary General: transfer of diseases, adverse environmental effects of the global economy, the increasing interconnectedness of certain types of criminal activity). We have to include Ukraine to these countries.

As mentioned previously in the scientific literature the research of positive sides of the world economic globalization and their "related" (but also positive) consequences is dominated. The positive effects of such globalization are: information and cultural rapprochement of peoples, the spread of common living standards, unification preferences, values, principles and standards of conduct universalization of culture and so on. However, we believe this process of "unification" not only economic, but also cultural, intellectual and other fundamentals of the people which are called "national identity" is itself a basis of globalization dangers. Other (specific) the negative effects of globalization process are derived from the "erosion of national identity." The more nations are similar the more they are different (this statement applies to all areas of life). It is this difference that makes a unique and socio-cultural identity. The problem of destruction of nation's identity strikingly appears in the countries of the so-called "third world". In connection with the peculiarities of their own historically conditioned development they are the most vulnerable and unprepared to "life according to European standards." We believe that integration for these countries into the world community should take place gradually, under close government control. Sharp change complicates the existing way of life of these countries and positive effects of globalization are often not certain perspective.

Thus, today we can list specific negative displays of globalization in Ukraine. In our opinion they are: 1) the destruction of the national economy, which is due to backward technology cannot compete with the economies of developed countries; 2) ruination of the agrarian sector (for the same reasons here should add a bit dubious form of "game" of the EU in the agricultural market which supports domestic producers and for countries (former Soviet republics) set strict quotas on agricultural products, impose a ban on far-fetched grounds (as control of ex-

cess nitrates, phosphates, GMO etc.), conduct a policy aimed at the formation of Ukraine as a country of EU raw appendage (remember the story of the Carpathian forest wood), etc.; 3) efforts of EU countries, the United States to place on our territory environmentally hazardous production (for example shale gas), to make Ukraine a European dump radioactive waste nuclear power (i.e. growing environmental threat to the population), etc.;4) the sale of arable land of the country where the business of foreign countries have an advantage because of financial opportunities; 5) destruction of the national education system that has been adapted to the requirements of the national labor market; 6) the leak of skilled and most productive intellectual and labor abroad (where higher salaries, sometimes better working conditions); 7) uncontrolled migration (as a result of the mentioned above factors); 8) dissemination of the precariat class in Ukraine and others.

Limits of publications do not allow us to dwell on the consideration of the above dangers for Ukraine. So briefly we dwell on a new danger that, we believe, is growing rapidly in modern society and poses a real threat to independent and progressive economic and social development not only Ukrainian state, but also a significant number of Eastern European countries. This is so-called problem of precariat. As a result of globalization, as the blurring of national identity precariat problem clearly reflects the danger of uncontrolled globalization.

Precarious means "unstable, unreliable, threatening". This term first was used by French sociologist Pierre Bourdieu and its phenomenon was analyzed in detail by British sociologist Guy Standing in his work "The Precariat: the New Dangerous Class" [7]. Similar to the "proletariat" this is the stratum of the working class and other categories of workers whose representatives do not have "normal", stable work which can be characterized by constant employment, stable earnings and social guarantees provided for them by an employer and the state. Precariats mainly come from the middle class which is traditional and quite rightly considered the foundation of any society. (Middle class on global level is defined as a group of people who are able to buy imported high-quality goods, imported cars, to travel abroad, to gain higher education abroad etc.)[1]

On the opinion of Swiss bank Credit Suisse analysts since 2008 the world has witnessed a disturbing trend: there are more rich and poor people and the middle class who is considered a mainstay of society becomes weak. In 2015 the world had 664 million members of the middle class or 14% of the adult population. Their combined assets are estimated at almost one-third (32%) of global wealth (with more than half of the world wealth concentrated in 1% of total population). In Ukraine in 2015 there were around 297,000 middle class representatives. It is only 0.83% of the adult population [8].

The danger of precarious to society is that they are not "tied" to anything; they don't have a profession so they have no consistent views on the world,

[1] The concept of the middle class (its capabilities and standart of living) can be deduced from analysis of the annual International Monetary Fund reports.

themselves, their place in society. Therefore, they can be provoked by anything. Precarious does not cherish the history of his people, does not cherish his culture all that is called "the roots of the peoples". Precarious is a man rejected by the society. He does not find his place in the existing model of life, and therefore has considerable claim to the world. Not knowing anything, realizing his insignificance and needlessness, full of insults to the whole world precarious is ready to destroy it. They have nothing to lose except emptiness. They are ready social base for any revolutions and radical rebellions. You just need to stir.

Necessarily precariat negatively affects the quality of work. It reduces the competitiveness of Ukraine in the market of high technologies, enhances the tendency of "downloading" Ukraine to the level of states as a raw materials appendage and suppliers of cheap unskilled labor. Precariat is dangerous for the destruction of professional unions of the working people, increasing their insecurity against the tyranny of employers (which will necessarily increase), the growth of the poorest stratum of the population of Ukraine. This will further strengthen the movement of labor to the wealthier countries of the world, which will negatively affect the Ukrainian economy.

As a result there is an objective poverty and vulnerability of even the working population. It provokes a rise in poverty nihilistic attitudes, disrespect for state institutions and public administration, the rules of coexistence etc. And this is a nutrient medium for the growth of crime in society. Indicative here is the fate of the former ex-soldier battalion "Donbass" who was on Maydan first and then fought in the antiterrorist operation on the East of Ukraine. "I thought I fought for a best future. I was wounded. Then returned and realized that I didn’t need anyone in this country. Nothing will change for the better. Everybody interested in their own wallet. Corruption is everywhere. Want to live take part in the "schemes". So I took for a decision: raiding. At least the family will have something to eat" [9]. (The absence of a clear and coherent country model adaptation of former fighters of the antiterrorist operation on the East of Ukraine "pushing" them to the ranks precariat. From the defenders they are a priori convert into destroyers).

The situation in the East of the country reinforces the listed problems; we can see the growth of so-called "revolutionary sentiments" in the community that threaten the existence of Ukraine as a democratic and civilized. This situation requires a balanced and independent state policy aimed at protecting the interests of their own people, demands to decline globalization "for the sake of globalization", to taking populist decisions for temporary satisfy the interests of certain groups. The state should understand that no one is waiting for us in the EU in order to "share with us their standard of living." We should raise it in our own. There is no need to please strange half-legal formation and break (at least at this difficult situation) arguable but profitable for Ukraine economic relations with states and territories to which these links were established decades ago and of which largely depends on the state of modern Ukraine’s economy.

Conclusions. Legitimate government must prove its strength and defends beneficial economic and social policy for the entire population. For doing this in Ukraine we have all existing state structures and legal fields. In order to improve the situation in the country we suggest as priority the following areas of domestic policy: 1) to develop and adopt a conception to coordinate the impact of globalization on Ukrainian society, may be to create a new department on relevant issues at the central office of the Ministry of Justice of Ukraine (or charge this direction to one of the existing ones); 2) to develop a new concept of educational reform in Ukraine (the current education reform, in our opinion, shows its ineffectiveness) which would create a real opportunity to generate highly qualified personnel in various areas of service delivery and production; 3) to recognize the priority of public policies focused on new working places creation in the country in the real economy in order to avoid the outflow of Ukrainian working class; 4) to reduce the level of tax burden on small and medium business in Ukraine and foreign investors; 5) to change the existing Labor Code of Ukraine or take a new one making numerous adjustments to ensure real and high level of protection of rights, freedoms and interests of the employee; 6) to implement actually government policies designed to struggle against artificial replacement employment contract of civil-law agreements etc; 7) to redirect management system in Ukraine protecting the interests of the Ukrainian people but not pan-European interest (or any other).

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GIFTS FOR A PUBLIC SERVANT: WHETHER IT IS WORTH TO COMPLY WITH THE RULES

Summary. *The article substantiates the expediency to distinguish a kind of "gift relations in the public service" – "gift relations with the participation of close persons of a public servant". The author draws attention to the specificity of the subjects of the relevant relations, which is a public servant (a person is empowered to exercise the functions of the state or local self-government and "serve" for a public interest) and close persons of the public servant (persons connected with the public servant by means of family, friendly relations) A gift in these relations differs by peculiarity because it is oriented solely to the person of a public servant, and not to his professional activities, his special legal status. Its presentation does not imply any influence on the "purity" of the professional activities of a public servant. In view of this, it is inappropriate to consider the normative consolidation of the appropriate "personal" (it is also called "private", "ordinary", "normal") gift to requirements for cost, grounds, periodicity of receiving. At the same time, despite the specifics of "gift relations with the participation of a public servant", they cannot remain outside the regulatory framework. Such regulation allows strengthening the foundations of determinacy in the "gift policy" of the state and eliminating the grounds for use of "gifts from close persons" as a means of "indirect" influence, including inappropriate, on the professional activities of public servants or concealment of unjust enrichment of the latter. The author justifies the inappropriate use of prohibitions and restrictions in the regulation of appropriate kind of "gift relations in the public service". Instead, the introduction of an obligatory annual declaration where public servants point all gifts, including "personal" ones, indicating donor's personality, the nature of relationship with him, the market value of the gift. A similar obligation is proposed to provide for close persons of a public servant (first of all, family members as well as close persons who live together with a public servant) in order to strengthen the principles of transparency of "gift relations with the participation of close persons of a public servant", confirmation of the history of relationship, funds sources for gift's presentation (the indication of funds sources for the gift is a mandatory for this group of persons). For the effective use of the declaration, proposals are formulated to unify the provisions of anti-*

corruption, tax and tort legislation in the aspect of compliance with the requirements for obtainment of gifts by public servants from their relatives.

***Key words**: close persons, public service, public servant, gift, corruption, declaration, rules, gift receiving.*

1. Introduction

In the context of active search by the interested public, subjects of public administration of effective means of corruption prevention in the public service, increasingly the attention is focused on ones, the resources of which traditionally have been undervalued. "Gift prohibitions", "gift restrictions" occupy pride of place among them. However, it should be noted that, first of all, they are oriented to public servants and rightly so. They are empowered to implement the functions of the state and local self-government related to prohibition or restriction of gifts reception as means of influence on professional activity and should be oriented to such persons. Despite the relatively small, in cost nature, "influence power" of a gift on the professional activities of a public servant, it is not possible to evaluate it in the scale of public service as a whole. Due to the active use of the gift resource, it possible to achieve a significant influence on "purity" of the public service, which, in turn, will contribute to the growth and diversification of corruption in all its manifestations. It is that requires formation of the legislation that is a perfect in content and effective in the application and which would regulate the principles of "gift policy in the public service" in all possible external forms of its manifestation. Despite the fact that in the legislation of a large number of countries of the world there are "gift prohibition", "gift restrictions" related to public servants, the rules of conduct with various types of gifts, the principles of public liability for non-compliance with the relevant provisions, unfortunately, "gift relations" with the participation of relatives of public servants are regulated rather fragmentarily. Practice also shows that such relations are quite common, and the possibilities (including inappropriate) of "gift influence" on a public servant in his professional activities through (or with the participation) his close persons is quite significant. For this reason, it is quite timely, logical and justified to study the resource of "regulation of gift relations with the participation of close persons of a public servant" as an integral element of the modern "gift legal policy", which will allow formulating certain "rules of the game", the observance of which will eliminate the prerequisites for the use of a gift's potential as a "means of unlawful influence" on a public servant separately and public service as a whole. Regulatory fixation of the principles of the appropriate gift relations will contribute to effective counteraction to corruption in all its manifestations in the modern public service. All these fasts lead to the formulation of the article purpose which due to analysis of the resource of "gift relations in the public service with the participation of close persons of public servants" lies in the determination of the main guidelines of their regulatory control under the current conditions of activation of the prevention and counteraction of corruption

in all its manifestations, thereby eliminated the "gray zone" that has been existing for a long time in the legal basis of such opposition and impedes the latter.

2. The issue of "gift relations" in the public service in the legislation of different countries of the world

It is worth to start from the fact that in the legislation of many countries the issue of "gift relations" in the public service has found its sufficiently detailed regulation as at the level of separate legislative acts (as a rule, it has anti-corruption content (for example, Ukraine, Georgia) and as codified tortious acts (for example, Denmark, the Great Britain, Finland, France, Germany), codified or other acts oriented to fix the ethical rules of conduct of public servants (for example, the USA, Brazil, Poland, Greece, Italy, Ireland). The principles of "gift relations" with the participation of public servants are regulated sufficiently detailed in the predominant majority of the relevant acts, which make sense. As they are called, using their powers, to realize the functions of the state or local self-government, in accordance with them the rules of conduct are regulated and the non-observance of which, in turn, leads to the possibility of bringing public servants to legal responsibility. Such approach of the legislator is a logical as it is necessary to foresee the levers of prohibition, restriction on the activity of the person who, in the course of his professional activity, "serves the public interests". In relation to the activity of such person it is necessary to foresee elimination (or minimization) of corruption risks, negative influence on "purity" of his professional activity. As a result, it is possible to find provisions in the legislation of the countries of the world that prohibit the receiving of gifts by public servants directly related to their professional activities (for example, China, Ukraine, Russia, Georgia, Germany, France), determine the maximum cost of gifts that public servants can receive from other persons as a manifestation of honour, respect for their bona fide professional activity (for example, in Singapore – fifty Singapore dollars, in Brazil – one hundred reals, in Denmark – one hundred and thirty euros), regulate the handling rules with various kinds of gifts as a "contact model" and "contactless model" of relations (for example, Standards of Ethical Conduct for Employees of the Executive Branch, Codified in 5 C. F. R, Part 2635 as Amended 76 FR 38547, the Law of Ukraine dated 14.10.2014 "On Prevention of Corruption" (art. 23, 24), the Resolution of Public Ethics Commission No. 3/00 (2000) on gifts to civil servants within the framework of the Code of Conduct for Senior Civil Servants in the Federal Executive Branch of Brazil (Certificate of Intent No. 37 on 18.08.2000 and Presidential Decree on 21.08.2000), the grounds of different types of legal responsibility for failure to comply with the relevant provisions. In scientific professional sources, the attention is also focused on "gift relations in the public service" with an emphasis on the principles of behaviour of public servants, prohibitions, restrictions on their activities, grounds for their liability for unlawful acts. It is possible to highlight several directions of enhanced scientific analysis of the relevant issue: a) with an emphasis on

the specifics of regulatory consolidation and the practice of applying in a particular state (for example, in Brazil (Vasileva, 2015), Singapore (Gladchenko, 2014), Japan (Kolyshkyna), Russian (Gafurova, 2015), Ukraine (Kolomoiets, 2018), Slovenia (Nysnvevich, 2016), Indonesia (Tolmachev, 2016) etc.; b) in the aspect of comparative legal analysis through the example of several states (Zimneva, Chumakova , 2015) or a significant number of states (Kolomoiets, Verlos, Pyrozhkova, 20218); c) with the emphasizing of one or several problematic aspects of regulation (for example, the normative definition of a gift and its place in the contiguous conceptual series, the variety of gifts, the rules of gifts handling in different circumstances, the differentiation of principles of legal responsibility for breach of "gift rules", etc. (Bonsing, Langsted, 2013). At the same time, despite the availability of relevant scientific and normative thematic sources, the issues related to the regulation of "gift relations with the participation of close persons of public servants", unfortunately, are under-investigated and almost not regulated. Hence, there are issues which differ by their relevance. Whether public servants can receive gifts from their close ones? Whether it is possible to use close persons for unlawful influence on a public servant by means of "gift relations"? Whether a public servant uses "gift relations with close persons" as "external form" of concealing of corruption acts or acts connected with corruption? To answer these and concerned them issue, it is necessary to analyze the resource of "gift relations of public servants with the participation of their close persons" taking into account the provisions of the legislation of different states designed to regulate these issues.

3. Subjects of "gift relations of public servants with the participation of their close persons"

First of all, it is necessary to focus on the subjects of these relations. Such are the public servant and his close persons. In relation to the first one, his main decisive feature is a special legal status, which consists in the fact that this person is authorized by the subject of public administration to perform functions of the state or local self-government and for this reason is lodged by a certain amount of public authority that can be used in the process of his public activity, "service to the public interest". Legislations of different states use several terms to indicate the appropriate group of persons. The most widespread are "public servant", "civil servant", "official of local self-government", "official", etc. These terms form peculiar adjacent thematic terminology series. They are correlated with each other either as absolute synonyms or as adjacent synonyms of different volumes of regulatory notation. The legislator of each state establishes an official term and standard definition, which is the basis for the relevant legislation, to regulate "gift relations in the public service". For example, in Ukraine in special anti-corruption legislative act (the Law of Ukraine dated 14.10.2014 "On prevention of Corruption") the legislator, identifying the subjects covered by the relevant legislative act, offers their list (art. 3 of the Law) which can be divided into five groups: a) persons authorized to perform functions of the state or local

self-government (they are still offered to be called "functionaries of the public sector"); b) persons who, for the purposes of the relevant Law, are equated with persons authorized to perform the above-mentioned functions (they are proposed to be conventionally called "quasi-functionaries of the public sector"); c) persons who are permanently or temporarily hold positions related to the implementation of organizational-management or administrative duties, or specifically authorized to perform such duties in legal entities of private law (so-called "functionaries of private sector"); d) candidates for post of elected positions as well as candidates for headman post ("candidates for certain positions of functionaries of public sector"); e) other persons (so-called "non-functionaries") (Khavroniuk, 2018). At the same time, one article uses several terms as "civil servants", "officials of local self-government", "servicemen", etc., and their definition is fixed in other legislative acts (on civil service, service in local self-government bodies, diplomatic service, etc.). The analysis of the content of the latter allows separating the indication of the "public" nature of activity, empowerment, and service (therefrom "service") to the public interest.

Georgian legislator chose somewhat different approach to the solution of this issue. Thus, in the Law of the Republic of Georgia dated 21.12.2016 "On the Conflict of Interests and Corruption in Public Institution", the basic term is "public servant". And although, the legislator does not propose the very definition of a public servant in this legislative act, at the same time, it notes that for the purposes of this act, a public official is "public servants" introduced by the Law of Georgia "On Public Service" as well as persons engaged in activities in institutions that are equated with state ones. In addition, they are not persons performing auxiliary functions (auxiliary servants) (art. 2–1 of the Law). At the same time, the legislator moves on and clarifies its position, indicating that public servants (accordingly for gift relations too) are considered civil servants, professional public officials (officials), persons who work in the public service under an administrative contract (art. 2–1 of this same Law). In order to eliminate the grounds for free interpretation of the provisions of the legislation on this issue, the legislator, using the term "official" to denote the subjects of service (including gift) relations, proposes their list (art. 2 of the same Law) (On the Conflict of Interests and Corruption in Public Institution dated 21.12.2016 No 157. As we see, in spite of the use of various terminology to determine the subject of "gift relations", it can be said that the term "public servant" is used as a generalized to the rest, and features that are inherent to the subject of "gift relations" are typical for the laws of any state, which allows to assert that this subject of "gift relations" is a special subject, a subject with a special legal status.

In relation to another subject of the relationship, it should be noted the following. In the legislation of different countries you can find different terms for its determination: "family members", "close persons", "close relatives", etc. Despite their relative external similarity, they should not be confused and it is necessary to focus on the one, who is detached by the legislator as another

subject of "gift relations". For example, in Ukraine, these are "close people" (art. 23 of the Law) and they should be clearly distinguished from "family members" (art. 1 of the same Law). Consequently, in Ukraine, "close persons" are offered to be recognized as persons who can be divided into two groups: a) those who in any circumstances are considered as such (their list is given, beginning from "husband, wife, father, mother, and even to a person who is under guardianship or care); b) those for the recognition of which as close persons there is necessity of three features, namely: joint residence, connection with a common life, the existence of mutual rights and responsibilities with mentioned person – a public servant. So, listing the first group of people, for some reason, it was forgotten about niece (nephew), uncle (aunt), groom (bride), great-grandfather (great-grandfather), thereby arbitrarily drawing the degrees of kinship (Khavroinuk, 2018). Separating the second group of people, the legislator offers their features, the proof of which in practice is associated with significant difficulties, as evidenced by the generalization of the results of trial of cases over non-compliance with restrictions on the receipt of gifts by public servants. Under these conditions, the question arises, whether a public servant can get a gift from his friend or neighbour? It is impossible to attribute such persons to "close persons" according to the above-mentioned features, although such practice of presentation of "personal gifts", "private gifts" is very common in different countries. The conditions of "gift relations" can be complicated – the receipt of gifts by a public servant from a person who carries out any activity in the sphere of realization of the functions of the state or local self-government by a public servant, if there is a long-lasting friendly relationship between the two persons. Is it possible to receive gifts under such conditions? This person does not belong to the category of "close persons", and at the same time "subordinate person" in the classical sense cannot be recognized as such.

The legislation of Georgia uses another term – "close relatives" (family members, lineal relatives, stepchildren, sisters, brothers, and stepchildren of parents and children of a person) (art. 4 of the Georgian Law). In addition, relatively "gift relations", it is proposed to use the term "family members" (husband, wife, minor children, stepsons (stepdaughters) of a person, as well as persons who permanently reside with a person (art. 4 of the Law). Such approach to the definition of the subjects of "gift relations in the public service" looks more considered as in the process of law enforcement it involves the concentration of attention either on family ties, or on a joint permanent residence, eliminating the need to prove common life, etc. But nevertheless, the issue of a gift from a friend or a neighbour remains open. In this aspect, the US approach to the solution of this issue looks interesting, namely: among the whole variety of gifts, there are "gifts made on the basis of personal relationships". That is, the legislator allows a public servant to receive a gift from a person with whom is "in family or friendly relationship, and not in relation to a position of service" (§ 2635. 204 Standards of Ethical Conduct for Employees of

the Executive Branch, Codified in 5 C. F. R, Part 2635 as Amended 76FR 38547). However, there must be evidence of "history of relationships", the facts of payment of a gift by members of a family or friends of a public servant, etc. This type of gifts is also called "private gifts", "personal gifts", "normal gifts" due to their disconnection with the professional activities of a public servant, and vice versa, its direct connection with a person, his private life (Bonsing, Langsted, 2013).

Thus, to specify another subject of "gift relations in the public service", despite the use of a large number of different terms, the emphasis is laid on its direct connection with the person of a public servant, his private life by means of the normative consolidation of the conditions of family, friendly relations, common, permanent residence, the existence of a common way of life, mutual rights, responsibilities, etc. Connection with the professional activities of a public servant, a desire to influence in any way such activities, including its "purity", should remain outside of attention for this subject. Despite the variety of terms used to identify this subject of "gift relations", it can be argued that there are conditionally two approaches of the legislator to resolve this issue. The first one is narrow, indicating a family relationship with a public official (prevalent use "family members", "close relatives", "family members"), and the second one is wide, indicating both family and other personal (person-related) ties (prevalent use of the term "close persons", that is, persons "who are (stay) close, beside"). For the purposes of law enforcement, taking into account existing practices, it is expedient to use the term "close persons", however, with the normative consolidation of all diversity of the manifestation of personal relations. This will allow eliminating "gray zone" in the terminology series of normative grounds for the definition of the subjects of "gift relations in the public service" and the dividing of so-called "personal" gifts as a separate kind of gifts.

4. Specification of gifts in "gift relations with the participation of close persons of a public servant"

It is important to find out what exactly can be considered as gifts in "gift relations with the participation of close persons of a public servant". A generalized analysis of the legislation of different countries shows that the basic approach in normative resolution of this issue is enumeration of possible external forms of gift existence (however, the number of such forms and the sequence of their mention in the corresponding list differ). For example, a gift (it should be clearly noted that the official definition is also fixed either in a special anti-corruption legal act, or in an act that consolidates the principles of ethical conduct of public servants, or in another act, the content of which is "oriented" to regulate relations of public service) is recognized as "a reward that has the form of any material wealth with value sense (including money, fees, securities, debts relief, services, benefits, privileges, etc.)" (in Singapore), "money reward, refraining from actions or other actions or things that may have money term, as well as services, payment of expenses on education, transportation, local travel, accommodation, meals in natural or in any

other form" (in the US), "funds or other property, benefits, privileges, services, intangible assets that are provided free of charge or at below minimum market price" (in Ukraine) (Kolomoiets, 2018). Thus, it is traced the legislator's desire to enumerate as much as possible potential external forms of expression of a gift and to emphasize the presence of their value feature, which is also quite logical. The basic definition of "gift" is used for "gift relationship with the participation of close persons of a public servant" as well as for any other types of "gift relations in the public service". However, it has already been noted the expediency of distinguishing a special kind of gift – "personal", "private", "ordinary", which should be used in the analysis of "gift relations with the participation of close persons of a public servant". This raises the question: if this is a special kind of gift, there should be its special features, which distinguish it among all variety of gifts. What are its specific features? Taking into consideration the specifics of "gift relations with the participation of close persons of a public servant" in the aspect of their subjects, as already noted, one could argue that a gift in such relationships should be characterized by its exclusive personal (in relation to the person of a public servant) orientation, connection with relatives, friendly relations with the person provides it (offers). Hence, it is quite logical to assume that the legislation should not consolidate any restrictions (indications at all) for this type of gifts regarding its value, grounds, frequency of receipt, etc. Otherwise, it contradicts the expediency of separation and hence the existence of such kind of gift that is directly related to a person, and not with his special legal status, professional activity, sphere of activity, etc. Exclusively personal orientation of such gift is directly connected with the grounds for its presentation (receipt), which also should be directly related to the personal life of a public servant, a history of the relationship with a close person who gives this gift. Consequently, any events in the life of relevant subjects such as birthday, marriage, the anniversary of friendly relations, the birth of a child, etc., can serve as legal facts for the emergence of "gift relations with the participation of close persons of a public servant". In practice, in general, there should be no difficulties associated with the attribution of a gift for a public servant from his close person to "personal" ("private", "ordinary"). If the person who gives (offers) a gift to a public servant is his close person in accordance with the provisions of the current national legislation and this fact is confirmed by the history of their relations, there are reasons to consider it as "personal" ("private", "ordinary"). There should not be any indications in the legislation relatively its correspondence to any visions of hospitality, historical or national traditions of gifts presentation, communicating, maintenance of friendly or family relationships, as this gift is not related to the professional activities of a public servant, his special legal status, it is not foreseen the possibility to use it for any (including unlawful) influence on the "purity" of his professional activities. There should not be any risks from such gift for public service. At the same time, unfortunately, in practice there are cases of the use of so-called "complicated gift relations with

the participation of close persons of public servants", when close persons of a public servant act as "mediators" in gift relations. That is why, it is impossible to remain "gift relations with the participation of close persons of a public servant" without normative regulation. An analysis of the provisions of the legislation of different states suggests that in most cases, it is consolidated the provision that public servants are allowed to receive gifts from close persons. This is quite justifiable. However, there are no any restrictions relatively their quantity, cost, frequency of receipt, correspondence of gifts with certain criteria of content, which again is quite justified. At the same time, the state should regulate the appropriate "gift relations" using other, than prohibitions or restrictions, methods to eliminate the misuse of the resource of such relationships.

5. Introduction of the obligation of annual declaring of gifts for a public servant

The introduction of the obligation for a public servant to declare state, including from relatives, gifts every year looks optimally. This practice has been quite widespread in different countries for a long time and has approved itself positively. For example, in Latvia declaration of gifts is mandatory for all public servants, including both for those who hold election posts and parliamentarians, in Germany, Spain, and the United Kingdom, the declaration of gifts is mandatory for those who hold political post and for members of parliament, while in Hungary this obligation applies only to members of parliament. In Poland, gifts are declared only by those who hold elective posts at the local level and political positions, while in France, parliamentarians declare all state gifts regardless of their value. (Villoria, Synnerström, Bertok, 2010). It is important that the legislation should stipulate that gifts are subjected to mandatory declaration, incl. received from relatives, whose value on the day of reception exceeds a certain clearly defined amount. The latter may equal to the value of the so-called "allowed" gifts for a public servant that can mediate his professional activities (in the UK – 140 pounds sterling, in Russia – three thousand rubles, in Singapore – fifty Singapore dollars, in Ukraine – one living wage for an able-bodied person at a one-time reception of a gift, etc.). It is important to consolidate the duty of a public servant to declare this gift, indicating its market value and the person who provided it. In addition, it should be clearly understood that the institute resource of the "declaration of gifts in the public sphere" should be used systematically: the law should have a unified approach to the determination of all, including "personal" ("private", "normal") gifts in the aspect of their value, the obligation to indicate the identity of the donor (in order to, in case of doubt, determine the sources funds for the corresponding gift). It is necessary to introduce the obligation of family members of public servants to declare incomes and expenses, including and in part of the gifts given to a public servant, thereby eliminating the collision that exists to date in the legislation of most states on this issue (a public official, submitting a declaration, must also indicate the information of family members, although the latter

are not obliged to do so and they are not legally responsible). The introduction of such practices will contribute to the clearness of "gift relationships with family members" regarding the reliance that this gift was purchased at their own expense. The same rules can be extended to close people who live together with a public servant and those who are "as close as possible" to the possibility of "indirect influence" on the professional activities of a public servant through a gift for him. Implementation of mandatory declaration by them, including gifts given to a public servant, will contribute to the certainty of the appropriate kind of "gift relations in the public service" (first of all, in terms of the legality of funds sources). As for the relatives as a whole, the introduction of total declaration in the country is possible only under certain conditions, taking into account the priorities of domestic policy, time limits, and therefore in the long run, this is a very real mechanism for monitoring the "gift relations with the participation of close persons of public servant". Under such conditions, close persons will be obliged to declare the gifts given to a public servant, indicating the sources of funds for this. By this moment, it is logical to declare "personal" ("private, "ordinary") gifts received from close friends annually by a public servant, indicating the person who provided the present, the market value of this gift. That, in turn, will provide an opportunity for anti-corruption actors and interested public, if there are doubts, to concentrate their attention on the close person of a public servant in order to find out the reasons for the emergence of "gift relations". It should be noted that in the legislation of some countries such provisions have already been consolidated (for example, Georgia, Singapore). Thus, taking into account the specifics of the appropriate variety of "gift relations in the public service", the optimal means of their regulation is the introduction of declaration of things by the subjects of these relations, with the simultaneous unification of the provisions of anti-corruption (in terms of regulation of "gift relations") and tax legislation (declaration duty, value nature of the gift should be declared, indication of the donor’s person and the nature of the relationship with her, etc.), the introduction of legal liability for the breach of the obligation to declare, strengthened the guarantees of performance of duty, eliminating the grounds for the existence of "indirect gift relations with the participation of close persons of a public servant" (when such persons are actually used to conceal the receipt of "prohibited gifts", which are directly related to professional activities of a public servant to influence the impartiality, bona fide of his professional activities). It is important to note that provisions of the tort law in the terms of identification of the principles of legal liability for failure to comply with the obligations by the subjects of "gift relations with the participation of close persons of a public servant" in general, regarding declarations must be consistent with the realities of time, anticipate such measures of responsibility that would be balanced with the nature of the commissioned unlawful act, would involve the achievement of the goal of prevention, education and adequate punishment and would be effective in its application.

6. Conclusions

In the context of search for the best means to prevent and combat corruption in all its manifestations, corruption offenses in the public sphere, it is important to define the legal principles of "gift relations in the public service". Among the diversity of "gift relations in the public service" it should be distinguished a special kind – "gift relations with the participation of close persons of a public servant". The latter are directly related to the receipt of "personal" ("private", "ordinary") gifts by public servants from persons with whom public servants are related by family, friendly relations, including for a long period of time. Nevertheless, in order to eliminate the prerequisites for the illegal use of the resource of "personal" ("private", "ordinary") gifts, the law should consolidate the basic principles of regulation of relations associated with the receipt of gifts by public persons from close persons. It will allow avoiding so-called "indirect gift relations in the public service" associated with the use of close persons as "hidden links" in "gift relations", aimed at influence on, including illegal, impartiality and honesty of the professional activities of a public servant, on the "purity" of the public service as a whole. In order to resolve this issue, it is considered important: a) the awareness that the subjects of the appropriate kind of "gift relations" are a public servant (a person with a special legal status who has a certain amount of authority to implement the functions of the state or local self-government, "service" to the public interests) and close persons (persons connected with a public servant by family, friendly, including long-term relationships) that requires the regularization of the official terminological series and normative consolidation of definitions "close people", "family members" (the first of which differs by generalized nature and covers other); b) the distinction among all diversity of gifts in the public service of the "personal" ("private", "ordinary") gift directly oriented to the person of a public servant without any connection with his professional activities, special legal status, possibility of any influence on the "purity" of his professional activities. It, in turn, makes it possible to use the existing norm of the definition "gift for a public servant" for the purpose of its distinguishing in terms of enumeration of possible external forms of its existence. At the same time it is inappropriate to fix any features of its value, reasons, frequency of receipt, and compliance with certain notions related to this kind of the gift as it is contrary to the nature of "gift relations with the participation of close persons of a public servant". c) It is impossible and inexpedient to regulate this kind of "gift relationship" by means of the use of any restrictions or prohibitions, at the same time, these relations cannot be outside the regulatory influence. In order to resolve this issue, it is possible to introduce a mandatory annual declaration by a public official of all received "personal" ("private", "ordinary") gifts with indication of the person who provided them, the nature of the relationship with him, the market value of this gift. To strengthen control over compliance with the requirements for the legislation on the "purity" of public service, it is expedient to secure the normative consolidation of the obligatory declaration by family mem-

bers and close persons of a public servant (who live together, and in the future, by all persons), and on gifts provided by them to a public servant with indication of the funds sources for it. All "personal" ("private", "ordinary") gifts should be declared, the cost of which exceeds the value nature of "permitted" gifts for the receipt by public servants related to professional activity. In the context of unification of the provisions of the national anti-corruption, tax and tort (in terms of the principles and measures of liability for non-compliance with the mandatory annual declaration) legislation, it is possible to achieve a positive result in the effective use of the resource of "personal" ("private", "ordinary") gift for a public servant.

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ADMINISTRATIVE PROCEEDING RELATIONS IN THE SUBJECT OF ADMINISTRATIVE LAW

Article investigates the administrative procedural relations which exist in sphere of action of administrative courts. The place of these establishes the relations in administrative law of Ukraine. For this purpose author investigates the legal nature of norms of administrative legal proceedings; analyzes the legislation on administrative courts; considers practice of work of administrative courts; studies history of administrative judicial system; analyzes scientific research in the sphere administrative law, administrative process, functioning of judicial system; studies drafts of normative documents in the sphere of administrative legal proceedings. As aresult of the research author proposed definition of the administrative process.

Key words: *administrative court, administrative jurisdiction, administrative law, administrative legal proceedings, administrative process, legal process, procedural relations, public administration.*

1. Introduction

Implementation of Ukrainian administrative procedure in the legal space was one of the most significant achievements of scientific research and law-making for all the years of its independence. This event is the realization of the objective needs of a democratic society to protect the rights of citizens in cases of it's breach by public administration. Functioning of separate judicial administrative jurisdiction is provided by the Law of Ukraine "On ratification of the European Convention on Human Rights in 1950, the First Protocol and Protocols number 2, 4, 7 and 11 of the Convention" on 17 July 1997 (Vidomosti Verkhovnoi Rady Ukrainy, 1997) and the Code of administrative legal proceedings of Ukraine (Vidomosti Verkhovnoi Rady Ukrainy, 2005). Theoretical understanding of administrative proceeding relations has passed several stages, that have formed modern scientific understanding of their concepts, substantive and functional components, terminology and regulatory definitions. An important feature of this process is it's substantive interdependence with transformation of the subject of administrative law, new understanding of basic administrative and legal categories. As a result, a number of important issues of administrative proceedings development have emerged: regarding control activities of public administration, administrative delicts area, administrative services, administrative process and administrative procedures.

There are several approaches as to definition of administrative proceedings: a) a new branch of national procedural law; b) administrative proceedings that may not coincide with administrative process; c) administrative proceeding is an administrative process; d) administrative proceedings is a legal administrative process; e) administrative proceeding is an institute of administrative law.

In our opinion, their definitions largely depend on determining the place of administrative justice in the subject of administrative law. There is still existing managerial understanding of the subject of administrative law, it's basic parameters had been formed during the Soviet Union times, unfortunately not leaving any place for the proceedings in administrative law, or considering it as a part of control activities by public administration.

2. The subject of administrative law

Updated modern approach to the subject of administrative law contrarily opens fruitful spheres of scientific research regarding the nature of administrative proceedings. It is based on two main theoretical conclusions, that had been made during development of ideas of the Concept of administrative reform in Ukraine. Firstly, it was based of the conclusion, that administrative law cannot develop a mono-centric structure, like the one, having a single regulatory & system-developing center (Averianov, 1998). Secondly, the conclusion, that administrative law is a poli-structural law (Kolpakov, 1999). An important role has played the perception of Ukrainian administrative law scientists, considering it's subject to be an important component of it's system-object relations, that arise upon initiative of the parties (Kolpakov, 1999). It had been introduced into the national administrative legal theory as reordinated relations. Based on these achievements, the concept of the subject of administrative law became broader and incudes the public administration sector, public law regulation, ensuring functioning of public administration. Such a regulation encompasses: a) public administration; b) administrative services; c) responsibility of the society (individual and collective) for violation of the public order and administration regulations or administrative tort relations; d) relations, resulting from the mutual respect of administrative law subjects, that are not related to public authority; e) the relationship of public administration responsibility for the wrongful acts or omissions, resulting from the review of it's decisions. Appeals against decisions of public administration may be carried out either by filing administrative complaints or by judicial review (appeals to the administrative court). The central issue of the understanding of administrative law subject may be explained by the number of it's components & integrative quality. It's fundamental importance is due to the fact, that the lack of such a quality resulted into a conglomerate formation. Their unity is only a technical one. The presence of integrative quality proves that the system is a whole, so it may be considered as a subject area of law. In this respect it should be noted, that in the Soviet legal doctrine of administrative law, the subject was defined a system formation. Integrative nature of the interaction of it's

components researchers had argued on the basis of the following characteristics: a) all relations belong to the subject, the same types of relations; b) all relations within the subject are relations of power and subordination; c) all object relationships resulting from the implementation of governance are strictly defined structures – public administrations.

At the same time, it is necessary to remember, that the above-mentioned approach didn't have significant support of the researches in the field. In this respect, we'd like to mention the approaches by: Yampolsky, according to it administrative law had not aimed to form a coherent structure across it's subject (Yampol'skaya, 1956); Mrevlishvili, who argued that administrative law is not an independent branch and has no subject (Sovetskoe gosudarstvo i pravo, 1958); Petrov, who highlighted relations between citizens, for example, drivers of the mutual observance of traffic rules (Petrov, 1959).

None of the above integrative features is considered as a new structural component of the subject of modern Ukrainian administrative law. We also cannot include administrative services and responsibility proceedings as the same type of relationship. They also don't include relations of power and subordination. Not all of the updated object relations arise from the implementation of public administration.

There is a set of relationships that is governed by administrative law in the updated terms, converted into the system. These are categories of "public administration" and "administrative actions".

3. The theory of public administration

"Public administration" has already taken it's place, that belonged to the category of "state administration" in Soviet administrative law. Today the scientific understanding and further development of the theory of public administration is one of the main areas of doctrinal development of administrative law of Ukraine. It's an important basis of it's transformation into a modern European legal area.

This is not a simple change of terms, the theory of public administration has fundamental differences from the theory of governance: the legal content and ideological nature.

It's formation and recognition puts an end to attempts to adapt the theory of governance to the doctrine of a legal, democratic state – states, where the regulatory power recognizes it's responsibility before the citizen, where human rights and their guarantees determine the content and direction of the state.

Public administration in administrative law of the European countries, in most cases, is defined as a set of authorities and institutions that exercise public authority by enforcing the law, regulations and other actions in the public interest. This is important for the Ukrainian legal system.

It should also be noted, that the concept of public administration is not a new one for the Ukrainian law. It was described in scientific works of Ukrainian researchers in administrative law, who represented the Soviet law school, for example, in the writings of Y. L. Paneyko, who in "Theoretical Foundations of Government" (1963) wrote, that the basis of administrative law regulates

the organization and functioning of public administration.

Public administration as a legal category has two dimensions: functional and organizational-structural. According to the functional approach it is an activity of it's structural elements to perform functions aimed to implement the public interest. Such an interest in the Ukrainian law is considered as the interest of social community. Thus, for example, the performance of law-enforcement functions of public administration system means that the activities of all structural elements possess this feature. Such an activity had been proposed to be denoted (2009) by the term "public administration".

According to organizational and structural approach public administration is considered to be a collection of bodies, formed to implement public authority. The Ukrainian authorities recognized by public law are: a) the power of the people as a direct democracy; b) governance – legislative, executive, judicial branches; c) local self-government bodies (Pohorilko, 2003).

It means that public power in Ukraine is engaged in the following structures: firstly, the Verkhovna Rada of Ukraine (the Parliament), the President of Ukraine, the local self-government bodies. They realize the power of the people, reflected during elections; secondly, all the authorities and institutions that implement state power. For example, the executive authorities, courts and others; thirdly, all the agencies and institutions that implement the local government. For example, the executive committees of local councils, associations, BSP and so on.

Thus, public administration is a system of organizational and structural formations lawfully acquired powers to implement them in the public interest.

All this makes it necessary to consider the theory of public administration as a methodological basis of administrative law concept and use it as a base to build administrative and legal relations, including relations and administrative proceedings.

Another system-subject to administrative law factor is the category of "relationships administrative obligations". The essence of this relationship due to the content of the Constitution of Ukraine is concerning the responsibility of the state to the individual, recognizing the main duty of the state to affirm and ensure human rights and freedoms, rule of law limiting the powers and actions of public administration by the Constitution and laws of Ukraine.

They imply that the formation of public administration undertakes to meet the interests of society and citizens. Among them there is the obligation of public nature, the implementation of which requires the use of a public administration authority. During their implementation there are relations that have been proposed (2008) to be described as "administrative obligations relationships".

They – the relationship that fulfill administrative obligations of public administration to the public – are the subject of administrative and legal regulations, or subject to administrative law.

This category – administrative obligation relationships – combined four types of relationships, all of which are part of the subject of administrative law. This relationships are: public adminis-

tration; Relations Administrative Services; relations responsibilities of public administration for the wrongful acts or omissions; relationship of social responsibility (individual and collective) for violation of the public administration and rules of procedure (Kolpakov, 2008).

A characteristic feature of all the above types of administrative legal relations is that public administration bodies act in their ruling party that exercises its executive and administrative powers. That has the right to make powerful (mandatory) solution (Kolpakov, 2017).

An important factor regarding the systematization of relations governed by administrative law is public administration. Public administration is an active subject fulfilling the public administration authority. It is made through the use of management, administrative services, participation in relations of subjects of public administration, enforcement for violation of rules established by the public administration.

4. The principles, methods and forms of public administration

Public administration is carried out according to the principles, which are divided into: a) the general principles of public administration inherent in all kinds of activities and b) the special principles of public administration.

Special principles inherent to specific types of administration: public administration; provision of administrative services; the establishment and implementation of public administration responsibility for violation of positive human society; the establishment and implementation of social responsibility for the violation of public administration standards.

Adherence to the principles of public administration regulation provided methods and forms of public administration. According to the principles, methods and forms of public administration are divided into general and special.

With this understanding of the subject of administrative law, each set of administrative legal relations clearly ranks deterministic specific legal grounds place.

Relations accountability of public administration are derived from relationships appeal of actions that can be done, first, out of court (filing an administrative complaint); Second, the court – by an appeal against the Administrative Court (judicial review).

In the second case (appeal against the Administrative Court) there are relations of administrative proceedings.

Filing complaints with the court (court of appeal) is proved by administrative justice, which is a form of justice. An external expression of Administrative Procedure is the activity of administrative courts to review and resolve public disputes between the parties in public law relationships, where relationships in every party are the executive body of local government or other public authorities.

In the area of judicial appeal relations, referred to the administrative court disputes are called "administrative matters" or "administrative jurisdiction of the case". According to the Administrative Code of Ukraine, the right of administrative jurisdiction (or administrative), it is – referred to the administrative court of public dispute in

which at least one party is an executive agency, local government, their official or official or other subjects ’object that performs power management functions on the basis of legislation, including the delegated powers. Those cases are violated by an administrative claim. The plaintiff in an administrative case can be citizen of Ukraine, foreigner or stateless person, enterprises, institutions, organizations (legal entities), public authorities. The defendant in the case is an administrative authority, unless otherwise provided by the Administrative Code of Ukraine.

Systemic understanding of administrative justice provides the establishment of its place not only in the subject of administrative law. Important theoretical importance is the question of his relationship with the totality of the administrative and procedural forms that form the concept of "administrative process".

Today the idea that the administrative process is merely procedural activity of administrative courts is spreading. It is based on the formula of "administrative process – relationship, consisting in the implementation of administrative justice" (Administrative Code of Ukraine, Art. 3 "Definitions"). However, the same article contains the following warning: "This Code, the following terms have the following meanings <…>”. It follows that defined in Art. 3 terms (including the definition of the administrative process) is conclusive only in administrative proceedings.

Conclusion

Analysis of the current regulatory material evidence of the use of the term "process" to others (except for administrative justice) types of administrative relations. This, for example, is the process of determining the level of danger of the investigation (regarding aviation accidents and incidents), the process of regulation of aviation, the budget process.

This does not give grounds to believe that the legislator establishes a monopoly on the use of administrative justice and the concept of the term "administrative process" and its use on the territory of other administrative and legal space is fair.

Accordingly, the actual definition of the administrative process is a generic name of legal regulated public administration to implement the power. This activity is carried out in the areas generated by monogenic relations and objects as structural components of the subject of administrative law.

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COMPETITIVE SELECTION OF JUDGES: PROBLEMS OF CONSTITUTIONAL REALIZATION

Abstract. *Constitutional-legal and judicial-legal reforms, mass revaluation of values require revision of existing stereotypical views on the process of creation of the image of judicial authorities in general and judges in particular. The analysis of the norms of the constitutional legislation proves the need not only to consolidate the rules on the competitive principles of the selection of judges but also the peculiarities of their application in practice. Thus, the relevance of this research and the prospects for further study of the topic are seen in its timeliness, since competitive selection was the basis for the formation of the Supreme Court of Ukraine, the judges of the Constitutional Court of Ukraine were appointed by the quotas of the Congress of Judges of Ukraine and the President of Ukraine, while we are getting closer to the competitive selection process to start for the High Anti-corruption Court of Ukraine, the High Court of Intellectual Property as well as for Appellate and Local Courts. In addition, the relevance of the study of the problem of constitutional implementation of the competitive selection of judges is due to Ukraine's aspirations through constitutional-legal and judicial-legal reforms to overcome the highly critical attitude to the judiciary overall, judicial protection of the rights and freedoms of the individual and to restore society's trust in the court. Despite a significant number of scientific publications, in which the issues of selection of judicial personnel are directly or indirectly covered, the science of constitutional law has not yet developed a unified approach to solving this problem, resulting in the lack of proper doctrinal grounds by the laws of Ukraine "On the Judiciary and the Status of Judges" and "On the Constitutional Court of Ukraine". Therefore, monitoring the application of these norms in practice is necessary in order to ensure compliance with the constitutional principles of the organization and functioning of the state and the judiciary in particular.*

The purpose of the research is to analyze the approaches developed in the doctrine of constitutional law (taking into account legislative and practical aspects) to an understanding of the criteria for organizing a competitive selection of judges in order to develop a holistic view of the problems of its realization, as well as presenting an author's own vision on this procedure's improvement.

It has been established that the goal of the competitive selection procedure for judges is to find the worthiest candidates for judicial positions, but it needs to be improved. We propose to define specific criteria of professional ethics and integrity of a candidate for a position of judge and to stipulate the advantage of a professional criterion in determin-

ing the winners of such competition. At the same time, the analysis of personal file and the interview with the candidate should come first, later to be followed by a test, which should determine the winners of the competition.

The author concludes that it is necessary to harmonize the provisions of Art. 208^4 of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine" with Art. 12 of the Law of Ukraine "On the Constitutional Court of Ukraine" and determine the principles of conducting the competitive selection of judges of the Constitutional Court of Ukraine, which should prevent abuse and ensure a transparent selection of lawyers with a recognized level of competence and high moral qualities. Such principles should include: ensuring equal access, political impartiality, legality, public trust, non-discrimination, transparency, integrity, effective and fair selection process.

Key words: *judicial reform; competitive selection of judges; competition; candidate for a position of a judge; competition for a position of a judge of the Constitutional Court of Ukraine*

Constitutional-legal and judicial-legal reforms, mass revaluation of values require revision of existing stereotypical views on the process of creation of the image of judicial authorities in general and judges in particular. The issues of forming a positive image of the judiciary are built into the problem of creating an effective judicial system in Ukraine and is of particular importance for ensuring the right to a fair trial. This means that the problems that arise must be solved only in the legal field by a strong independent judiciary that people can trust. Only, in this case, the judiciary becomes a mechanism of a democratic rule of law. The analysis of the norms of the constitutional legislation proves the need not only to consolidate the rules on the competitive principles of the selection of judges but also the peculiarities of their application in practice. Taking into account the above, *the relevance of this article and the prospects for further study* of the topic are seen in its timeliness, since competitive selection was the basis for the formation of the Supreme Court of Ukraine, the judges of the Constitutional Court of Ukraine were appointed by the quotas of the Congress of Judges of Ukraine and the President of Ukraine, while we are getting closer to the competitive selection process to start for the High Anti-corruption Court of Ukraine, the High Court of Intellectual Property as well as for Appellate and Local Courts. In addition, the relevance of the study of the problem of constitutional implementation of the competitive selection of judges is due to Ukraine's aspirations through constitutional-legal and judicial-legal reforms to overcome the highly critical attitude to the judiciary overall, judicial protection of the rights and freedoms of the individual and to restore society's trust in the court. As A. Selivanov rightly put it:

For its part, the state has no other instruments than the judicial system, including the Constitutional Court of Ukraine, in order to ensure, through the right to justice, the trust in people's real assessments of all administrative, social and economic measures with which people perceive as an in-

dicator of welfare and protection their rights[1].

Despite the large number of scientific publications (I. Marochkin, L. Moskvych, A. Selivanov, I. Yurevych), which directly or indirectly cover the mentioned process, the science of constitutional and judicial law has not yet developed a unified approach to solving this problem, resulting in a serious lack of substantial doctrinal grounds by the laws of Ukraine "On the Judiciary and Status of Judges" (hereinafter – the Law on the Judiciary) and "On the Constitutional Court of Ukraine" (hereinafter referred to as the Law). In addition, the procedure for the selection of candidates, initiated by the constitutional reform in the area of justice in 2016, is still new for Ukraine.

Thus, V. Horodovenko in the paper "Problems of the Establishment of an Independent Judicial Power in Ukraine" proposes to amend the legislation with a position that a person who committed misconduct that defames it cannot be recommended as a judge[2]. I. Yurevych investigated the problems of selecting judges in the context of the principle of judicial unity and considered the possibility of creating a single disciplinary body[3]. I. Marochkin had as far back as in 2007 (before the creation of a system for selecting candidates for a position of the judge) noted that "the qualification commission of judges must determine whether the level of proficiency of a candidate in the Ukrainian language is sufficient for the performance of duties of a judge"[4].

This necessitates the study of a competitive selection procedure for judges as an element of the constitutional and legal status of a judge.

Therefore, monitoring the implementation of these norms into practice is necessary in order to ensure compliance with the constitutional principles of the organization and functioning of the state in general and the judiciary in particular.

The purpose of the study is to analyze doctrinal approaches of constitutional law (taking into account legislative and practical aspects) regarding the understanding of the criteria for organizing a competitive selection of judges to provide new ideas for developing a holistic view of the problems of the implementation of the competitive selection of judges, as well as the presentation of their own vision of this procedure's improvement.

Modern Ukrainian society and the Ukrainian state are at the stage of deep concern of the rights and freedoms of man and citizen, and the ideology of human rights determines the revaluation of the activity of all state institutions and the formation of state policy solely on the basis of human-centered approach. Protection of human rights in every European country is an important indicator of its level of integration into the European legal culture. For Ukraine, human

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[1] Selivanov Anatolii, 'Sudova vlada maie pro-ity reformu ponovlennia svoho avtorytetu ta doviry' Holos Ukrainy (Kyiv, 7 Lystopad 2017) (in Ukrainian)..

[2] Horodovenko Viktor, Problemy stanovlennia nezalezhnoi sudovoi vlady v Ukraini: monohrafiia (Feniks 2007) (in Ukrainian).

[3] Yurevych I, Yednist sudovoi vlady (Pravo 2014) (in Ukrainian).

[4] Marochkin I, 'Dobir kandydativ na posady suddiv' (2007) 1 Informatsiinyi visnyk Vyshchoi kvalifikatsiinoi komisii suddiv Ukrainy 19 (in Ukrainian).

rights protection is a leading area of state policy, which consequently has led to the constitutional and legal reform in the area of justice to restore confidence in the judiciary. One of the novelties was the introduction of a public competitive selection procedure for the selection of judges from a list of competent, virtuous and high-moral lawyers. "Status" as a category, while studied quite widely in domestic legal science, still lacks a complete theoretical ground. Frameworks of "status" offered by law theoreticians are mostly associated with issues of human and citizen rights, the provisions of the state authority, officials etc. In general, in the theory of law, status is defined as a legally (normative) fixed position of the subject in society; a set of basic rights, freedoms, and responsibilities belonging to the subject of law, established by the rules of positive law. In the science of constitutional law, the notion of the constitutional and legal status of a particular subject of constitutional law is given through the list of constituent elements of a particular status. So, N. Mishyn and V. Mikhalova suggest, that:

The constitutional status of judges amounts to the requirements regarding business and personal qualities, independence, immutability, integrity, and incompatibility of judges. Appointment to a judge's office must be in line with the requirements of apoliticality so that the procedure for selecting and appointing judges to positions does not give rise to a judge's dependence on the institutions responsible for the selection of judges[1].

[1] Mishyna N ta Mikhalova V red, Konstytutsiine pravo zarubizhnykh krain, t 1: Zahalna chastyna (Seredniak T K 2014) (in Ukrainian).

In the legal practice of some foreign countries (Italy, Poland, etc.) moral or personal qualities of the applicant are also taken into consideration, these are formulated in law and thus gain legal value.

The legal mechanism for selecting candidates for a judge's role is aimed at providing an objective assessment of not only their professional but also personal and moral qualities. V. Horodovenko in his monograph "The Problems of the Establishment of an Independent Judiciary" argues that:

It is necessary to introduce new regulatory requirements aimed at preventing situations when persons with a low level of moral and personal qualities (as well as violators of the standards of judicial ethics) access judicial positions[2].

The introduction of justice-related amendments to the Constitution of Ukraine, the adoption of the Law on the Judiciary and the Law introduced a competitive procedure for selecting candidates for a judge's position in Ukraine. Thus, according to Part 2 of Art. 128 of the Constitution of Ukraine, "appointment to a post of a judge is carried out in competition, except in cases specified by law"[3]. A competition for the vacancy of a judge shall be conducted in accordance with the law and the provisions on conducting the competition. The purpose of the competition is to select persons capable of professionally performing the official duties. In addition, the competition allows an objective assessment of the level of voca-

[2] Horodovenko (n. 2)

[3] Konstytutsiia Ukrainy: Zakon Ukrainy vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy. 1996. №30. St. 141 (in Ukrainian).

tional training of candidates for filling vacancies, creates a competitive environment, as participants compete for vacant positions, as well as stimulate and promote the acquisition of the necessary knowledge. Conduct of the competition is carried out in accordance with the requirements established in the procedure established by law in relevance to the professional competence of a candidate for a vacant position on the basis of evaluation of his personal achievements, knowledge, skills, perks, moral qualities.

In accordance with Part 12 of Art. 79 of the Law on the Judiciary "competition for a judge's position is to determine the participant of the competition, which has a higher position by rating." The criteria for qualification evaluation are competence (professional, personal, social, etc.); professional ethics; virtue. As L. Moskvych notes, "the content of the legal personality of a judge is conditioned by the specific legal status of the carrier of the judiciary and consists in recognizing by the state, by means of legal norms of the compliance of the personality of a judge with the requirements of his professional activity"[1].

Thus, in accordance with international standards in the field of justice and court statutes, in particular, to Art. 10 of the Basic Principles of Independence of the Judiciary, approved by resolutions of the United Nations General Assembly (hereinafter referred to as the UN) 40/32 and 40/146 of October 29 and November 13 1985:

Individuals selected for judicial positions must have high moral qualities and abilities as well as appropriate qualifications in the field of law. <…> When recruiting judges, there should be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinions, national or social origin, property status, etc.; however, the requirement that a candidate for a legal position be a citizen of the country concerned should not be regarded as discriminatory[2].

The Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders recommended the above principles for use within national, regional and interregional activities, taking into account the political, economic, social and cultural conditions and traditions of each country, while the General Assembly has recommended Governments to adhere to them and take into account within the limits of their national legislation and practice[3]. According to the European Charter on the Status of Judges, the rules for the selection and appointment of judges by an independent body or commission require selection on the basis of the ability of candidates to assess freely and impartially the cases that are being referred to them and apply a law in respect for human dignity. A candidate cannot be denied a post on the basis of gender, nationality or social origin, or his philosophical or political views or religious

[1] Moskvych Lidiia, 'Orhanizatsiino-pravovi problemy statusu suddiv' (avtoref dys kand yuryd nauk, Natsionalna yurydychna akademiia Ukrainy imeni Yaroslava Mudroho 2003) (in Ukrainian).

[2] Osnovni pryntsypy nezalezhnosti sudovykh orhaniv, skhvaleni rezoliutsiiamy 40/32 ta 40/146 Heneralnoi Asamblei vid 29 lystopada ta 13 hrudnia 1985 roku. URL: http://zakon1.rada.gov.ua/laws/show/995_201. (accessed: 20.02.2018) (in Ukrainian).

[3] Same.

beliefs.[1] A law should provide for conditions that will be fulfilled by nominating candidates for educational qualifications and the availability of prior experience in appointing those who are capable of performing judicial duties[2]. In this regard, it should be noted that the European Commission for Democracy through Law (Venice Commission) in paragraph 38 of the Opinion on the Law on the Judiciary dated June 30, 2017, reminded Ukraine of its obligations and drew attention to that fact that judges will be judged by criteria of competence, professional ethics or integrity[3]. At the same time, the Joint Opinion of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on the draft amendments to the legal framework in the area of disciplinary liability of judges in the Kyrgyz Republic states that:

The above criteria are too general; thus, they can be difficult to evaluate in practice. For example, the rules of professional ethics, given their nature and traditional wording in general and confusing terms, should not be used directly as a basis for the application of sanctions, and especially when it may lead to dismissal[4].

Certainly, applicants for the positions in higher courts are subject to increased requirements. The requirement for additional legal education in special schools of judges, sometimes in special schools focused on the training of judiciary leaders, magistracy academies, judicial colleges, schools of judges (France, USA, Peru) is quite common. The legislation of most countries puts moral and ethical characteristics in line with the professional qualities of the candidate.

Thus, according to paragraph 4 of the Code of Conduct for US Judges, "the behavior of a judge in everyday life must be higher than any reprimand"[5]. This emphasizes the special significance of the authority of the court for the effective exercise of its function of social control in society.

Mainstream and internet media, assessed the competition for vacancies in the Supreme Court judges, providing focused feedback:

International observers, evaluating the contest to the Supreme Court of Ukraine, expressed the competition with unprecedented openness and pointed out that such transparency in the selection of judges and the public discussion of candidates is unprecedented in the world. According to the coordinator of the EU project "Support of Justice Reform in Ukraine" Dovydas

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[1] Yevropeiska khartiia pro zakon "Pro status suddiv" vid 10 lypnia 1998 r. URL: http://zakon3.rada.gov.ua/laws/show/994_236 (accessed: 20.02.2018) (in Russian).

[2] Same.

[3] Vysnovok Venetsianskoi komisii shchodo Zakonu Ukrainy "Pro sudoustrii ta status suddiv" vid 30 chervnia 2017 r. URL: https://vkksu.gov.ua/userfiles/doc/perelik-dokumentiv/visnovok_osce.pdf (accessed: 20.02.2018) (in Ukrainian).

[4] Joint Opinion of the European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic: Adopted by the Venice Commission at its 99th Plenary Session (Venice, 13–14 June 2014 <http://www.legislationline.org/documents/id/19099> accessed 20 February 2018.

[5] Code of Conduct for United States Judges <http://www.uscourts.gov/sites/default/files/vol02a-ch02_0.pdf> accessed 20 February 2018.

Vitkauskas – in most European and other developed countries, the selection of candidates to the Supreme Court is a purely political process and is based on a rather non-transparent decision-making process at the level of government officials. According to him, often before the final approval, the parliament puts the candidates through an "interrogation with predilection" that is far from the transparency and accountability of the process as provided for in Ukraine[1].

A special role in the competition is played by the Public Council on Integrity, the representatives of which draw conclusions on the eligibility of the candidate for a position of judge for the criteria of integrity and professional ethics by examining the dossiers and declarations of candidates, public registers and other open sources. Of course, not all of them were positive, which sparked litigation. There are already five decisions of the Supreme Court on the dismissal of a claim to the High Qualifications Commission of Judges and the Public Council on Integrity (as a third party) on cancellation of the decision and the obligation to perform certain actions[2]. Thus, the Supreme Court noted in its decision:

<…> the controversial decision was made by the defendant collectively according to the internal convictions of the members of the High Qualifications Commission of Judges in compliance with the competition procedure in accordance with the requirements of the Constitution and laws of Ukraine, Regulations on the procedure and methodology of qualification assessment, indicators of compliance with the criteria of qualification assessment and means of their establishment, approved by the Commission's decision of November 3, 2016 No. 143 / sn-16. Systematic analysis of the above normative legal acts provides grounds for the Supreme Court to conclude that the evaluation of the criteria of professional ethics and integrity lies precisely with the members of the High Qualifications Commission of Judges and is based on the principles of equality and complicity of the decision, while it is legally determined that a candidate will proceed with the competition if such a decision is supported by at least eleven of its members[3].

[1] "Chystylyshche" Verkhovnoho Sudu: shcho vyishlo z pershoho v istorii krainy konkursu suddiv' (Novoe Vremia, 3 Traven 2017)<https://nv.ua/ukr/ukraine/events/chistilishche-verhovnogo-sudu-shcho-vijshlo-z-pershogo-v-istoriji-krajini-konkursu-suddiv-1084418.html> accessed 20 February 2018 (in Ukrainian).

[2] Rishennia Verkhovnoho Sudu vid 1 liutoho 2018 r. № 71982112 u sudovii spravi № 800/328/17. URL: http://reyestr.court.gov.ua/Review/71982112 (accessed: 20.02.2018) (in Ukrainian); 13. Rishennia Verkhovnoho Sudu vid 1 liutoho 2018 r. № 72029066 u sudovii spravi № 800/328/17. URL: http://reyestr.court.gov.ua/Review/72029066 (accessed: 20.02.2018) (in Ukrainian); 15. Ukhvala Verkhovnoho Sudu vid 5 liutoho 2018 r. № 72064913 u sudovii spravi № 800/228/17. URL: http://reyestr.court.gov.ua/Review/72064913 (accessed: 20.02.2018) (in Ukrainian); 16. Ukhvala Verkhovnoho Sudu vid 6 liutoho 2018 r. № 72065272 u sudovii spravi № 800/249/17. URL: http://reyestr.court.gov.ua/Review/72065272 (accessed: 20.02.2018) (in Ukrainian); 17. Rishennia Verkhovnoho Sudu vid 6 liutoho 2018 r. № 72065254 u sudovii spravi № 800/249/17. URL: http://reyestr.court.gov.ua/Review/72065254 (accessed: 20.02.2018) (in Ukrainian).

[3] Rishennia Verkhovnoho Sudu vid 1 liutoho 2018 r. № 72029066 u sudovii spravi № 800/328/17. URL: http://reyestr.court.gov.ua/Review/72029066 (accessed: 20.02.2018) (in Ukrainian) (n. 18).

Thus, for a true competitive selection, it is necessary to introduce specific criteria for determining the professional ethics and integrity of a candidate for a judge. As A. Butyrskyi notes:

The procedure for conducting a competition to the Supreme Court is imperfect and needs to be changed, which should stipulate the advantage of a professional criterion in determining the winners of the competition. At the same time, the research of the dossier and the interview with the candidate should come first and only then the test, which should determine the winners of the competition[1].

The amendments made to the Fundamental Law of Ukraine regarding the functions and powers of the CCU led to the updating of its legal and regulatory framework, in particular, with the adoption of the Law on July 13, 2017[2]. In accordance with parts 3, 4 of Art. 148 of the Constitution of Ukraine:

The selection of candidates for the position of a judge of the Constitutional Court of Ukraine is carried out on a competitive basis in accordance with the procedure established by law. A judge of the Constitutional Court of Ukraine may be a citizen of Ukraine who speaks official language, is at least forty years old on the date of his appointment, has a higher legal education and experience of professional activity in the field of law for at least fifteen years, has high moral qualities and is a lawyer with a recognized level of competence[3].

Article 12 of the Law[4] titled "Competitive principles of selection of candidates for the position of a judge of the Constitutional Court" does not provide for a legal definition of "competition", the principles of its conduct or the procedure for the selection of judges of the CCU.

Thus, the Law defines three competitive procedures for the bodies that appoint the judges of the CCU. The selection of candidates for a post of a judge of the CCU on a competitive basis regarding the persons appointed by the President of Ukraine is carried out by the Competitive Commission, which was formed by the Decree of the President of Ukraine dated October 4, 2017 No. 306/2017[5]. Protocol No. 1 of the Commission meeting dated October 18, 2017, approved the Conditions for conducting the competition for vacant positions of judges of the CCU[6]. Ac-

[1] Butyrskyi A, 'Konkurs do Verkhovnoho Sudu: problemy teorii i praktyky' v Shcherbaniuk O ta inshi (red), Suchasni vyklyky ta aktualni problemy sudovoi reformy v Ukraini: Mizhnarodna naukova konferentsiia (Tekhnodruk 2017) (in Ukrainian) 13.

[2] Pro Konstytutsiinyi Sud Ukrainy: Zakon Ukrainy vid 13 lypnia 2017 r. № 2136 – VIII URL: http://zakon3.rada.gov.ua/laws/show/2136–19/print (accessed: 20.02.2018) (in Ukrainian).

[3] Konstytutsiia Ukrainy: Zakon Ukrainy vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy. 1996. № 30. St. 141 (in Ukrainian).

[4] Pro Konstytutsiinyi Sud Ukrainy (n 20).

[5] Pro konkursnu komisiiu dlia zdiisnennia vidboru kandydatur na posadu suddi Konstytutsiinoho Sudu Ukrainy shchodo osib, yakykh pryznachaie Prezydent Ukrainy: Ukaz Prezydenta Ukrainy vid 4 zhovtnia 2017 r. № 306/2017. URL: http://zakon0.rada.gov.ua/laws/show/306/2017 (accessed: 20.02.2018) (in Ukrainian).

[6] 'Umovy provedennia konkursu na zainiattia vakantnykh posad suddiv Konstytutsiinoho Sudu Ukrainy, zatverdzheni protokolom № 1 zasidannia Komisii vid 18 zhovtnia 2017 roku'.

cording to the clauses 13, 16, 17 of these Conditions:

<…> The Competitive Commission based on the documents submitted checks the compliance of persons who have expressed their intention to apply for the post of judge of the Constitutional Court of Ukraine with the requirements established by the Constitution of Ukraine and the Law of Ukraine "On the Constitutional Court of Ukraine".

<…> The Commission shall appoint an interview date with candidates for the position of a judge of the Constitutional Court of Ukraine and notify candidates thereof.

<…> Based on the assessment of the documents and information provided by the candidates (and personal interviews), the Competitive Commission adopts a recommendation for each candidate for the post of judge of the Constitutional Court of Ukraine[1].

The relevant procedure for the quota candidates of the Congress of Judges of Ukraine is similar, where the organization of its conduct is entrusted to a body of judicial self-government – the Council of Judges of Ukraine, which announces the start of the competition for the selection of candidates for the position of a judge of the CCU, the beginning of the application phase (with the documents attached thereto), publishes list of candidates who announced their intention to apply for the position of a judge of the CCU and conducts interviews with the candidates.

It is certain, that in the course of the formation of the Constitutional Court by the President of Ukraine, the Verkhovna Rada of Ukraine, and the Congress of Judges, the order, the list of documents and the organization of holding the competition must be identical, which is conditioned by equal status of applicants, regulated by the principles of the constitutional and legal status of the person and the norms of the Law of Ukraine "On the Principles of Prevention and Counteraction of Discrimination in Ukraine", the scope of which according to paragraph 2 of Art. 4 of this Law extends to such spheres of public relations as:

social and political activities;

public service and service in local self-government bodies; justice (my italics);

labor relations, including the employer's application of the principle of reasonable adjustment;

healthcare;

education;

social security;

housing relations;

access to goods and services;

other spheres of public relations[2].

At the same time, the legislation of Ukraine should be based on the principle of non-discrimination, which provides, regardless of certain features:

1) ensuring equality of rights and freedoms of individuals and/or groups of persons;

(Prezydent Ukrainy Petro Poroshenko: ofitsiine internet-predstavnytstvo, 18 Zhovten 2017) URL: <http://www.president.gov.ua/news/umovi-provedennya-konkursu-na-zajnyattya-vakantnih-posad-sud-44022> accessed 2 February 2018 (in Ukrainian).

[1] Same.

[2] Pro zasady zapobihannia ta protydii dyskryminatsii v Ukraini: Zakon Ukrainy vid 6 chervnia 2012 r. № 5207-VI. Vidomosti Verkhovnoi Rady Ukrainy. 2013. № 32. Ct. 412 (in Ukrainian).

2) ensuring equality before the law of individuals and/or groups of persons;

3) respect for the dignity of each person;

4) ensuring equal opportunities for individuals and/or groups of persons[1].

Unfortunately, however, the principle of equality of opportunity for candidates in the competition is not reflected in the rules relating to the competitive selection of judges of the CCU. In accordance with Part 4 of Art. 12 of the Law:

<…> The Competitive Commission, the Committee, the Council of Judges of Ukraine within one month from the day the announcement of the beginning of the competition within the framework of the general term of the contest, <…> accepts applications from persons who have expressed their intention to apply for the position of a judge of the Constitutional Court of Ukraine and meet the requirements established by the Constitution of Ukraine[2].

According to paragraphs 2, 3 part 1 of Art. 12 of the Law:

<…> The preparation process on the consideration of candidates for a position of a judge of the Constitutional Court of Ukraine in the Verkhovna Rada of Ukraine is carried out by a committee whose competence includes the legal status of the Constitutional Court of Ukraine in accordance with the procedure established by the Rules of Procedure of the Verkhovna Rada of Ukraine, considering the provisions of this article.

<…> The preparation process on the consideration of candidatures for the position of a judge of the Constitutional Court of Ukraine by the Congress of Judges of Ukraine is carried out by the Council of Judges of Ukraine[3].

At the same time, it should be noted that Clause 9 of Section III "Final Provisions" of the Law supplemented the Art. In 208^4 of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine"[4], procedural norms of which regulate the procedure for holding the contest by the Verkhovna Rada of Ukraine. Thus, according to Part 3 of Art. 208^4 of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine":

No later than three months before the expiration of the term of office or the achievement of the maximum age of being a judge of the Constitutional Court of Ukraine or not later than one month from the date of the vacancy of a judge of the Constitutional Court of Ukraine in the event that the powers of a judge of the Constitutional Court of Ukraine are terminated or one is dismissed from office, the Verkhovna Rada of Ukraine, based on the proposal by the committee, whose competence incorporate legal status of the Constitutional Court of Ukraine, discloses the relevant information on the official website of the Verkhovna Rada and informs deputies' factions (deputy groups) about the start of the collection procedure of proposals by the latter regarding candidates for the position of a judge of the Constitutional Court of Ukraine. A deputy faction (deputy group) can offer one candidate for each vacant post

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[1] Same.

[2] Pro Konstytutsiinyi Sud Ukrainy (n 22).

[3] Same.

[4] Pro Rehlament Verkhovnoi Rady Ukrainy: Zakon Ukrainy vid 10 liutoho 2010 r. № 1861-V. Vidomosti Verkhovnoi Rady Ukrainy. 2010. № 14–15. № 16–17 St.13 (in Ukrainian).

of judge of the Constitutional Court of Ukraine.

The right to submit a proposal regarding a candidate for a position of a judge of the Constitutional Court of Ukraine may also be exercised by a group of non-factional MPs in a quantity not less than the smallest deputy group present[1].

It should be noted that the phrasing "may propose" does not mean "only to propose", as the procedural norm of the Rules of Procedure of the Verkhovna Rada of Ukraine restricts the constitutional right of a person defined by the Constitution and the law, and also violates Art. 22 of the Constitution of Ukraine, according to part 1 of which "constitutional rights and freedoms are guaranteed and can not be abolished"[2]. And in paragraph 2 of this article it is provided that "when adopting new laws or amending the existing laws, the content and scope of existing rights and freedoms shall not be narrowed"[3]. In this case, the procedural norm of the Rules of Procedure of the Verkhovna Rada of Ukraine is clearly discriminatory, it restricts the constitutional right of an individual to take part in the contest, granting this right exclusively to parliamentary factions (groups), it violates the principle of equality and establishes additional requirements to the applicant than those specified by the Law.

Thus, according to the Law,[4] an application of a person who has declared his intention to apply for a judge of the CCU is accompanied by a list of documents stipulated by the Law, in which, among the demands put forward, there is a written consent to conduct a special examination and other documents provided for in the Law of Ukraine "On Prevention of Corruption". Moreover, in the list of the documents attached to the application, the Law does not specify for extracts from the minutes of the meeting of the parliamentary faction (group). The requirements for candidates are specified in Part 4 of Art. 148 of the Constitution of Ukraine and art. 11 of the Law. Therefore, the submission of proposals by parliamentary factions (groups) is not a prerequisite and directly contradicts the requirements to the seekers of a position of a judge of the Constitutional Court determined by the norms of the Constitution of Ukraine and the Law.

Taking into account the above, although the Constitution of Ukraine and the Law defines a competitive procedure for selecting candidates for the position of a judge of the CCU, at the same time, attention is drawn to the inconsistency of the legislator in ensuring equal opportunities for the competitive selection by authorized institutions.

It should also be noted that the criteria for determining the high moral qualities of the candidate and the high level of competence of the lawyer in the contest process remain uncertain. In this regard, one should point out the position of National Legal Advisor, Head of the Rule of Law Department of the OSCE Project Co-ordinator in Ukraine O. Vodiannikov, who proposes to introduce such measures in order to comply with the constitutional requirements for identifying high moral qualities and a recognized level of competence:

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[1] Pro Rehlament Verkhovnoi Rady Ukrainy (n 31).

[2] Konstituciia Ukrainy (n 7).

[3] Same.

[4] Pro Konstuciinyi Sud Ukrainy (n 21).

First, when assessing candidates for the position of a judge of the Constitutional Court of Ukraine, a Competitive Commission / Council of Judges / Parliamentary Committee should proceed, in particular, from the following: (1) the need to ensure public trust and confidence in the compliance of candidates for the post of judge of the Constitutional Court of Ukraine in case of appointing high standards of constitutional justice; (2) the conviction that public trust and confidence can only be ensured if judges and candidates for a judicial position adhere to high ethical standards of conduct in their professional, public and private life; (3) the necessity of ensuring substantive and procedural justice in the evaluation of candidates for the post of judge of the Constitutional Court of Ukraine.

<…> To determine the degree of compliance of the candidate with the criteria of high moral qualities and the recognized level of competence, the Competitive Commission / Council of Judges / Parliamentary Committee:

should examine (if any) the candidate's publications, his expert opinions, analytical materials, public speeches, articles, interviews, his court decisions (if the candidate was or is a judge), etc.;

could question other representatives of the legal profession (confidentially) (judges, lawyers, scholars, etc.) who had or have a professional relationship with the candidate, journalists in order to obtain their assessment of the candidate's legal competence, his integrity, suitability to exercise the powers of the judge of the Constitutional Court of Ukraine;

would have to investigate publicly available information about the candidate in the media.

After this, an interview with a candidate for a judge's position should be held, giving him the opportunity to comment on any negative information about him, which became known to the Commission (or other qualified institution)[1].

Thus, the appointment by the contest of judges gives an opportunity to objectively assess the level of vocational training of candidates for filling vacancies, creates a competitive environment, as participants compete for a vacancy, as well as stimulate, promote the acquisition of the necessary knowledge.

Conclusions. The analysis of the approaches to understanding, criteria, and organization of the competitive selection of judges formed in the doctrine of constitutional law (taking into account legislative and practical aspects) leads to the conclusion that the aim of the competitive procedure for the selection of judges is to find the worthiest candidates for judicial positions, yet it needs to be improved. An analysis of the organization of the competitive selection of judges gave grounds for developing a holistic view of the problems of implementing the competitive selection of judges, as well as setting out our own vision for improving the specified procedure. It is established that if the right to participate in the competition is fixed by the legislator, the state is obliged to provide guarantees of its fair realization with a system of special anti-corruption

[1] Vodiannikov Oleksandr, 'Konkurs do Konstytutsiinoho Sudu vid suddivskoi vlady: rivniannia z shistma nevidomymy' (LB.ua, 13 Lystopad 2017) <https://ukr.lb.ua/blog/oleksandr_vodennikov/381760_konkurs_konstitutsiynogo_sudu_vid.html> accessed 20 February 2018 (in Ukrainian).

and anti-patronage measures against abuses. At the same time, the competitive procedure for the appointment of judges should not be a measure that can be easily manipulated, but an unchanging and specially protected by the society guarantee of the selection of professionals. In our opinion, it is necessary to introduce specific criteria for determining the professional ethics and integrity of a candidate for a judge and to amend the Law "On the Judiciary", which should stipulate the advantage of a professional criterion in determining the winners of the competition. At the same time, the research of the dossier and the interview with the candidate should begin first, and only then be followed by a test, which should determine the winners of the competition.

In addition, we suggest harmonizing the provisions of Art. 208^4 of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine" with Art. 12 of the Law. In addition, it is expedient to define the principles of conducting competitive selection in the Law, which should prevent abuse and ensure a transparent selection of lawyers with a recognized level of competence and high moral qualities. Such principles should include: ensuring equal access, political impartiality, legality, public trust, non-discrimination, transparency, integrity, effective and fair selection process.

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UNITY OF PROCEDURE PRINCIPLES IN ADMINISTRATIVE AND TAX LAW

1. An analysis of constitutional prescriptions, in particular, Article 19 of the Basic Law of Ukraine, suggests that, first of all, the rules on powers of subjects of authority and the rules for the exercise of these powers should be represented in the national administrative law. Actually, these norms form the foundation of administrative law.

The relevant rules can be united into institutions, the names of which are the institution of powers of the subjects of public administration and the institution of administrative procedure.

The rules on powers play an important role in the settlement of relations, where one of the parties is the subject of authority. Without diminishing the role of the rules on authorities, it is noted that the rules on their implementation are extremely important. After all, the starting point for the emergence of relations between an individual and a subject of public administration is the application of the rules of the administrative procedure in particular. Indeed, such a relationship would not be possible without the rules of powers. However, the existence of the powers outside the legal regulation, without rules on the procedure for their implementation is impossible, violating constitutional requirements.

2. The set of rules that determine the procedure for the implementation of powers by the subjects of public administration (describe the administrative procedure) is undoubtedly the main, decisive institution of administrative law.

In exactly the same way, it is possible to determine the place of the rules on the implementation of powers by a subject of authority in the system of tax law, for example.

3. Understanding the significance of procedural rules in settling relations that form the subject of both administrative law and the tax law mentioned above, leads to the conclusion that the question of the essence of the principles, taken as a basis by the law-maker in their (rules) formulating, is primary for both the researcher and the law enforcer.

I will dwell on the applied aspect of the principles of procedure, and therefore, on the question of how interesting the principles are to the law enforcer, how important the understanding of their essence is, by those who, in the course of their activities, directly turn to the law in order to implement its rules.

4. It can be stated that understanding of the essence of the principles is based on the level of legal culture, on the professionalism of the law enforcer.

However, for the formation of a proper level of a legal culture, it is important how clear the law to the law enforcer is, how accurately the law describes the pattern of one's behavior. In other words, if we are talking about the need to enshrine rules on principles for the purposes of their practical application, such rules will affect the level of legal culture of the law enforcer, and therefore will be "viable", provided they are represented accurately and are fairly simple at the same time.

There is another important warning. I believe that if the legislator decided to create norms on principles, then the goals of their creation should be obvious.

5. In Ukraine, there exists only a draft Law on Administrative Procedure. Work on the project continues.

The text of the draft allows us to draw some conclusions about what the objectives of the formation of norms about the principles in this Law are, what these principles are, what their content is.

To begin with, I note that the project deals with the principles of the procedure in particular. This emphasis is important because, for example, in the Tax Code of Ukraine, the legislator outlines the basics (principles) of tax legislation.

Thus, in the draft Law, the authors reflect the principles of activity of the subject of public administration; their efforts are aimed at specifying at the very beginning of a regulatory legal act, its ideas form the basis of all the rules that describe the order in which a subject performs certain actions. This is probably one of the goals of the formation of norms on the principles in this Law.

I can also assume that the authors of the project, focusing on national procedural laws, also reflected the principles so that the subject of public administration, not finding the answer in a specific norm, resolves the individual case, relying on the principles of one's activities. Although this is just my guess, which can be subjected to strong criticism. After all, now I am talking about the fact that the project contains the possibility of the existence of discretion unlimited by law, which is too dangerous in the case when it comes to the activities of a subject of public administration.

Regarding the latter assumption, I would also like to recall the rule of the Latvian Administrative Procedure Law, which states that the general principles of law, including the principles of the administrative procedure, are to be applied by a subject of authority if the relevant issue is not settled by an external regulatory act, as well as for the interpretation of regulatory acts (Part 4 of Article 15 of the Law). However, the recipients of the Latvian procedural law are both public administration authorities and judicial bodies, which allowed to place such a rule in its general provisions. The court, which, as known, is free in questions of filling gaps in regulating contentious relations, and in questions of interpreting the norms of law, will rather apply this rule.

6. Returning to the Tax Code of Ukraine, I note that this codified law contains not only the rules on the procedure for the commissions of actions by participants in tax legal relations. Other rules are concentrated in it; non-procedural rules, which can be conventionally called "material". This, in my opinion, can be explained by the fact that the

legislator at the beginning of the Code did not define the principles of activity of the representatives of the fiscal service, but the principles of legislation, which indicated the powers of these subjects of authority, and the order of realization of these powers. In other words, the legislator informed about the ideas that one was driven by and which should be addressed by other entities authorized to establish subordinate rules in the field of taxation.

7. Another important observation. The draft Law on Administrative Procedure defines the subject of regulation and its scope. Among the relations that are not covered by this Law, the relations regulated by tax legislation, for example, are not indicated. This approach of the project authors allows to conclude that the general rules of procedure, and therefore its principles, will be applicable to the procedure for exercising powers by the tax authorities.

8. The range of principles proposed by the authors of the draft is wide. There are 16 of them; some of them, it seems to me, are extremely common. Thus, the authors of the project propose that the subject of public administration should rely in person's activities on the principles of the rule of law, legality, equality of participants before the law or, for example, on the principle of guaranteeing effective legal remedies.

Without addressing the discussion of what the rule of law is, a specific principle or doctrinal idea, filled with specific principles, we ask ourselves whether it is reasonable or even just rational to provide a general legal and multifaceted category with the general list of principles, as well as with the requirements that are traditionally perceived as mandatory elements of the rule of law itself. Is it enough for the addressees of this act to understand the essence of the rule of law to write about it as a principle of the procedure and at the same time suggest the public administration subjects to perceive the rule of law taking into account the practice of national courts and the practice of the European Court of Human Rights?

I believe that such regulations are completely declarative and have no prospects of being applied.

The rules of the procedure principles, as well as all other rules aimed at regulating the activities of subjects of authority, I think, should be distinguished by extreme clarity and specificity. And here again the experience of Latvia is interesting, the Administrative Procedural Law of which contains a list of very specific principles of the administrative process with disclosing the essence of each of them in subsequent articles. Either the experience of Germany is interesting, the Administrative Procedure Law of which does not contain the norms on principles we are familiar with. At the same time, all its other norms are imbued with ideas, the practical implementation of which seems to guarantee respect for human rights, while preventing arbitrariness on the part of the authorities.

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CIVIL–LEGAL SCIENCES

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ENSURING HIGH-QUALITY PRACTICAL TRAINING OF LAW STUDENTS AS AN INTEGRAL PART OF THE REFORM OF LEGAL EDUCATION

Annotation. *The article analyzes the methods of acquiring practical skills by law students, focuses on the need to introduce interactive techniques, acquiring the technique of legal reasoning and legal language by the students.*

The author turns to historical and foreign experiences, reveals the "bottlenecks" of practical training of law students, justifies the advisability of wider introduction of student legal clinics.

Key words: *reforming of legal education, practical training of students, technique of legal reasoning, student legal clinic.*

Problems of reforming the system of higher education in general and higher legal education, in particular, today should be considered as the most important state priorities, because the future of our social development depends directly on their timely and effective solution. Analyzing both the state of modern education and the problems of its organization in the state, there is no escaping the fact that all the challenges of the legal educational process reflect the general political, economic and social problems of the development of Ukrainian society.

The definition of the "position of community request" for the legal profession is important in the context of these problems, because in order to be effective in solving a particular task, one must clearly understand what the end result is expected when setting such a task. Already at this stage the first problems appear: should the legal education be universal or specialized?

Traditionally, in the Soviet era, all the law schools were oriented towards the preparation of a "universal" lawyer who could work without additional training in the court, the prosecutor's office, conduct investigative actions in

the internal affairs bodies, be a lawyer, a notary, a legal adviser, solve legal issues in the local self-governing authorities or other government agencies. Such an approach was formalized both in the name of the speciality – "jurisprudence science" and in the definition of qualifications – "lawyer". However, a higher level of specialized training was provided in law institutes, as well as in educational institutions that were the part of the Ministry of Internal Affairs, where since the first year of study the main areas of specialization which corresponded to the profile of the faculty were identified for the students: judicial and prosecutorial, investigation officer, legal work in the national economy. As a side note, the limited number of law schools, the special requirements for the state distribution of graduates determined among other things the general approaches to the organization of educational process in educational institutions.

After all, despite all the changes that have taken place and continue in the field of legal education, one cannot reject a significant positive of a universal character of training of legal personnel. Although today the legal profession "sprouted" into all layers of public life, and this to a certain extent determines the peculiarities of the implementation of professional knowledge in each field, of course, in general, legal training should be based on a rather solid, unified foundation of basic legal knowledge and practical skills that is equally necessary for every lawyer: a judge, a lawyer, a prosecutor, an investigation officer, a notary, etc.

What should be a modern graduate of a law school? Using the competency-based approach, the developers of the so named standard of higher legal education emphasize that in addition to knowledge in the field of theory, history, philosophy of law, the main branches of law, he must be skilled in the implementation and application of the rules of law (material and procedural), he should have the ability to apply knowledge in practice in modeling of legal situations, ability to determine the appropriate and acceptable facts for legal analysis, as well as analyze legal problems and form legal positions, apply legal reasoning, identify problems of legal regulation and offer their solutions, including overcoming legal uncertainty.

In addition, in the course of education, the lawyer should acquire the skills of logical, critical and systematic analysis of documents, understanding of their legal nature and significance, counselling skills on legal issues, in particular, possible ways of protecting the rights and interests of clients, in accordance with the requirements of professional ethics, due observance of norms for non-disclosure of personal data and confidential information, skills of self-preparation of drafts of acts of law enforcement. The graduate should have the ability of critical and systematic analysis of legal phenomena and application of acquired knowledge in professional activities.

This list of professional competencies from the perspective of contemporary challenges to the legal profession can of course be expanded and detailed, but without any doubt – it is oriented towards the formation of a whole set of practical skills that law school student needs in his professional activities in

the process of learning. Application of the competency-based approach implies that the learning process should be largely redirected to the formation of particularly practical skills.

The need to include elements of the contents in the teaching programmes the assimilation of which involves the student’s educational activity, which stimulates the development of thinking, the cognitive sphere of the student, his active life position is rightly emphasized in the special literature. The purpose of training should be, in particular, formation of the ability to apply acquired knowledge in new situations related to professional activity, to formulate evaluative judgments, which reveal a personal attitude and a creative approach to the solution of educational and operations assignments [1].

Critically assessing the certain aspects of the educational process in law schools, it is rightly noted that universities need to limit the methodology of "article-by-article reproduction of regulatory acts as being one which has a negative impact on the acquisition of legal analytical skills by students." Instead, it is proposed to implement network education technologies and elements of education for adults through setting training goals, work in small groups using case studies, discussing practical aspects of the use of knowledge acquired during learning. It is also emphasized on the importance of practical training of the student, and therefore it is recommended to introduce the practical tasks to the full directly during the educational process and outside of practice [2].

It is reasonably noted that law graduates are to some extent overburdened with normative and theoretical knowledge. The ratio of the specific gravity of the cycle of humanities and socio-economic disciplines (history of Ukraine, economic theory, foreign language, religion, etc.) compared to the other two cycles – fundamental and professionally oriented disciplines (state and law theory, major branches of law) and elective courses need to be adjusted. The graduates’ ability to solve some legal problems, cases, find alternatives, work in a team and manage the team, demonstrate knowledge of applied legal computer programs, the sufficiency of legal work techniques, the comprehensiveness of legal knowledge, the sufficiency of the technique of legal reasoning, knowledge of Ukrainian business language, foreign languages, microeconomics are not at the high level [3].

Analyzing the historical development of legal education, it can be noted that the need for practical training of the law student was at all times considered as the important component of the educational process.

Even in the pre-October times, in the process of discussing the directions of reforming the university education of pre-revolutionary Russia, it was strongly advisable to introduce special classes (along with traditional lectures) in which students studied the real needs of the legal profession. Thus, Professor of the Imperial Novorossiysk University P. E. Kazansky in the article "The issue of teaching of law in the Russian press in 1901", summarizing the discussion on the reformation of law education at universities, quotes prof. Borodin: "Methods of university teaching are experiencing, to some extent, a transitional period. With the development

of scientific and especially educational literature, **reading lectures** as an overriding method of teaching becomes increasingly **anachronistic**. Lectures cease to be the main basis of the university's educational activities, its center is moved to **practical classes** with students – "**seminars**", works in laboratories, classrooms, etc. At the same time, the student leaves the position of the passive listener of professorial lectures, and is accustomed to work more or less independently and, in parallel with the study of various scientific disciplines, he learns practical methods and techniques of research. **The book often succesfullyreplaces the professorial reading**, and the professor himself becomes a close **supervisor of students in their classes**. There is no doubt that this change in the teaching system, while still not sufficiently explored, has its future"[4].

One of the prominent domestic legal scholars of the Soviet period, prof. G. K. Matveev, while not denying the importance of lectures in the educational process (but underlining that the lecture should be meaningful and bring to the students "living word" of the professor!), noted that it was necessary to radically change the methodology of conducting practical classes, make them interesting and useful for students. Criticizing the primitive questioning of the students in practical classes, duplication of the material of lectures, G. K. Matveev called such a method not only ineffective, but also harmful. He noted: "Of considerable interest is the experience of those teachers who reject such a "school" methodology and hold seminars on the other – on creative grounds, and even try to avoid the very name of the "seminar"- they replace it with the term "practicum" and its main function is connected with the setting and checking of fulfilment of various home instructions or tasks: to read the article, the book or part of it, to write a report or an essay on the topic of classes, to review a specific document, to make a diagram or scheme, to draw up a table, to decide the task (case) from judicial, investigative, arbitration or administrative practice, etc." Even in those early eighties of the last century, an outstanding teacher, stating the lack of proper domestic methodological works, wrote: "The valuable experience in this area has been accumulated, in particular, in British and American educational institutions. There are rather comprehensive study guides that facilitate workshops. One example is the exercise manual of D. I. Harris "Cases and Materials of International Law. "This volume of 950 pages of condensed font includes not only the cases but also the normative and factual materials by which the student can solve them."[5].

The above shows that the need for acquiring practical skills by law students was not properly resolved neither in 19th, nor in the 20th century. It remains relevant today, and not only for national legal education. It is also taken care of by our foreign colleagues: both European and American. Therefore, we can (and, of course, must) take advantage of this experience – foreign and historical.

It is clear that the basis of the solution of this important task should be modern facilities – innovative methods and technologies, modern interactive approaches and utilities.

But there are things that lie purely in the organizational and methodological framework. First and foremost, what format should have a practical session, what tasks and additional materials should be provided for the independent work of students, which in the general amount of study time occupies almost the most important place? Therefore, it should also be the new approach to the establishment of the forms of control – both the current and the final (test-exam).

The profession of lawyer has its peculiarities – it belongs to the so-called "regulated", consequently, there are special rules of admission to the profession.

Typically, in many countries, it is anticipated that you must take a special qualification exam after graduation. The format, organization and procedure for taking such an exam have its own peculiarities in different countries: for example, in the USA, its organization is assigned to the American Bar Association (ABA), in Germany – to the Federal Ministry of Justice, in the UK – to the Joint Academic State Board, in France – to Centers for Advocacy Training, etc. [6].

Common to all these possible variants is that this exam is taken after completion of studies before an independent examination board and, usually, in writing.

Thus, a graduate who wants to be admitted to professional legal activity as a judge, attorney, prosecutor, is motivated to acquire both theoretical knowledge and practical skills, first of all, because of the necessity to take a qualification exam.

In light of this, educational institutions put the practical training of law students almost in the first place, and the focus and forms of this training depend entirely on the format of the future qualification exam.

Thus, in Germany, the second qualification examination, which is taken in the Ministry of Justice of Germany after the completion of studies and after the successful first examination in the Supreme Court of the respective land, as well as after a long internship, requires a written solution of cases of private and public law.

The written assignment given by a candidate is set out in the form of a court decision, in general 5 hours is given for each assignment. As a whole, 6 cases are being solved for two weeks. The works are checked by independent experts anonymously for 3–4 months.

Such approach requires the candidate not only to know the law, but much more important and more difficult – the use of legal reasoning. For examiners, it is important not only and not so much the correctness of the decision as its reasoning. On this basis, the entire educational process is aimed at the formation of students' solid skills in this technique – the technique of legal reasoning.

The competitive selection of the first 120 judges of the new Supreme Court has recently been completed in Ukraine. It was a long and sometimes dramatic marathon.

The candidates for the highest judicial authority of the state among other tasks also were instructed to draw up a court judgment from the materials of the cassation case within 5 hours. Leaving aside some legal and technical shortcomings of the organization of this process, in general, the results were rather disappointing.

For us, lecturers of law schools, as well as for teachers of the National School of Judges and Judiciary Chiefs – this is a serious challenge!

On the one hand, the judiciary should work out common standards for a court judgement (of course, taking into account the particularities of each jurisdiction and the relevant instance), on the other hand, general and special law schools should develop a methodology for appropriate skills development and ability **to write** such court judgments by students.

It can be seen that that today in our "professional legal arsenal" there are no neither standards for such judicial acts (decisions, sentences, rulings), nor the appropriate training methodology for their preparation and writing.

There is another important conclusion. Often, when holding practical classes in sectoral training courses, the requirement of writing tasks is ignored, as well as in the future – their regular examination by the teacher. Such a "simplified" approach to the organization and holding of practical classes has the logical effect of the students' lack of skills of legal reasoning, as well as the basic skills of legal writing.

Thus, the important task of leading law schools in Ukraine is to form the main methodical approaches to the formation of skills of legal reasoning, as well as the appropriate algorithm for solving educational cases from various branch legal disciplines. Obviously, it is advisable to hold a series of conferences devoted to discussing the main methodological issues of both general character and on the specific branch directions.

We consider that an effective form of practical training of law students may also be practical classes with the use of methods of simulating the consideration of a dispute with the distribution of roles among its participants (complainant, defendant, third parties, judge, etc.). Of course, such form of organization of the workshop is associated with significant training, as well as with the need to provide students with relevant materials. At the same time, the use of modern communication tools (in electronic form) can solve many technical problems.

A special place in the system of practical training of students is taken by legal clinics. We take the courage to assert that today, in law schools, they are, unfortunately, a singular phenomenon. Even where they are created and functioning, their effectiveness is low, and in general they are not an influential factor in the process of practical training of law students.

Analyzing this situation, one can identify the main reasons for such a poor performance of legal clinics. First of all, it is because of the lack of a direct link of their functioning with the educational process.

Legal clinics have no place in the curriculum of the university – hence the work of both the leaders of the clinics (teachers) and the students are not taken into account in the educational process. Kind of a "voluntary work".

Instead, in recent years, the most well-known American law schools had placed the legal student clinics as the main form of practical training for senior students. Moreover, there is a fairly branchy system of legal clinics, which are created on a subject basis, deal with a specific range of cases, have a leader (or "full-time" professor or a trained professor-practitioner), 8–10 students

managing specific cases (including judicial ones) under the supervision of a teacher. Customers of legal services of student clinics are poor citizens who need legal assistance but cannot afford to hire a professional attorney.

The important aspect of the functioning of student legal clinics, apart from their direct connection with the educational process, is their funding both by the universities themselves and by numerous funds.

Despite the enormous complications of introduction of legal student clinics into Ukrainian legal education, one cannot completely reject such a rather effective form of practical training for law students.

The students, experiencing the need for such a practice, seek employment in law firms, commercial and manufacturing companies, provide individual counseling – these processes are not controlled by universities, do not coincide with the schedule of classes, are carried out spontaneously, and, hence, it is virtually impossible to measure their effectiveness.

The problem of practical training of students is being significantly updated at the stage of formation and discussion of the concept of reforming legal education in Ukraine.

The real forms of practical training of the student for the future profession should take the place of the archaic construction of practical classes, theorized seminars, formal practical placement and pre-diploma practice (which is carried out mostly on paper). And this is not just about legal universities and the Ministry of Science and Education. The Ministry of Justice, the General Prosecutor's Office, the National Bar Association, the Ukrainian Bar Association, leading legal and law firms, i.e. the entire Ukrainian legal community, should take an active role in this process. We all are interested in the fact that after graduation, a young lawyer would not hear: "Forget everything you had been taught at the university …".

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REGULATION OF NON-PROPERTY RELATIONS IN THE CIVIL CODE OF UKRAINE: EXPERIENCE AND PERSPECTIVES

Among the undisputed positive achievements of the Civil Code of Ukraine, it is still so significant achievement which can be put, if not the first, but in one of the first places. This achievement is the regulation of a complex of non-property relations in the Civil Code of Ukraine, which is an outstanding result of Ukraine's acquisition of independence and the victory of democratic principles in the building of the whole system of civil legislation.

Part 1 of Article 1 of the Civil Code of Ukraine is not accidentally formulated in the following way: "Civil legislation regulates personal non-property and property relations (civil relations), based on legal equality, free expression of will, property independence of their participants" ". During the preparation of the current Civil Code of Ukraine, the developers discussed the place and significance of legal norms governing the sphere of personal non-property relations in this most important act of civil legislation.

The discussion ended with the adoption of a position that, since then, the scientists – civilians have not been questioned. The first according to its significance is personal non-property relations, which should be put in a prominent place, since without the enshrining of the most important rights for a person and a citizen, one can not speak about all the other – also important rights such as ownership or obligatory right, the inheritance right, etc. Life, honor, dignity, business reputation, the results of creativity, information – all these are the most important components that form the personality of human and give impetus and conditions for the acquisition of other benefits.

Proceeding from this principled and faithful in the content, decision, the Civil Code of Ukraine is constructed in such a way in order to cover by its regulatory influence all the currently known non-property relations, to provide effective guarantees for the realization of all non-property rights without exception and to provide them with effective means of civil protection.

Moreover, much has been done today by private law science to take into account also non-property interests, and not only human rights, to continue the study of the principles on the basis of which these relations should develop,

and even delicately, but consistently explore the moral and religious principles developed by society to formulate correctly both the basic principles and directions of improvement of the civil law. This, for example, is absolutely necessary, taking into account such which are vulnerable to gross interference, which are formed in the spheres of reproductive technologies, improvement of human natural adilities, euthanasia, personal data and many others. The same processes can be observed today in the development of the legislation and the law of European countries, exemplified by the current codification of civil law by the Quebec Civil Code[1] and a number of others. Morality in law should not be a theoretical construct, the norm of everyday life of a lawyer, when every right or interest, even neither named and nor enshrined in law, which a person considers to be violated, it could protect, including – on the international level.

If we approach the problem in a complex, from the positions of private law, then it should be noted that there are at least three institutions that regulate personal non-property relations in civil law and civil legislation, and taking into account their development level and completeness of coverage, even sub-spheres: personal non-property rights of individuals; intellectual property rights; information rights.

All three institutes in their totality now cover the majority of the sphere of non-property relations – the most complete in content and harmoniously in form.

[1] Гражданский кодекс Квебека. – М.: СТАТУТ, 1999. – 472с. – (Современное зарубежное и международное частное право).

We can only note the brilliant insight of the developers of the Civil Code of Ukraine that foresaw and managed with regulation of relations in the areas of the most rapid development and general interest: human rights, their creative intellectual and informational activity in the XXI century.

Moreover, by enshrining the information as a separate object of civil rights, and the right to information as a personal non-property right, by regulating informational relations in the sphere of property rights, obligitary law, intellectual property rights, corporate rights, inheritance and family private international law in more or to a lesser extent, civilians managed with uniting into a single system certain norms and giving them modern definition and prospects for development taking into account the current state of all multi-disciplinary science.

It is still the information, information relations, information rights which play today the most important role in the development of civil law. On the other hand, it is still the development of these issues in civil law, in private law which allowed to provide legal content to the processes which are taking place today in networks – above all, contractual relations in the spheres of receiving, transmitting, storing, providing various kinds of information, market trading relationships, in particular e-commerce, the provision of information services, etc.

It is possible to predict that the institute of information rights in the near future will be no less developed in civil law than all other institutions, since its development is almost as fast as the development of information technology

and information transfering systems. In this aspect, domestic civilians have gained an extensive experience and continue as doctrinal studies, as well as the implementation of these achievements in practice.

It should be recalled that Ukrainian scientists at one time were among the first in the world in the process of forming cybernetics as a science, and only the political and administrative system did not allow them at their time to make the country one of the leaders of information development. The impertinent and now funny definition of cybernetics by the dictionaries of the 50s of the last century is the evidence of it: "Cybernetics – reactionary pseudoscience, which arose in the United States after the Second World War and was widespread in other capitalist countries …".[1]

We believe that it is still these reasons which can interfere the development of information relations within civil law, the neglect of common sense and shortsightedness, since whether the information in the Civil Code of Ukraine will be as a separate object of civil law, but in the field of personal non-property rights – the right to information in the field of intellectual property rights – an understanding of the informational nature of virtually all objects of creativity – depends on the progressive, humane, intellectually grounded and harmonious way of developing modern information society.

Let's add only that today interdisciplinary developments of the problems of information law have led to the appearence and development in Ukraine of Information Law, which is understood as a separate sphere of law, and the complexity of legislation in the field of Intellectual property rights resulted attempts of blurring a civil law interpretation of its legal nature. It should, however, be kept in mind that even the appearance of new scientific specialties "Information Law" and "Intellectual Property" can not interfere the sectoral developments of issues of information regal relations or intellectual property rights in civil, criminal, land, ecological, family, procedure, even existing economic law in the country, etc. Moreover, and this should be emphasized especially – both the information legal relationship and the legal relationship in the field of intellectual property rights, personal non-property rights have a civil-law nature that has long been debated, but confirmed by scientific research and life. That means that the most effective realization and the protection of the rights of participants in these relations is possible only through civil law methods. All of the above considerations allowed us to define the "Information Law" as a generalized conventional name of a wide amount of legal acts and norms intended to the regulation of relations in the information sphere, which is used by a number of authors who support the understanding of information law as a branch of law in special literary sources. The definition of information law includes the norms of various branches of law: civil, administrative, financial, etc.[2]

[1] Краткий философский словарь /Под редакцией М. Розенталя и П. Юдина, Издание четвертое, дополненное и исправленное. – Государственное издательство политической литературы. – 1954. – С.236.

[2] Енциклопедія цивільного права України /Ін-т держави і права ім..В. М. Корецького

Detalizing more the doctrine of personal non-property rights of an individual, and in reality – of entities, I would like to note that we have carried out an deep study of this topic in the process of work on the formation of the third volume of five-volume academic edition "The Legal System of Ukraine: History, Status and perspectives “ (subsection 2.2" Regulation of personal non-property rights in the civil law of Ukraine “).[1] The conclusions which were made from the results of this study can be generalized.

If we turn to our domestic civil history, the first attempts of regulation of personal non-property relations were made in the 1960’s and consisted essentially of protecting honor, dignity and business reputation. The so-called positive regulation of these relations was either not carried out at all, or was carried beyond the bounds of a civilian legal material, although according to its content it should be connected with civil law.

The desire to create a democratic society, the need for comprehensive protection of human rights and freedoms, was expressed in 1990 in the Declaration on the State Sovereignty of Ukraine. In turn, the 90s of the twentieth century turned out to be an extremely favorable period for Ukrainian civil law, for sublime, romantic legal perception and law-making. This is confirmed by the development by the leading Ukrainian scientists of the new Civil Code of Ukraine, and the the Second Book, dedicated to the personal non-property rights of the individual – as the victory of centuries-old aspirations of mankind to realize the concepts of morality, justice, and the ideas of intrinsic value of each individual.

The institute of human rights and freedoms takes a central place in the 1996 Constitution of Ukraine, in which a significant number of articles (about 30%) is Section II "Rights, Freedoms and Responsibilities of a Person and a Citizen." This has accelerated the development in the sphere of civil-law regulation of personal non-property relations.

The Constitution has changed the very understanding of human rights from those which are received by it from the state to the concept of human rights, which are connected with the very fact of its existence, that is, they relate to its main properties, without which it can not be a "member of a public union". In conditions of the absence of rights, the very nature of the human is being destroyed. Thus, a human becomes today as an equal and free partner of the state, and the latter has not only human rights but also responsibilities.

The vast majority of people nowadays consider their spiritual self as the greatest value, directing their efforts to self-improvement of their personality through spiritual growth. Intangible, non-property weighs for a person no less, and sometimes even much more than material. Thus, the evaluetion of a person as a person, a sense of freedom, self-esteem – is something for which one lives, improves his or her fi-

НАН України; відп. ред.. Ґ. М. Шевченко. – К.: Ін Юре, 2009. – 952с. – С.412.

[1] Правова система України: історія, стан та перспективи: у 5 т. – Х.: Право, 2008. – Т.3: Цивільно – правові науки. Приватне право / за заг. ред.. Н. С. Кузнєцової. – 640с. – С. 183–208.

nancial position, works and communicates. Feeling being a person, a human wants to preserve his uniqueness, demonstrate it to others, be confident in the assessment and respect for himself.

In Ukraine, for the first time at the level of the Civil Code, personal non-property rights of individuals were fixed, their content, guarantees and methods of protection were determined, which became a significant contribution to the process of improving the current civil law, bringing it in line with international standards.

In legal literature, different opinions were expressed about the possibility and necessity of the inclusion of personal non-property relations into the subject of civil law. In the theory of law, there were at least two points of view on the subject of civil law regulation of relations related to intangible assests and connected with them personal non-property rights. The first position is that civil law does not regulate, but only protects personal non-property rights. The other is that legal regulation and protection of rights can not be opposed, since regulation means the protection of rights, and their protection is carried out by regulating the relevant relations. The idea that civil law regulates and protects intangible assesed is taken a root in Ukraine. Consequently, relations that arise in relation to personal non-property rights that are not property-related are the part of the subject of civil-law regulation.

The question of the possibility of regulating or only protecting these relations also became controversial at the time. These days, the norms of the Civil Code can and should protect not only personal non-property rights, but also to exercise the so-called positive regulation, that is, a concrete definition of the content of these rights and, at the same time, the content of the duties that correspond to them.

The proclamation in Article 3 of the Constitution of Ukraine of a person, his or her life, health, honor and dignity, inviolability and security as the highest social value caused the formation in the Civil Code of Ukraine a separate Book devoted to personal non-property rights of an individual. Constitutional rights of a person also have a civilian dimension as the absolute civil rights of an individual. If the Constitution guarantees the right to information, then in the civilian dimension it is the absolute non-property right of a person that exists within the framework of civil relations between this person and all third parties, including a state which has civilian ways of protetion. Consequently, the Civil Code of Ukraine for the first time at the level of codification of civil law devoted to the regulation of personal non-property relations not a separate article, but a separate book, because non-property rights form the spiritual basis of society, which is a prerequisite of other rights and freedoms. It should be seen as a logical consequence of the development of human rights and humanitarian law. The provisions of this book contribute to the humanization of relations between people, awareness of human being as the greatest value of society; increase the level of relations between people in Ukraine to the level of the European standards of human rights.

In a legal democratic state, legislation must primarily serve the interests of human, and all aspects of human participation in new market relations

should be considered in the unity and interconnection. The Civil Code of Ukraine accumulates and regulates all property and personal non-property relations that arise and develop on the basis of equality of all participants of civilians relations, therefore, it is today the ground on which human rights law is being building. This is the part of the law that defines its very structure and the ratio of normative acts of various types in it. The Code is a holistic system of rules, which are based on common principles and are based on a single method of regulation of public relations; defines general provisions common to all norms of a certain kind; allocates separate institutes according to differentiated approaches, fixing them in the appropriate order. The Second Book refers to the norms governing personal non-property and property relations on the basis of equality, effect relating, inadmissibility of interference in the sphere of private life of an individual; judicial protection of any violated civil law; fairness, conscientiousness, reasonableness, etc. A characteristic feature of the Civil Code of Ukraine is also that it emphasizes the importance of a private person in a society, both individual and entity. This idea permeates all the institutes which are the part of it, as reflected in the structure of the Code, which codifies the rules of private law, embodying a legal order based on the principle of human freedom.

In one's life, a person is linked by a variety of social relations with the same as he or she is – equal and independent subjects. Proceeding from the provision that legal entities have not only all property rights, as in principle, individuals, as the exception of those rights and obligations, the necessary condition for which are the natural properties of a person, but also personal non-property rights. The law provides the right of a legal entity to inviolate its business reputation; the secret of correspondence; for information, etc. This is explained by the fact that the concept of the code is generally based on the recognition of the formation of legal entities as an expression of the natural rights of members of civil society. Meanwhile, the Second Book of the Civil Code of Ukraine deals with the personal non-property rights of the individual. Personal non-property rights are considered in the modern doctrine and legislation of Ukraine as absolute and inalienable, and which is an expression of freedom and inviolability of a person. Taking into account the traditions of Ukrainian legislation, the provisions of international conventions, trends of social development, the experience of democratic countries, which are defined by the Constitution of Ukraine, the legislator does not allow any limitation of the possibilities of civil protection of personal non-property relations. Normative acts of the current legislation containing civil law and regulating personal non-property relations in their civilian part, whether they are purely civilian or have a complex nature, should obey the general provisions of the institute of personal non-property rights which are contained in The Civil Code of Ukraine.

The Civil Code of Ukraine divides the personal non-property rights of an individual, by direction or on purpose, into two groups: those that ensure the natural existence of an individual (Chapter 21) and those that ensure its social existence (Chapter 22).

It is also possible to take as a basis of the division the order of consistency of personal non-proprietary rights to such which belong to individuals from birth and to such which belong to them according to the law. (Part 1 of Article 270 of the Civil Code of Ukraine).

The Civil Code of Ukraine contains a significant set of norms regulating personal non-property relations and ensures the systematic statement of legal material on personal non-property rights, while retreating from the order which is enshrined in the Constitution for the consistent provision of so-called positive regulation of the content of personal non-property rights.

Since personal non-property rights are absolute, this institution is located among institutions of other absolute rights – property rights, right in rem and intellectual property rights. In addition, the logic of the legislator is based on the conviction that social significance of personal non-property rights is considerably higher than the rights existing in the material sphere of society and which are, first of all, constitutional rights, are the spiritual basis of society and serve as a prerequisite for ensuring freedom of property, freedom of contract, freedom of business, etc. The fact that personal non-property rights precede the right in rem, binding rights also led to the revision of the concept of civil relations and civil law at the modern level.

Personal non-property rights of an individual have no economic (or property) content, have a single non-economic nature and are formed in the spiritual sphere of life of society. Lack of economic content follows, above all, from their very name, as non-property rights. Meanwhile, there is a certain link between the property sphere and the named rights. This can be verified by comparing the abilities of the materially secured person of the realization of his or her rights, and the person who does not have such opportunities. Thus, in violation of personal non-property rights a person is forced to bear both material and mental losses. This, in turn, has an impact and on one's property status in the future. Accordingly, non-property rights should be analyzed along with other individual rights, taking into account that they are part of a single system of rights which obey to the person in accordance with his or her interests and which he or she owns.

The characteristic of personal non-property rights is the fact that they are closely related to the individual. (Part 3 of Article 269 of the Civil Code of Ukraine). An individual can neither refuse personal non-proprietary rights, nor being deprived of these rights. This provision corresponds to the most important provisions of the Constitution, which have an impact on the whole sphere of human rights, namely the inalienability and inviolability of human rights and freedoms (Article 21), the inability to abolish constitutional rights and freedoms (Article 22).

Inseparability from the person the bearer of this immaterial right individualizes and makes a unique personality of its bearer. Especially it should be emphasized that a person has personal non-property rights for life.

In the Civil Code of Ukraine the personal non-property rights of individuals are enshrined, their content, guarantees and ways of protection are defined. The consolidation at the level of the civil code of the inalienable person-

al non-property rights of individuals has been a significant contribution to the process of improving the current civil law, bringing it in line with international standards.

In accordance with the Constitution of Ukraine and to the Art. 270 of the Civil Code of Ukraine an individual has the right to life, the right to health care, the right to a safe environment for life and health, the right to liberty and personal integrity, the right to inviolability of private and family life, the right to respect for dignity the right to the secret of correspondence, telephone conversations, telegraph and other correspondence, the right to inviolability of habitation, the right to free choice of place of residence and freedom of movement, the right to freedom of literary, artistic, scientific and technical creativity.

The Code and other laws may also provide for other personal, non-property rights of an individual. Part 3 of the article. 270 of the Civil Code of Ukraine contains an important clarification that the list of personal non-property rights established by the Constitution of Ukraine, the Civil Codeof Ukraine and other laws is not exhaustive. This provision is confirmed by international legal approaches to the solution of this issue. Thus, ukrainian legislation is focused not only on the current stage of development of civil relations, but also on their development in the future.

An individual in accordance with Part 1 of Art. 272 of the Civil Code of Ukraine exercises personal non-property rights his- or herself. Realization of subjective non-property rights is most often by means of passive non-execution of legal and actual actions covered by the possibility of appropriate behavior. Exercising of non-property rights may also consist of certain active actions in cases where the law provides the opportunity to exercise the right. Thus, exercising of the right of an individual to information is that one can freely collect, store, use and spread information (Article 302 of the Civil Code of Ukraine).

The refusal of an individual from the right which belongs to one does not entail the termination of this right, except in cases provided for by the law. For example, an individual does not exercise his right to the inviolability of business reputation or to the integrity of a dwelling, but this right is not terminated and can be realized in the future.

Exercising of personal non-property rights may take place in different ways. The vast majority of rights is exercised through multiple repetitive actions. For example, the repeated use of the name of an individual, or the use of the right to the secret of correspondence, the use of the right to free choice of place of residence, etc. A number of personal non-property rights is realized through one action, but leaves the opportunity to change its decision under the appropriate conditions. Thus, the author has the right to use the pseudonym while publishing a literary work, and during the re-publishing it is possible to use a real name.

Most non-property rights are exercised only by a person authorized by the law, but there are cases where the realization of individual powers is exercised by a representative. For example, a caretaker of an incapacitated or young child has the right to apply to the court in the interests of the named persons

with a claim to protect their honor and dignity.

Rights which ensure the physical and mental well-being of a person should be prioritized while exercising and protecting in comparison with other civil rights. An individual has the right to demand from the officials and public servants the relevant actions aimed at ensuring the exercise of one's personal non-property rights. Thus, the Civil Code of Ukraine in Art. 273 enshrines the duty of officials and public servants to take appropriate action and regulates the issues of ensuring the implementation of personal non-property rights.

According to the law, the bodies of state power, bodies of the Autonomous Republic of Crimea, and local self-government bodies must ensure the realization of the individual's non-property rights within the limits of one's authority. The renewal of the violated personal non-property right in this case occurs under the rules of art. 276 of the Civil Code of Ukraine. Legal entities, their employees, individuals, whose professional duties relate to these rights of an individual must refrain from activities which may violate personal non-property rights. Activities of individuals and legal entities can not violate personal non-property rights. Individuals and legal entities whose rights have been violated may apply for their protection to the court.

Limitation of personal non-property rights of an individual, established by the Constitution of Ukraine, is possible only in cases provided for by it (Part 1 of Article 274 of the Civil Code of Ukraine). Articles 21 and 24 of the Constitution of Ukraine declare inalienability, inviolability and equality of human rights and freedoms; impossibility of abolition of constitutional rights and freedoms. As an exception to these general rules one can be considered limitation of certain rights for individuals and their associations – and only in order to provide national security, crime prevention, protection of the rights of other people or health protection and under the conditions specifically defined by the Constitution and laws.

It should be noted, however, that the most interesting developments in the sphere of personal non-property rights of an individual are currently proposals to consider the objects of these rights from the perspective of their possible turnover,[1] highlighting among them those that absolutely can not be viewed either from a legal or moral point of view – and others who are able to bring material benefits to their carriers and actually combine both non-property and property interests of a person. Delicacy and caution in these matters are undisputable, exclusive, especially while the regulation by legislatio. But it is shortsighted not to set them, taking into account the level of current market environment. In addition, the division of the rights to non-property and property, and non-property in turn, to personal non-property which are connected with the property and personal non-property, not connected with the property, as any classification, has not absolute significance. It is a bit conditional and should not hinder a single comprehensive understanding of a particular legal phenomenon. As in the well-

[1] Сліпченко С. О. Особисті немайнові правовідносини щодо оборонoздатних об'актів: монографія/ С. О. Сліпченко. – Х.: Діса плюс, 2013. – 552 с.

known philosophical question – which was the first: a chicken or an egg – it is difficult to divide and it is difficult to give an undenyable answer: what was the first and what is more important for an individual – property or non-property right. Therefore, the answer will depend on a particular life a situation that is always broader than its theoretical justification.

During the years of Ukraine's independence, the theory of intellectual property law is developing by civilians at an extremely rapid pace. The results of the research of domestic scientific developments in this sphere were reflected in section 2.7 "Intellectual Property Rights and Civilian Doctrine" prepared by us, in the Thrid Volume of five-volume edition "The Legal Doctrine of Ukraine".[1]

In general, the definition of "intellectual property rights" is given in Part 1 of Article 418 of the Civil Code of Ukraine as a person's right to the result of intellectual, creative activity or to another object of intellectual property right defined by the Civil Code of Ukraine or another law. "However, the position of the developers of the Civil Code of Ukraine regarding the nature of intellectual property rights as exceptional, formulated in Articles 429–433 of the draft of the Civil Code of Ukraine, was not accepted by the legislator," N. S. Kuznetsova notes. The author explains: "The final version of the draft adopted by the Verkhovna Rada of Ukraine, has determined the right of intellectual property as a person's right to the result of intellectual, creative activity or other object of intellectual property rights, defined by the Code or another law. This right constitutes personal non-property intellectual property rights and (or) property rights of intellectual property, the content of which regarding certain objects of intellectual property rights is determined by the Civil Codeand other laws (Article 418 of the Civil Code of Ukraine). Thus, despite the fact that the legislator limited himself to the name of these rights as "intellectual property rights", the question of the nature and legal nature remained opened to scientific discussion.[2]

In foreign countries today, special "intellectual rights" are fixed – property and personal non-property civil rights which are recognized as a result of intellectual activity, ways of individualization and some other intangible objects. Like other civil rights, they are based on equality, autonomy of will and property independence of participants. Is it necessary in terms of theory, legislation and practice to introduce a similar definition in Ukraine? In our opinion, it is not necessary, since all the components of the category of the above objects are in the Ukrainian legislation. Moreover, they are directly specified in the Civil Code of Ukraine, and these objects are intangible by nature, in what their main difference from the majority of others objects of civil law is. Futhermore, the theory of exclusive rights is today the leading one in

[1] Правова доктрина України: у 5 т. – Х.: Право, 2013. Т.3: Доктрина приватного права України /Н. С. Кузнєцова, Є. О. Харитонов, Р. А. Майданик та ін..; за заг. ред.. Н. С. Кузнєцової. – 760с. – С.367–385.

[2] Правова система України: історія, стан та перспективи: у 5 т. – Х.: Право, 2008. – Т.3: Цивільно – правові науки. Приватне право / за заг. ред.. Н. С. Кузнєцової. – 640с. – С.379–380.

Ukraine and is used for legislative regulation of the relations of intellectual property rights. Personal non-property rights are enshrined not only at the level of General provisions of the Civil Code of Ukraine but also as an obligatory component of intellectual property rights in the the Fourth Book of Civil Code of Ukraine and special legislation as personal non-property rights connected with property, as well as detailed regulated on the basis of a thorough theory of personal non-property rights of an individual in the Second Book of the Civil Code of Ukraine, where the right to freedom of literary, artistic, scientific and technical creativity plays an important role among other personal non-property rights of an individual, not related to property ones. We will also add that the right of following, as well as the right of access and other specific intellectual property rights, are enshrined by ukrainian legislation.

Ending with we emphasize once again the extremely detailed and logical, consistent and promising for further development, construction of the Civil Code of Ukraine in issues of comprehensive regulation of non-property relations. The experience of exercising the norms of the current Civil Code of Ukraine is a clear confirmation of that fact.

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ANTI – STATISM OF PRIVATE LAW

The article researches the phenomenon of anti-statism in private law, the relevance of which is based on contradictions between the interest of the state and autonomous subjects of the civil society. The general principles of anti-statism are highlighted and the actual directions are determined studying the subject of anti-statism in private law.

Key words: *anti-statism, private law, state, civil society.*

Anti-statism is a philosophical and political trend that reflects the views of state negativism, according to which the social system is possible without the state or its role should be minimized.

In modern conditions, the state cannot be considered as a source of social and moral disaster, which always lies at the heart of anti-statism attitudes, because human history and the experience of socially-oriented countries prove the expediency of the social-state system. But the state has to benefit not only the political elite, acting as a source of its enrichment and subjugation population of a certain territory. It must become a tool for the provision of a common social good. However, this attitude to the state is already a manifestation of the opposite anti-statism views that is statism.

It has been repeatedly noted in the literature that anti-statism is a primordial national feature of Ukrainian economic and political mentality, which manifests itself in reliance on himself, and not on the state or its organs. This feature is determined ethnically and historically, since it is almost a millennium on Ukrainian lands, different states were, first, organs of foreign national and social oppression, and therefore Ukrainians were forced to solve their own problems independently. As Ukraine gained its independence, the situation changed only ethnically, because the state became an instrument not the alien, but the internal oppression of most of the population by the national political elite. That is why anti-statism continues to be one of the features of Ukrainian mentality of society. Bright examples of this are the significant amount of emigration of Ukrainians to other countries, the emergence of a variety of "gray" schemes to co-finance those areas that are traditionally budget, but for which insufficient funds are missing (primarily education and medicine), etc.

Any law, public and private, is a product of the state and cannot exist without state. Without a state or in a weak state, legal prescriptions lose their legal nature (provision of the possibility of using state coercion) and be-

come moral norms or other social regulators. That is why private law can not exist without the state or in a weak the state. In such social arrangements, private law, most likely, will be reduced to the customs that are are provided by the "right of the stronger", that is the threat of banal physical coercion.

However, the basis of private law is the idea of natural law and therefore private law, unlike the public, it is the part of the law that is least dependent on the state. It regulates relations between legally equal entities with the use of predominantly discretionary principles, so in the field of private law its participants, as a rule, can regulate their own relationship. Imperative rules in private law are rather an exception than a norm.

The well-known Ukrainian researchers E. O. Kharytonova and O. I. Kharytonov are very accurately characterize the private law in the opinion of which it:

"1) is based on the recognition of a human (person) an independent value: a person is not recognized as a mean but as a purpose of law;

2) is designed to regulate relations between private individuals, providing "sovereignty" everyone;

3) puts on a main place private interest: it focuses on economic freedom, free self-expression and equality of commodity producers, protection of the rights of owners (including the arbitrariness of the state);

4) proceeds from the possibility of free expression of the will of private entities in the realization of their rights;

5) involves the widespread use of a contractual form of regulation of civil relations;

6) contains norms that are converted to subjective law and provide its judicial protection;

7) is characterized by the prevalence of dispositive norms" [1, p. 107].

Because of its nature, private law goes beyond individual states and acquires inter-state value. An example of this is the emergence of such non-state control systems as, for example, lex mercatoria, Incoterms, etc. So, the connection of private law with each particular state is quite enough nominal and manifested predominantly in the form of individual restrictions or prohibitions, as well as when there is needed to ensure the fulfillment of private law duties in the territory specific state by force of state coercion.

However, within an individual countries, private law relations depend not only on private law norms, but also from public-law regulation, as well as from the activities of certain public institutions, primarily the courts. Thus, the legal positions of the higher judicial authority may nullify certain provisions of private law, which we have from the application of deposit at the conclusion of previous treaties purchase and sale of real estate. Many provisions of tax legislation or the collection of individual fees / payments legislation make virtually dead some private law norms, since their use becomes economically unprofitable. Yes, in fact, in Ukraine does not concluded agreements on the payment of alimony, since such contracts are subject to mandatory notarial the certificate, the cost of which (state fee or fee to a private notary) is 1% of the total amount of alimony for the entire time of their receipt. In this case, in fact, the same contract can be concluded

in the procedure for concluding an agreement within the framework of court proceedings on the recovery of alimony, without spending money at all.

At the same time, the research problem consists several risks of objective and subjective nature, among which we will dwell on the following:

1) there is no request for the development of such subjects: any institutes of state-head state, legislative, executive or judicial authorities; local self-government bodies, most of the civil society, etc. In the case of researching of this topic, the results can be used in an unscrupulous way to substantiate the destructive policy (reforms) to reduce social obligations of the state to teachers, doctors, scientists, pensioners, students, a whole category of patients, etc., which may lead to application by the state policy of "social Darwinism", when everyone has to survive, and only stronger survives;

2) in the conditions of substantial primitivization of scientific discourse in the domestic legal science, such a topic will be perceived by the scientific community as a deepening in scientific abstraction and formal separation of the scientific topics.

The general principles of anti-statism can be deduced from the content of the rule of law principle, since, as noted in the report of the European Commission "For Democracy Through the Law" (Venice Commission) "Rule of Law" of 04.04.2011 №512/2009 "the subject of the rule of law is the execution of authority and the relationship between the individual and the state".

In Ukrainian national law, a clear appeal to the idea of anti-statism (including in the field of private relations) is traced in Art. 19 of the Constitution of Ukraine, according to which "The legal order in Ukraine is based on the principles according to which no one shall be forced to do what is not envisaged by legislation. Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine".

Mentioned principles are specified in the decision of the Constitutional Court of Ukraine of 16.04.2009 № 7-РП / 2009 in the case of the constitutional petition of the Kharkiv City Council on official interpretation the provisions of part two of Article 19, Article 144 of the Constitution of Ukraine, Article 25, part fourteen Article 46, Clauses 1, 10 of Article 59 of the Law of Ukraine "On Local Self-Government in Ukraine" (the case on the abolition of acts of local self-government bodies).

In par. 5, paragraph 5 of the mentioned decision "the Constitutional Court of Ukraine notes that in The Constitution of Ukraine enshrines the principle by which human rights and freedoms and their guarantees are determined the content and direction of the state, which is responsible to a person for his activities (Article 3).

Local self-government bodies are responsible for their activities to legal persons and individuals (Article 74 of the Law). Thus, local self-government bodies cannot cancel their previous decisions or change it, if according to the provisions of these decisions there were legal relationships related to the implementation of certain subjective rights and protected law of interests, and the

subjects of these legal relations deny their change or termination. This is "A guarantee of stability of social relations" between local self-government bodies and citizens, generating citizens confidence that their current situation will not be aggravated by acceptance a later decision that is consistent with the legal position set out in the second paragraph point 5 motivational part of the Decision of the Constitutional Court of Ukraine of May 13, 1997 No. 1-ЗП in case concerning incompatibility of the deputy mandate.

Non-normative legal acts of the local self-government body are acts of one-time use, exhaust their effects by the fact of their execution, therefore they cannot be canceled or changed by the local government after their implementation".

In the Civil Code of Ukraine one of the manifestations of anti-statism is Art. 19, which defines the rights to self-defense civil rights (non-dissident form of protection is also an expression of anti-statism): "1. A person shall have a right to self-protection of his/her/its civil right and the right of any other person against violations and unlawful infringements. Self-protection consists in taking by a person countermeasure not prohibited by the law and not contradicting the moral norms of the society. 2. Self-protection means must comply with the substance of the violated right, the nature of actions that caused this violation as well as with the consequences resulted therefrom. Self-protection means may be chosen by a person or specified by the agreement or civil legislation acts.".

So, in our opinion, the high degree of self-defense of private rights is a characteristic feature of civil society, in which private law acts as its element that is "organically inherent to him, serving as the regulator of internal relations in it and a mean of securing the interests of its members in relation to each other" [1, p. 97].

Integration processes taking place in Ukraine in order to adapt domestic legislation to the acquis EU aimed to create the main political, legal and organizational principles of adaptation legislation and ensuring united approaches to normative design, which would ensure, in the first turn, favorable economic transformations in the state. Corporate law as a private law sector must regulate effective mechanism of legal regulation of corporate relations, which arise in the field of entrepreneurship.

At the same time, the state should be interested in qualitative regulation of corporate relations, after all as it is a subject of legal relationship is the owner of the property and a shareholder in many entrepreneurships. The state acts not only as the regulator of corporate relations, but also its participant.

That is why it is an urgent issue of rethinking corporate legal regulation and proposals for its improvement, considering the experience of the EU states, the application of the current legislation, the results of scientific research and suggested legal ideas. At the same time, it should be noted the positive aspects of law-making in the field of corporate law. It is also about the norms of the Civil Code of Ukraine, most of which are dispositive with the possibility regulation of corporate relations in constituent documents and other corporate acts legal entities, absence of cen-

tralized influence of the state on their management, etc.

At the same time, the state has been actively working on corporatization in recent years strategically important state-owned enterprises, because it is important for the country's economic development the attracting of foreign capital to the domestic capital market. In particular, NAEK "Energoatom" in 2015 developed the draft and submitted to the Cabinet of Ministers of Ukraine the Law of Ukraine on corporatization of the Company. The need to move from unitary toa joint-stock company with 100% state-owned property is grounded not only by international requirements lenders – EBRD, Euroatom and other potential investors in the development of nuclear energy in Ukraine, but also the introduction of a new format of the energy market from 2017.

In 2017, the National on Securities and Stock Market Commission of Ukraine made a decision on a registration shares in PJSC "Ukrzaliznytsya" due to the company's interest in the development an effective corporate governance system based on openness and transparency. This will provide the ability to establish personal responsibility of managers for a specific area of activity. How said the management of PJSC "Ukrzaliznytsya", corporatization "will open the door" for foreign investors, which means significant new opportunities for upgrading the railway infrastructure at the expense of investors that can be felt by the customers, passengers and shippers.

It is worth noting the attempt of corporatization "Ukrposhta", which in 2017 has issued shares worth 6.5 billion UAH. Thus, the company has become from a public enterprise in to a public joint-stock company, whose purpose is to raise funds for company development, creation of an independent company supervisory board, the development of new strategies in the management of the company, investing in new programs, new opportunities for real estate management, attracting investors and partners, etc.

Consequently, it follows from the above that corporatization promotes, on the one hand, the improvement of the system corporate governance by separating management from the owner and creating an independent body, namely the supervisory board, which controls the activities of management, promotes the implementation of corporate rights of owners and creates mechanisms to eliminate the possibility of abuse of the same corporate rights, and on the other hand, gives foreign and domestic investors the opportunity to work with private ones not a state form of ownership that is more understandable and provides more opportunities to enter into freely contracts, including the stock exchanges, to sell products on the market on an entrepreneurial basis, as well also attract credit funds and so on.

Summarizing the above, we can clearly state that legislative changes in the field regulation of corporate relations have qualitative positive character, weakening influence of the state in the legal space and determine its place as a legally equal participant in civil relations along with other legal entities and individuals to participate in entrepreneurial activity on private law principles provided by the condition that the

proposed innovations are properly implemented.

The value of the state, first, is the law-making activity (development of the concept of the legislation structure that covers the sphere of regulation of private legal relations, the formation of legal norms content in private law, definition of the place of so-called complex branches of law in the private law system, etc.). The other direction is the right-realization in the field of private law, associated with the development of a market economics, the needs of which are provided by private law. However, private law is a resource that can act as a restraining and stimulating effect on the economy. The economy objectively brings to the sphere of the law and becomes dependent on them, while the laws of the economy, not being objective laws, are perceived through behavior participants in public relations, which is influenced by legal means, which take into account / not take into account the economic situation. Right cannot be recognized as a tool to overcome economic crisis, but it may well be a mean of reducing its scale and effects. State activity regarding private law also includes the formation of a firm understanding that the right is not only restrictive and punitive mechanism used by the state to offenders, but also the system that guarantees personal freedoms, subjective rights, legitimate interests of individuals and legal entities. For private law consciousness is inherent, above all, individualism that is protected by the state when state tasks have restrictions related to the interests of individuals, when the state with the legal means can limit both arbitrariness its and factual possibilities of the socially and economically more powerful subjects and even groups. In this context it is necessary to identify the balance between the individual interests and interests of the group, the general interests of the majority should not have a defining meaning.

Entering the era of globalization and the liberalization of trade and investment, integration into the economy sphere (establishment of the European Union, the introduction of single citizenship, introduction of a common currency, etc.), the unification of legal systems, is clearly aware of the great importance of legal relations and relations between states. This situation, in turn, is a prerequisite for the widespread development of the internationalization of economic life, international cooperation and civil turnover, and, consequently, to expand the scope of the participation of states in both public law and private law relationships, including those are complicated by a foreign element. There is now a worldwide tendency to reduce the participation of states in private international legal relations, as the competent authorities of most states do not want to enter into agreements with foreign individuals through possible states liability for all in the event of non-fulfillment or inadequate fulfillment of the obligation, and foreign individuals do not want to enter into legal relations with the states because of the complexity (and sometimes impossibility) of bringing them to justice in their national court because of judicial immunity. Private law loses any meaning without such element as the state.

Anti-statism, in its extreme expression as the ideology of total denational-

ization, is in principle a utopian and harmful philosophy aimed at removing the state from the sphere of governance and justifying anarchism. However, the ideas of moderate anti-statism in the form of limiting the influence of the state as a political center on the social, economic, cultural, spiritual, etc. processes of society and the release of healthy initiatives from the bottom form the basis of the modern liberal legal doctrine of the north America and Western Europe. The urgency of anti-statism subjects in private law is based on the existing irreconcilable contradictions between the interest of the state, which seeks to assimilate itself as a manager of several conflicting centers, and autonomous subjects of civil society.

Modern European history of Ukraine is written in the context of a new paradigm of legal regulation of social relations, which is based on the key idea-the principle: not all social relations need to be regulated by the state, in the conditions of a modern civil society its citizens in most cases are able to independently execute their rights and obligations without excessive imperative state interference. In addition, the contract is becoming an increasingly important regulator of legal relations, since in today's conditions the system of social ties in general and, as a consequence, the system of contractual private relations became much more complex and diverse, there was an invariance of interests and behavior. Under such conditions, state regulation became objective unable to remain the only type of legal regulation. There was an objective need of additional external influence on this system of public relations by internal regulators, that is the establishment of effective mechanisms of self-regulation of contractual private law relations.

At the present stage of development of Ukraine, the actual direction of development is the creation, on the one hand, of a developed civil society of a European type, on the other hand, a strong state capable of harmoniously combining the heterogeneous interests of participants in social relations in certain forms of concrete historical interaction, in particular, in the form of consensus or compromises. Modern reading of the problem of anti-statism involves understanding the optimal ways of organizing social life in all its contexts from the point of view of the main issue – dialectics and the limits of autonomy (freedom) of personality and public order. After all, at the beginning of the last century, the legal literature was widely believed that the boundaries of private and public law are changing permanently [2, p. 239].

Therefore, when substantiating and developing the model of sustainable development, which should be the basis for the modern movement of modern Ukraine, the subject of anti-statism in private law should occupy an important relevant place. In particular, it needs to be developed in such urgent areas as: the correlation of private and public foundations in the private law regulation of social relations; the contract as a universal form of legal regulation in modern civil society, the restriction of direct interference of the state in the private relations of individuals and civil society.

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PHENOMENON OF CONTRACT IN CIVIL LAW

Abstract. *The article considers the phenomenon of the contract in the Ukrainian legislation and its adaptation to the standards of the European Union. Regulatory acts that contain provisions on contracts are examined; special attention is paid to the Civil Code of Ukraine as the main document providing the legal regulation of contracts. Separate articles of the Civil Code, which define the contract and its role in the regulation of civil relations, were analyzed in detail. The concept of the contract as one of the decisive elements of the mechanism of legal regulation of property and personal non-property civil relations is considered. It is concluded that the extension and complication of economic relations leads to the transformation of the system of contracts, appearance of new contractual forms in particular in the spheres of service rendering, compilation of information, international scientific-technological cooperation, etc.*

Key words: *Civil Code of Ukraine, contract, civil relations, legal regulation of contracts.*

INTRODUCTION

The construction of a contract has become one of the most prominent achievements of the world legal culture. A contract is a unique legal construction in the mechanism of legal regulation of social relations. A contract as an instrument of legal regulation along with the traditional application in the field of private law is used in contemporary conditions in the field of public law, constitutional, administrative, ecological, financial law, etc. (public-legal contracts) [1].

A unique, phenomenal role belongs to a contract in the field of private, in particular civil law. As I. V. Beklenischeva affirms, civil contract under the effect of strengthening of common to mankind humanitarian ideals and principles, the idea of human rights and the value of an individual in the modern society acquires today a new, earlier not peculiar to it meaning, in particular the meaning of the element of common European legal culture [2].

The rise of the role of a contract in the life of society is also stipulated by the external factors, most of all by the processes of the legal and economic integration which take place in the Western Europe. In particular, the formation of the united economic space is impossible without the development of legal forms and institutions which are adequate to the character and nature of relations that emerge along with this, among which, a contract shell play the key role, taking into consideration the supremacy of liberal values in the Euro-

pean consciousness. In connection with this there was the necessity of creation of the common term of a contract for different legal systems. This term would satisfy the national legal doctrines of the European states as well as objects raised [3].

An important tendency of the development of civil in particular contract law is the rapprochement and interpenetration of the elements of proprietary, obligatory and other legal relations. First of all this is displayed in contracts directed to the transfer of a property right from an alienator to beneficiary of property (purchase and sale, supply, exchange, gift, lifelong maintenance, hire, etc.). The example of the contractual construction, in which proprietary and obligatory elements are combined, is the property management contract [4].

The construction of a contract penetrates into all spheres of economic and spiritual life of society. The role of a contract as a unique and the most reasonable legal form of mediation of market relations is especially growing in contemporary conditions. The transition to the market economy and the functioning of the market mechanism itself are only possible under the condition that the main mass of commodity producers (enterprises and citizens) has the freedom of economic activities and entrepreneurship. The results of these activities are realized in the commodity market on the contractual terms. The planned-administrative influence of a state on the property relations is restricted with the transition to the market, thus, the freedom of choice of partners in economic relations and the determination of the content of contractual obligations are extended at the discretion of the parties of a contract. First of all this concerns contracts directed to ensuring the needs of legal and natural persons in material, energy, food resources (purchase and sale, delivery, contracting, energy supply etc.). The role of hiring contracts (lease, leasing, hiring out), contracts of performance of work (contracting, construction, contract of design and survey), contracts of different kinds of services provided to natural and legal persons (agency contract, commission, consignment, credit contract, transportation, insurance, etc.) is not decreased [5].

1. MATERIALS AND METHODS

An important direction in the development of contractual legislation of Ukraine is its adaptation to the standards of the European Union (EU). Though, 10 years passed from the time of enactment of the National program on adaptation of the legislation of Ukraine to the legislation of the European Union, it's a pity but considerable steps in this direction were not taken at the legislative level. At the current stage in Europe rather intensive work is conducted concerning the preparation of the Unified European Civil Code, which can become the culmination in the unification of one of the most important branches of the legislation.

The provisions on civil contracts are located in numerous legislative documents such as:

– Civil Code of Ukraine;
– Family Code of Ukraine;
– Land Code of Ukraine;
– Economic Code of Ukraine;
– Decrees of the President of Ukraine;

– Orders of the Cabinet of Ministers of Ukraine;

– Acts of bodies of the state power, bodies of power of the Autonomous Republic of Crimea, bodies of local self-government;

– Articles of association of commercial partnerships;

– Business-dealing practice;

– Other regulators of civil relations (judicial practice, morality, etc.).

We have focused on the main document, which provides legal regulation of contracts – the Civil Code of Ukraine (CCU) [4]. Almost half of its Articles (more than 1300) is dedicated to a contract, starting with the general provisions (Chapters 52 and 53) and finishing with the rules on particular kinds of contractual obligations (Chapters 54–77), which affirms the determinant role of a contract among the institutions of civil law. Besides, contractual provisions of the CCU determine the contents and scope of civil capacity of natural, legal persons and other participants of civil circulation, rules on transactions, the right to property, representation, limitation of action, concern contractual relations. Most of general provisions on obligations and in particular on means of their security (forfeit, pledge, deposit, bailment, guarantee, retention, etc.) are grounded on the construction of a contract. A detailed analysis of certain Articles of the Civil Code of Ukraine concerning the definition of a contract and the role it plays in the regulation of civil relations is the main task of this article.

2. RESULTS AND DISCUSSION

2.1. Definition of contract in Ukrainian legislation

According to the Article 626 of the CCU, a contract is an arrangement between two or more parties targeted at the establishment, change, or termination of civil rights and obligations. It means that a contract belongs to the legal acts of an individual character – juridical acts, in particular transactions. According to the Article 203 of the CCU, a transaction is an action of a person aimed at acquisition, changing or termination of civil rights and obligations. Depending on the number of expressions of the will of parties transactions may be bilateral or multilateral (contracts). A bilateral or multilateral transaction shall be a coordinated action of two or more parties [4].

Such features are peculiar to civil contract as a legal fact:

– the will of not one person (party) is manifested in a contract, but the will of two or some persons (parties), besides that the expression of the will of participants has to coincide with and correspond to each other;

– contract – is such joint action of persons, which is directed to the achievement of some civil legal consequences: to establishment, change, or termination of civil rights and obligation. Namely by this feature a civil contract is distinguished from contractual forms, which are used in other branches of law (labor, ecological, etc.) getting there some specific features.

However, the role of a contract is not limited only by its influence on dynamics of civil legal relations (generates, changes and terminates them), but according to the requirements of the legislation, business-dealing practice, requirements of reasonableness, good faith and fairness, it determines the con-

tents of concrete rights and obligations of the participants of a contractual obligation. In this sense, a contract appears to be the mean of the parties' conduct in civil legal relations.

The free expression of the will of a subject in a contract is one of the displays of contract freedom as one of the principles of civil legislation. Parties are free in conclusion of a contract, choice of contractor and determination of contract terms accounting the requirements of the CCU, other acts of civil legislation, business-dealing practice, requirements of reasonableness and good faith (Article 3, Article 627) [4]. However, the content of contractual freedom of parties is much wider. Besides the possibility of choice of a contractor and determination of the contract content, the freedom of a contract also includes:

– free expression of person's will for entering into contractual relations;

– freedom of choice of the form of a contract by the parties, with the exceptions prescribed by the law;

– right of parties to conclude contracts, stipulated by a law (defined contracts), as well as contracts, which are not stipulated by a law but does not contradict it (undefined contracts);

– possibility of parties to change, terminate or prolong the validity of a concluded by them contract;

– right to establish the forms (measures) of liability for contractual delinquency, etc [6].

However, we cannot consider the freedom of contract as an unlimited, because parties also have to account the requirements of the CCU, other acts of the civil legislation, business-dealing practice, requirements of reasonableness and good faith concluding and performing contracts. Some limitations on the force of the principle of the freedom of a contract, stipulated by the CCU, are pointed out in the literature [7]. Thus, the expression of the will of participants of a contract has to be formed freely, without any pressure from the part of a contractor or other persons, moreover the expressions of the will of every participant by their sense have to coincide with and correspond to each other. Attainment of a consent concerning conclusion and content of a contract occurs due to performing by them actions (offer and acceptance), which generate together such a phenomenon as a contract.

There was no extensive definition of the term "contract" in the Civil Code of USSR [8]. It was exposed through the term "agreement" as an action of a citizen or organization directed to establishment, change, or termination of civil rights and responsibilities. A contract is a bilateral or multilateral agreement (Article 41). However, the term "agreement" hardly suited the definition of unilateral action, in which the will of only one party (person) is expressed and there is no agreement (consent, concordance) with any other person. That's why the term "agreement" in the current Civil Code of Ukraine is replaced with the word "transaction" (action which makes law), and the term "agreement" has to be interpreted accounting its peculiar meaning as the concerted will of two or more persons (parties) [4].

The sense of a contract in civil law is in an agreement as the concerted will of two or more parties, directed to the establishment, change, or termination

of civil rights and obligations. In other words, an agreement (consent) is the "sole" of a contract, the "body" of which is formed by concerted in it conditions which form the content of a contract. That is why the term "arrangement" is ultimately to be replaced by the term "agreement", which reflects the sense of an agreement as a legal phenomenon.

If the sense of a contract is in an agreement of parties, then points arise: agreement on what, what is the subject matter of a contract, with what conditions is it concluded, what rights and responsibilities are established, changed, or terminated from an agreement? Thus, it deals with the content of a contract as an agreement of parties. According to definitions, represented in philosophic sources, the content – is the aggregate of elements, processes, relations, which form the subject or phenomenon.

According to the Article 628 of the CCU, the content of a contract is formed by the conditions (clauses), determined at the discretion of parties and agreed by them, which are obligatory according to the act of the civil legislation. In other words, the content of a contract is those conditions, on which the respective agreement is concluded. If a contract is legalized in writing in the form of one instrument, signed by parties, or by the way of changing the letters, or in another form (Article 639), then respective conditions are fixed in the clauses of a contract, in which the references to the rule of the current legislation in this sphere may be contained [4].

Touch upon the correlation of conditions in a contract, which are determined at the discretion of parties (so called "initiative" conditions), and conditions which are obligatory according to the acts of the civil legislation, it is necessary to address to the general provisions on the correlation of the acts of civil legislation and a contract, fixed in the Article 6 of the CCU. According to this Article, parties have the right to settle in a contract, which is stipulated by the acts of the civil legislation, their relations that are not arranged by these acts. The parties to a contract may depart from the provisions of the acts of civil legislation and settle their relations at their discretion. But the parties to a contract may not depart from the provisions of the acts of civil legislation, if in these acts this is directly stated and also in the case of obligatoriness of the provisions of the acts of the civil legislation for the parties, which follow from the content or sense of the relations between them [4].

2.2. The role of contract in legal regulation of civil relations

A contract is one of determinant elements of the mechanism of the legal regulation of property and, to some extent, personal non-property civil relations. Concerning the definition and the structure of the mechanism of the legal regulation of social relations, different by their content opinions are expressed in the civil literature. In particular, A. B. Gryniak understands term "the mechanism of the legal regulation of relations" as the aggregate of legal means, methods and forms with the help of which ordering of constricting relations occurs, their ideal form materializes which is stipulated in the rules of law and provisions of a contract, with which the establishment of the rights and responsibilities of concrete participants of contracting relations is connected [9].

S. O. Pogribny considers the mechanism of the legal regulation of contractual civil relations in some another way. He considers it as a consecutive chain of changes of particular legal phenomenon: rule of law, which regulates civil relations, – legal fact – rights and obligations, which exist in the civil legal relations, which emerged on its ground, the realization of civil rights and performance of obligations, and if necessary – also the protection of a broken right or interest [10].

Such understanding of the mechanism of the legal regulation of contractual relations is the reflection of a universally adopted in the common theory of law understanding of the legal regulation as a continuing process, in the course of which the influence of law on social relations is exercised, and which has three links (stages):

– legal rules;

– legal relations and in particular subjective rights and legal obligations of their participants;

– acts of the realization of rights and obligations.

However, the separation of particular stages of the legal regulation process is quite relative, because in legal reality the legible bounds of the course of this process cannot always be traced in its particular stages. For example, the stages of rise and realization of subjective rights and obligations of the parties by the contract can coincide under the one-time sales contract of goods which is performed when it is concluded. The idea of many authors should be agreed with. They refer much wider range of legal means: rules of morality, customs, acts of enforcement of law, legal positions, definitions, fictions, presumptions, scientific doctrines, etc., to the mechanism of the legal regulation [5].

The phenomenal role of a contract consists in that its regulatory influence on other elements of this mechanism is reflected during the whole process of legal regulation of civil contractual relations. That's why the idea of A. V. Kostruba, that legal facts are bounded with each stage of the legal regulation, should be defined as a correct one [11].

First of all, the legal model of the future contractual relations of persons is settled in the rules of law and other social regulators (morality, customs, business-dealing practice, religious rules, etc.). It is enough to address to any defined contractual institution, regulated by the CCU and other acts of the civil legislation, and in the first articles the definition of a given contract, its parties, subject matter, form, rights and obligations of parties, consequences of the breach of a contract, etc. is given, which permit to mark off it from other (contiguous) legal constructions.

Some conditions (preconditions), adhering to which is necessary for the contract to exercise its role as a regulator of concrete relations of parties. In particular, it deals with general requirements, adhering to which is necessary for a contract (transaction) to be valid (in force). As it admitted in the CCU (Article 203) [4] such conditions are:

– content of a contract cannot contradict the CCU, other acts of the civil legislation, interests of a state, of society, and also moral principles of society;

– person who concludes a contract has to have the necessary extent of a legal capability;

– expression of a will of a participant of a contract has to be free and correspond to his/her inner will.

– contract has to be concluded in the form, prescribed by the law;

– contract has to be directed to a real legal occurrence of consequences;

– contract which is concluded by parents (adopters), cannot contradict the rights and interests of their infants, minors and disable children.

The presumption of lawfulness of a transaction (contract) is presented in the CCU: a transaction is lawful if its invalidity is not stated directly by the law or if it is not recognized invalid by a court (Article 204) [4].

A contract is an individual legal act, in which the absolute model of persons' relations is traced in general features, is filled with a concrete content, takes its own "flesh and blood". In this sense a contract appears as a legal fact which is one of the grounds of rise of subjective civil rights and obligations (legal relations, in particular obligations). According to the CCU (Articles 11 and 509), obligations arise from contracts and other transactions, stipulated by the law, however do not contradict with it. An obligation is a legal relation in which one party (a debtor) shall be obliged to perform an action (to transfer property, to do a job, to render service, to pay money etc.) to the benefit of the other party (a creditor) or to abstain from a certain action, while the creditor shall have the right to claim from the debtor to fulfill his obligation (Article 509) [4].

But the character of an action, which one party to the obligation shall perform to the benefit of another (in bilateral contracts such as sales contract, hiring, constructing, etc., each party is simultaneously a creditor and a debtor), is defined first of all by the conditions (clauses) of a contract, determined and agreed by parties, and also conditions, which are obligatory according to the acts of the civil legislation (Article 628 of the CCU). Thus, concrete rights and obligations of parties, which constitute the content of a contractual obligation, result from the conclusion of a contract as a legal fact and depend on its content. Owing to the fact of the conclusion of a contract other conditions enter into force, which are obligatory for parties according to the acts of the civil legislation [4].

Generated by a contract obligation acts during the period of the validity of a contract, except cases of termination of an obligation in the result of its preterm performance or cancellation of a contract or in the result of its transformation in another kind of an obligation, for example, obligation of reimbursement for losses. So, if as a result of the debtor's delay the creditor has lost his interest in the obligation fulfillment, he can refuse from the acceptance of execution and claim to reimburse for the losses (Article 612 of the CCU) [4].

There is the direct connection of a contract as a legal fact and other elements of the mechanism of the legal regulation of civil relations – acts of the realization of subjective rights and obligations and methods of their protection, in particular with responsibility for the contractual obligation violation. Acts of the realization of rights and obligations by the parties of a contractual obligation are their performance of actions or restriction from them, which result from

the content of an obligation, for example delivery of goods by separate consignments in terms stipulated under a contract, payment of money for the performed work or rendered services, etc. And here contract conditions appear as the criteria for conformity of acts of right's realization to established requirements concerning subjects, subject matter, place, periods, methods of fulfillment of an obligation, etc. According to the CCU (Article 526), an obligation shall be properly fulfilled according to conditions of the contract, requirements of the CCU, other acts of civil law, and in absence of such conditions and requirements – according to traditions of business practice or other universally recognized requirements [4].

The need in the protection of civil rights and obligations appears in the case of the violation of civil contractual obligation. According to the CCU (Articles 610 and 611), violation of the obligation shall be its non-fulfillment or fulfillment with breaking the provisions determined by the content of the obligation (undue execution). In the case of violating the obligation the legal consequences determined by the agreement or the law shall come to effect, in particular:

– termination of the obligation due to unilateral refuse from the obligation, if it is stipulated by the agreement or the law, or cancellation of the agreement;

– change of the obligation's provisions;

– payment of the forfeit;

– reimbursement for losses and moral damages.

Among the admitted legal consequences of violating the obligation, which at the same time are the means of the protection of civil rights and interests (Article 16 of the CCU), it is possible to emphasize the reimbursement for losses and moral damages as the means of civil legal liability [4].

The provision on the responsibility for delinquency is grounded in the work of G. K. Matveyev. The ground for delinquency is the composition of a tort, which has to contain such elements (conditions):

– presence of tortious conduct (act or omission) of a person;

– harmful result of such conduct (damage);

– cause-effect relation between tortuous conduct and damage;

– tortfeasor [12].

A contract may stipulate sanctions (in particular forfeit, penalty or fine) for the violation of its particular conditions, if they are not stipulated in the law. By the arrangement of parties the departure from the principle of guilt as the ground for the civil legal responsibility is possible. According to the Article 614 of the CCU, a person that violated the obligation shall be responsible, provided the guilt (intent or negligence) is obvious, unless otherwise is stipulated by a contract or the law. It means that the responsibility may be stipulated in a contract, regardless of the guilt (without guilt) of a person, who violated an obligation; or discharge from the responsibility with the presence of the guilt in the form of recklessness in the conduct of a person may also be stipulated. However, according to the Article of the CCU, a transaction terminating or restricting the responsibility for deliberate violation of the obligation is void [4].

The actions different by the character and often contradictory tendencies are admitted in the development of the institute of a contract, accordingly, contract law in contemporary conditions. Thus, on the one hand, the freedom of the expression of the will in the determination of rights and obligations by parties is extended in the regulation of property relations.

Stressing the extension of the parties' freedom concluding contracts in some spheres of economic relations, in particular which were formed in the circumstances of command-administrative system on the basis of planned prescriptions, it is impossible to admit the opposite tendency which is peculiar to modern contract law of foreign states. The point is that the number of limitations of the principle of contract's freedom is set up with the aim of the protection of interests of a weak contractual party and securing of balanced development of property circulation. These limitations are displayed in particular in the intensive development of the competition legislation, legislation on the protection of consumer's rights, state regulation of pricing, regulation of the quality of goods, works and services, etc.

CONCLUSION

Material and spiritual needs of a wide range of consumers (citizens) in goods and services are secured owing to contracts which are concluded in the spheres of retail commerce, transportation by public transport, communication, medical, hotel, bank service, etc. Spiritual interests of citizens in the spheres of intellectual property, creative work are realized in particular through conclusion and performance of contracts on disposal of property rights to intellectual property (license contract, commercial concession, etc.) or contracts of research and development, design and development and technological works, etc. A contractual form also can be used in other kinds of civil legal relations, in particular during the realization of personal intangible rights between the subjects of tortious obligations.

The extension and complication of economic relations in domestic and external circulation leads to the transformation of the system of contracts, appearance of new contractual forms in particular in the spheres of service rendering, compilation of information, international scientific-technological cooperation, etc. Contractual relations take a complex and long-lasting character more and more often (lease contracts of enterprises as integral property complexes, lease of accommodation with the condition of purchase, purchase and sale or lease of objects of unfinished construction, leasing, factoring, etc.).

The removal of duplication and discrepancy in the regulation of contractual relations is important for the accession to the legal space of EU in particular to the sphere of contract law. The priority here has to be given to the provisions of the Civil Code of Ukraine, which has general character to contract law. A grate work has to be done in revision and renewal of the mass of normative-legal acts in the sphere of civil and commercial legislation and also commercial and judicial practice concerning the application of this legislation.

Correct offers concerning the improvement of the civil legislation which are declared by researchers in scientific publications, with the defense of candi-

date and doctor dissertations, at scientific conferences and "round tables" should be accounted in revisionary work with the normative base of contract law.

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VIRTUAL CURRENCY IN THE CIVIL LAW OF UKRAINE: STATE, TRENDS, PERSPECTIVES

Abstract. *The article deals with the peculiarities of the virtual currency in the civil law ofUkraine, namely a current state, problems, trends and prospects. The technical aspects of the work of theblockchain technology and their influence on the legal support of the emission and turnover of cryptocurrency are explored. The approaches to the regulation of cryptocurrency in other countries in the context of their comparison with Ukrainian experience are considered. The cryptocurrency as an object of the Ukrainian civil law is analyzed, as well as the peculiarities and main problems using of blockchain at the present stage. A draft of lawdesigned to regulate turnoverof cryptocurrencyin Ukraine, its characteristics, main advantages and disadvantages are described. Conclusions on the trends and prospects of legislative regulation of the emissioni and turnover of cryptocurrency in Ukraine are made.*

Key words: *'private' money, virtual currency, cryptocurrency transactions, cryptocurrency as an object of the Ukrainian civil law, legal regime of cryptocurrency.*

INTRODUCTION

One of the non-titled and not directly foreseen by the law objects of civil law are so-called virtual currencies – a kind of"private"money issued not by the public authority by emission of restricted funds (bitcoin, etc.) that are subject to conversion in certain circumstances to a real money [1; 2; 3]. The negative attitude and limitations by the states emission of private money is largely due to the lack of state oversight of the entities that issue them. The availability of private money offers an opportunity to use alternative payment units, which negatively affect the course of state money and, in theory, can reduce demeand for them.

The status of entities carrying out the issue, exchange, storage and operations with private money ("platforms of private money"), is not clearly defined for most virtual currencies [4; 5]. The absence of status of financial organizations on such platforms makes impossible the traditional currency control and bank supervision of private money. They are not subject to the consumer identification requirements (KYC); they can also deliberately weaken the control, thereby indirectly supporting criminal operations, money laundering and terrorist financing (ML/TF).

In the absence of the control over volume of emission of private money and the availability of security, the probability of a default of the issuer of private money is significantly greater than the probability of default of the state. This causes increased volatility

(unsteadiness) of the course of private money and additional risks for their holders, which further increases volatility. Non-cashmoneyis subject to failures and other technical risks. A failure can lead to theft, disappearance of money, a sudden increase in money supply and, consequently, depreciation of money. At the same time, platforms of private money do not want and can not be responsible for this.

In the regulatory sphere all possible measures were taken to reduce the mentioned risks. Platforms of private money equated to payment systems and banks with the corresponding requirements of customer identification, which meant:

– complete ban on anonymous payments or limitation of their maximum sum, storage of transaction history;

– establishment of restrictions for platforms for the management of user accounts and emission of unsecured money in order to avoid uncontrolled animation (formal increase);

– restriction of access of legal entities to the use of platforms to avoid the "leakage" of private money to the settlement system.

Thus, the private money platforms were reduced to payment systems, in which the use of virtual currency served only for technical purposes – transactions were simplified between clients who have invested public money into the system [1]. This status offsets most of the benefits of private money. Theoretically, a payment system operating over the Internet can act extraterritorially while being offshore, but all attempts to create such an independent system have invariably encountered active opposition fromfinancial regulators and law enforcement agencies.

1. MATERIAL AND METHODS

At the present stage in Ukraine there is a situation in which the active development and use of cryptocurrency occurs in the absence of a regulatory framework for its regulation. This gives rise to a number of problematic legal situations and more acutely raises the problem for the need in legislative regulation of virtual money. The Verkhovna Rada of Ukraine is considering the Draft Law of Ukraine "On the Circulation of Cryptocurrency in Ukraine"[6]. Itsprovisionsthathavenotyetenteredintoforcemay regulate in future:

– the concept of cryptocurrency;

– blockchainsystemandentitiesofcrypt-currencyoperations;

– mining of cryptocurrency;

– useofcryptocurrencyandcryptocurrencytransactions;

– activity of cryptocurrency market.

Trends and prospects of legal regulation of cryptocurrency in Ukraine are due to the peculiarities of this legal phenomenon. Cryptocurrency –is not the first in the history example of creating private money, but first of all they differ technologically:

– decentralized (the central issuer is absent);

– nottiedtomaterialobjects, includingaccountholders, which complicates control and regulation of cryptocurrency;

– in the technology of blockchain and its individual implementations (inparticular, incryptocurrency), states see the threat as it involves the effective replacement of state functionsby software algorithms. Inthelongrun, this will lead to a loss by the state part of functions in

the settlement sphere, which, of course, does not correspond to theinterests of the ruling groups.

Before analyzing the current state of legislative regulation of cryptocurrency in Ukraine, comparing it with the experience of individual countries and outlining the prospects of further development, it is necessary to consider technical aspects of work of blockchain technology, sinceit is they who most influence the resolution of legal issues concerning the issue and circulation of cryptocurrency. A clear answer, exactly what is the cryptocurrency, how exactly the mechanisms of its extraction and realization are provided, will help to establish its place in the legal field.

2. RESULTS AND DISCUSSION

2.1. The mechanism of work of blockchain

By the end ofXXcentury anonymous payment systems and private money exchanges, even though they were technological possibile, from political point of view they were completely unacceptable for the major financial market state players. Thus, at the beginningof 2000 the architecture of the Internet, the computing powers of its nodes and the increase of its connection speede enabled in some cases to switch from multilevel architectures of networks ("client-server") to decentralized peer-to-peer architectures in which individual network members interact without centralized server (peer-to-peer, p2p). The use of decentralized architecture in financial sphere has become a matter of time.

Though in vast majority of cases, multilevel architectures are most efficient, one-level provide greater reliability, as in case of failure of one member, others remain active. For such networks, it has been used in situations of constant pressure from the outside, including the exchange of controversial content. The example are decentralized file-exchange networks (and partially decentralized, like BitTorrent), and also anonymous proxies.

The architecture of one-level network and technology of electronic digital signature needed to identify participants of network were well developed and tested already in the middle of 2000s. The only problem remained was the forging of information about committed transactions by unfair participants of the system (the problem of multiple spending). In other words, the availability in decentralized system different information about the fate of the payment unit forms the problem at determiningthe "right" transaction. Without centralized intermediary, there is no standard network, participant who can be trusted. It is this problem that solved the technology of blockchain ("chain of blocks"), on which the implementation of cryptocurrency (includingbitcoin), as well as non-payment implementations of distributed ciphered registers, was established. Decentralized payment system, although carries certain risks, in some situations may be more efficient than centralized, since remittancesmade with the help of such system do not require the participation of intermediaries, and, correspondingly, can not be cancelled or changed by these intermediaries [1].

Blockchain, except the technology itself, is called the direct database –"distributed registry". "Distributed" means that each participant keeps (and synchronizes) full version of base or, at

a minimum, records of large number of recent transactions. Thus, it is impossible to liquidate blockchain by disconnection some participants from network: base is saved for those who stayed. Base storage means the participation in the system and, accordingly, the presence of unique keynecessary for addressing transactions (participant address, or"wallet"). The presence or absence of any other information about the user in base odes not influence the work of the system, and therefore blockchain can be anonymous, that is contain only address of participants (their"wallets") [1].

The most widespread implementation of blockchain technology is a cryptocurrency bitcoin, blocks of which are sealed since 2009. The first operations of exchange of bitcoins to property and money took place in 2010; at the same time there were exchanges, which provided an opportunity to follow the courses of cryptocurrency. As of October 2017, its base was about 136 GBand has been steadily increasing [1]. The bitcoin base is open: any participant can check transactions that were carried out by other participants. The amount of available information can be different in different blockchains, but the more open the network, the more it is protected frombreakage. In any case and in any implementation of the blockchain, in the course of a transaction its possibility is checked –for example, whether there is enough cryptocurrency in participant for the transfer. In this way, the emergence of funds from nowhere is warned.

The only problem in this case is the"multiple spending", that is determining the correct transaction in case of sending the same funds to different addresses.

The blockchain proposes a technological solution to this issue. The base consists of a chain of successive blocks (hence the name of the technology, the block chain). Each next block contains indentifier of the previous one, and also information about the "difference" of the performed transactions. Thus, itisimpossibletofalsifytransactionsalreadyexistinginthebase, as this will lead to the changing of all new ones. The introduction of new transactions into base is much more complicated, in what is the whole essence of blockchain.

The authors of the system deliberately complicated the creation of new blocks: for bitcoin they can be created no more than once every ten minutes. Thisisachievedbycomplexmathematicalcalculations.Toenteranewblockintothesystemparticipantsshouldfulfill a task that is solved only thorugh an overrun. The one who first finds the correct number receives a reward from the system: the right to"seal"the next block of transactions and supplement it with a common base. If the participants increase their capacity and solve tasks too quickly, the system automatically complicates the requirements so that to the emergence of new blocks will be spent an average of at least no more than ten minutes.

This process is called mining, by analogy with the extraction of the ore. Mining – is a technology for extraction of virtual money by solving in Internet complicated mathematical tasks on special equipment called"farm" [3]. Withthehelpofminingthe emissionofnewmoneyunits (inaformofcommissions) is

realized. The emission can be decreased or evenstop with time, for example, in bitcoin, where thus it is guaranteed the stability of money stock [1].

Therefore, the algorithm of work of blockchain can be imagined in such a way. If the participant of the system wants to fulfil transactions, he should inform about it other participants. Those who are ready to take part in mining, check the possibility of transaction and start calculations. The participant who received the correct result the first"seals"the block and sends updates to all other participants of the network. If he send at once severalmutually controversial transactions (multiple spending), only one happens – the one that first came to the miner who found the solution. The blockchain technologically solves the risk of multiple spending as a result of unscrupulous actions by realization of the technology of the distributed (decentralized) database guided by the actions of participants. It is practically impossible to influence the network from the outside while there are enough participants or theirtotal capacity. By default, the blockchain is open and anonymous; this ensures maximum decentralization and protection of the network. It is quite possible to make network based on the blockchain on-anonymous and closed, butsofarall popular networks are anonymous [1].

While most members of the network remain independent, it is impossible to falsify the information in the earlier blocks in the blockchain, as it is impossible to carry out transaction for any of the participants. The network based on the blockchain is always consistent – for example, it is possible to track the path of each bitcoin from time of its appearance in network. The active participants (miners) are interested in the correct work and development of the network, since they benefit in the form of commission, in fact, for maintaining its network performance.

Since "impossible" transactions are excluded and all participants have equal rights, the volume of cryptocurrency and the change of this volume (emission) are determined in advance. The cryptocurrency can be distributed between the participants from the beginning, as well as emitted and distributed depending on various factors (the existence of the base, the status of the participant of the system or its local computing power). Thus, the distribution of bitcoins in the corresponding systemis based on the computing power.

The blockchain technology was deliberately not patented, and therefore, soon enough, there were alternative implementations of cryptocurrency (alcoins). The most popular cryptocurrency based on identical with Bitcoin-protocol is Lightcoin – the cryptocurrency that uses a little other encryption algorithm providing faster execution of assignments. Most alcoins are used as speculative instrument and quickly lose popularityas means of exchange and accumulation. New decentralized platforms were created based on the blockchain: analternative DNS system of internet-addressing Namecoin, Ripple, which is positioned as infrastructure technology for interbank payments, and Etherium – the ecosystem of decentralized applications, implemented as the only decentralized virtual machine. Technology went beyond the scope of creating virtual money: the distributed

platforms with the function of smart-contacts, the precursor of which was the classic blockchain, are already considered as mechanism for realization of alternative system of transactions which are not associated with the state involvement and legal regulation [4].

2.2. Cryptocurrency as an object of civil law

World practice has formed various approaches to cryptocurrency as object of law. Atvarioustimesandindifferent countries the cryptocurrency was considered as:

– payment means (Italy, Japan);

– financial instrument;

– moneysurrogate (Ukraine, RussianFederation, Belarus, this position was also expressed in in the European Commission);

– goods (for the first time – in the USA);

– digital equivalent of value;

– the form of digital property;

– intangible asset.

Today, in most countries of the worl, the cryptocurrency is not considered to be money, currency or payment means, but qualified as intangible asset or goods [7]. The subject of the discussion is the question of the nature of the right to cryptocurrency, particularly, whether it is a subject of property right, exclusive rights, etc. [8]. The purpose and technological properties of blockchain technology are determined by the prevailing general legal understanding of cryptocurrency in native literature and public legal consciousness as intangible digital asset, which defines units of value, the subjective rights of which are fixed in accordance with records in distributed registry (blockchain).

One of the most acute problems of civil circulation of virtual currency in Ukraine is the search for suitable objects of lawto which it could be equated. The records in the blockchain are absolute rights and by nature are similar to things: theirnumberisknown;theymovef romownertoownerin a strictly defined order and do not contain any claims rights (like securities).Thenativedoctrineoflawfor a long time avoids the possibility of recognizing intangible things. Forexample, non-cashandnon-documentarysecuritiesarerecognizedasobjects of claim rights;due to the lack of central depositary (registrar)of cryptocurrency do not foresee the emergence of a claim right from their owner.

In view of this, the legislator does not even have the theoretical possibility to consider cryptocurrency to be object of claim rights. In such a situation, there are significant chances to regulate cryptocurrency as the object sui generis (as at one time exclusive rights were regulated inRussia, despite objections of supporters of proprietary concepts). No less probable is the use of substantive law by analogy (as was the case, for example, in determining the legal nature of electroenergy), which would give rise to another fiction in legal regulation. In some respect this can be a better option than analogy with the right to the intellectual property (the blockchain = database) or with "information" (for example, according to the law of RF"On Information, Information Technologies and Information Protection"[9]).

The native settlement system is more or less closed: at receipt all funds are subject to currency control, which eliminates most of the suspicious and criminal transactions. It is clear that

separate loopholes for dirty money are kept – offshore, criminal banks in third world countries, etc. However, a complete path to the settlement system for them is closed. The legalization of cryptocurrency in one way or another opens this way; this is why even partial legalization of them is hindered in order not to give cryptocurrency systems access to financial systems. And even haven decided on this step can face a powerful counteraction from the side of FATF and SWIFT [1].

Given to inconsistency of cryptocurrency with none of the actual objects of civil law, their full legal settlement requires either the creation of new object of civil rights in the actual system of objects, or the formation of the new system of objects of civil rights. However, from the ppoint of view of legislator it is easier to equate cryptocurrencies to one of the actual objects of civil rights, despite the probability of partial inadequacy of such regulation of the essence of cryptocurrency and the resulting confusion.

It should be taken into account that in most countries of the world the cryptocurrency is not considered money or currency, it is mainly qualified as intangible asset or goods and, more often, does not act as a legal payment means. At the same time, operations with cryptocurrency are equated with barter operations. This position is criticized, since under such conditions the financial components of cryptocurrency, which is transferred to the production sphere and into the sphere of goods turnover, arelost;thus losing is what it was created for, which does not contribute to the development of interbank cooperation and financial technologies [5].

2.3. Bitcoin in the practice of the Court of Justice of the European Union

The main features and legal regime of virtual currency of bitcoins (as one the most common types of non-traditional currencies)is determined by European Court of Justice’s jurisprudence. Particularly, this decision on the taxation of value added tax on cryptocurrency transactions in the "Tax Authority of Sweden (Skatteverket) againstDavidHedqvist" of October 22, 2015 [10].

The court considered the question of the taxation of value-added tax on transactions with cryptocurrencies in connection with the provision by the company of the respondent of the services for the exchange of traditional currencies into bitcoin virtual currency. A court decision is an important document for understanding the European approach to the definition and regulation of cryptocurrency. It is possible to allocate from it the following basic points:

1. A virtual currency can be defined as type of unregulated digital money emitted and controlled by its developers and accepted by members of a particular virtual community. Bitcoin virtual currency is one of the virtual "two-way-flow" currency schemes that users can buy and sell on an exchange basis. Given their use in the real world, such virtual currencies are similar to other convertible currencies. They provide the possibility to buy both realand virtual goods and services.

2. Virtual currencies are different from electronic money, since they are not expressed in traditional accounting units, such as the euro, but are expressed in virtual units such as"bitcoin".

3. Operations for the provision of services for the exchange of traditional currency to bitcoin virtual currency and vica versa must be carried out electronically through the website of the company. The company operator will buy units of bitcoin virtual currencydirectly from private individuals and companies or on international exchange sites. In the future the company will resell the units through an exchange site or store.

4. Bitcoin virtual money sold by the company-operator is such that the operator purchased directly on the exchange site after the client placed the order, or such that the company already had in stock. The price offered by the company-operator for clients will be based on current price on a specific exchange site, to which a certain percentage will be added. Te difference between the purchase price and the sale price is the profit of the company-operator.The company will not charge any other fees.

5. Transactions for the provision of services for the exchange of traditional currency into the bitcoin virtual currency and vica versa are limited to the purchase and sale of bitcoin virtual units in exchange for traditional currencies. From the foregoing, it does not seem that these operations include payments made with the help of a bitcoin. Such operations are the provision of exchange services for remuneration.

6. The bitcoin virtual currency with two-way flow that will be exchanged for traditional currencies in the context of exchange operations can not be describes as "tangible property", given that the virtual currency has no other purpose other than being a payment instrument. The same applies to traditional currencies – money that serves as a legal means of payment.

7. Transactions for the exchange of traditional currency to the bitcoin virtual currency and vice versa, which consist in the exchange of different means of payment, do not fall under the concept "supply of goods". In these circumstances, these operations are the supply of services for remuneration.

8. Provisionofservicesfortheexchangeoftraditionalcurrencyintothebitcoinvirtualcurrencyandvicaversaprovidestheexistenceofabilaterallegalrelationsbetweentheoperatorcompanyandotherpartyoftheagreement in which the parties mutually agree on the transfer of the amount of currency and the receipt of the corresponding value in virtual currency with a two-way flow or vice versa.

9. Itisalsoclearthattheoperatorcompanyforserviceswillreceivearemunerationequaltothemarginthat it will include in the calculation of the echange rate at which it is ready to sell and buy the relevant currencies.

10. Inordertodeterminewhetherthesupplyofservicesispaid, itdoesnotmatterwhether the remuneration is expressed in the form of commission payment oe certain fees.

11.Operationsfortheexchangeoftraditionalcurrenciesintothebitcoinvirtualcurrencyandothernon-traditionalcurrenciesandvicaversa, aslongassuchcurrenciesareacceptedbythepartiesas an alternative to the legal payment means and do not have any purpose other than to serve as a means of payment, are financial transactions.

12. The "bitcoin" virtual currency, being a contractual payment means, can not be considered as a current account,

a deposit account, a payment ora transfer. In addition, unlike deposit and current accounts, payments, transfers, debts, checks and other negotiable instruments, the"bitcoin" virtual currency – is a direct payment means between the operators who accept it.

13. Unless otherwise provided by the law of the respective country, operations involving the "bitcoin" virtual currency, other non-traditional currencies, are not used as legal payment means.

14. The "bitcoin" virtual currency is neither a security guaranteeing ownership, shares in companies or associations, nor debt nor other securities giving right to the property of legal entities and other securities that can be equated with their character with the other securities equate with the right of ownership.

2.4. Status and prospects of legal regulation of blockchain and cryptocurrency

The need to regulate the blockchain and cryptocurrency puts a number of new challenges to the state. The blockchain is an entirely new technology aimed at the technological solution of a number of tasks previously provided by state regulation. The problem of double spending, the identification of the owner, the execution of smart-contracts – they are all solved in technological rather than legal way: the action becomes impossible due to asymmetric encryption and chain of blocks, but not because of the legal prohibition and state supervision [1].

This approach entails fewer costs, but does not take into account the boundary situations and does not have the flexibility inherent in legal regulation. The blockchain admits a cross border, global data exchange, and therefore the same problems are relevant for its regulation as for the regulation of global networks in general. First of all, this is a problem of exterritoriality in cross border relations. Each state has its own traditions of legal regulation of information technologies; the international regulation of this sphere is minimal. The only adjacent sphere in which a strong international cooperation (bsed on the FATF) operates is the fight against money laundering, but on its basis it will be difficult to reach any international agreements on cryptocurrency.

The regulation of cryptocurrency and blockchain is partially related to currency and financial legislation, and also to the security market, which was traditionally regulated within national jurisdiction. So far, there is no recognized practice for legal regulation in sphere of cryptocurrency (and the practice of regulation of blockchain). The use of the blockchain technology for solving various problems (cryptocurrency, distributed storage and exchange of information, public offer, and performance of contracts) requires the application of legal norms from various fields. As a result, the legislator has a choice: the gradual extension of traditional norms to various realizations of blockchain or acceptance of centralized regulation, which takes into account the principles of building of any decentralized system. It is supposed that the regulation of cryptocurrency will give a possibility to use them often as an exchange means, which will reduce the speculative component in their use and, accordingly, the volatility of cryptocurrency market. The regulation will attract big business to operations with the

use of cryptocurrency, which will reduce the shadow market and improve the reputation of cryptocurrency, which in turn will also attract medium and small businesses to such operations. An increase in the number of participants in the respective blockchains will increase their decentralization, and, accordingly, reliability [1].

In many countries of the world and international organizations the possibilities of the blockchain technology in different spheres of life are actively explored. Great prospects for the development of this technology are seen in the filed of finance, that is as a promising tool for payments and settlement and clearing operations. Therefore, the most active steps for its comprehension, legal protection and regulation are made by financial and monetary regulators, in particular Japan, Singapore, Hong Kong, Great Britain, and China[11].Theintroductionoftheblockchainisapriorityofthelargestbanksoftheworldandthemostinnovativecountries –Sweden, Estonia, Denmark, etc. Such developed countries as Switzerland, Canada, and the USA do not hinder the development of cryptocurrency, even actively develop and implement the blockchain technologies. Inthe USA, for example, its use is completely legal under control of its conversion into dollars and vica versa [12].

Today the legal regime of cryptocurrency in Ukraine is not determined. The calculations are conducted mainly by concluding agreements of a mine, in which the cryptocurrency acts as a commodity that is exchanged for real goods, services or work. Operation on the acquisition or alienation of cryptocurrency can be recognized as a one way transaction, giving of goods or, in general, a transaction that is contrary to the law [5].

The absence of legal regulation of cryptocurrency in Ukraine is much more acute problem than the lack of regulation of the blockchain in general. In this case, without normative regulation the cryptocurrency can not use honest entrepreneurs: it is impossible to justify the profits received from the sale of cryptocurrency, to pay taxes from them, pass currency control, and carry out mining legally.

In Ukraine there is no a single clear position concerning the legal regime of cryptocurrency. In 2014 the National Bank of Ukraine provided an explanation in which noted that the bitcoin cryptocurrency is a monetary surrogate that does not have a real value. Although formally mining (manufacturing of cryptocurrency) is not a violation, the NBU advised to refrain from using cryptocurrencies, since its status is not legally determined, and therefore the regulators are not liable for possible risks and losses associated with the use of virtual currencies in settlement operations [13].

However, in recent years, the position of considering of cryptocurrency as a new financial instrument with elements of private money has become increasingly widespread, which has incouraged the implementation of relevant state policy. Thus, the Draft Law "On the Circulation of Cryptocurrency in Ukraine" was developed on 06.10.2017 No. 7183, which is currently under consideration by the Verkhovna Rada of Ukraine and is intended to regulate the main provisions concerning the use of cryptocurrency in Ukraine.

2.5. The concept of the Draft Law"On Circulation of Cryptocurrency"on 06.10.2017 No. 7183

This bill is based on the idea that the NBU should control the cryptocurrency, all its types (bitcoin, etherium and even about eight hundred denominations of virtual money) are proposed to be legalized, and for manipulating with cryptocurrency at the exchange, to collect the tax to the state treasury.

It defines the cryptocurrency as program code (a set of characters, numbers and letters) that is the object of ownership,which can act as a mine, the information about which is entered and stored in the blockchain system as the accounting units of the current blockchain systemin the form of data (program code) [6].

The state is not liable, and also does not reimburse the value of cryptocurrency in case of its depreciation or loss for any other reasons. The state does not guarantee and does not take any measures to ensure the activity of online-services for the exchange of cryptocurrency.

Consequently, the developers of the mentioned Draft Law proposed to adhere to the already established in the world practice approach and recognize the cryptocurrency not money, but the product, and apply to cryptocurrency operations general provisions of the contract of mines [5].

Legal principles of the blockchain system and the status of subjects of cryptocurrency operations [6]:

The subjects of cryptocurrency operations carry cryptocurrency transactions, that is operations for the transfer of cryptocurrency, the information about which is stored in the blockchain system.

The blockchain system is a decentralized public registry of all implemented cryptocurrency transactions carried out by the subject of cryptocurrency operations.

The subjects of cryptocurrency operations are cryptocurrency exchange, the user of the blockchain system, the cryptocurrency owner, and miner.

The cryptocurrency owner is any individual, individual entrepreneur or legal entity that legally holds and owns a cryptocurrency.

Miner – any individual, individual entrepreneur or legal entitythat, through its own and/or leased specialized equipment, ensures the efficiency and safety of the blockchain system, cryptocurrency transactions, and, depending on the rules of the blockchain system, receives remuneration of the blockchain system and/or acquires ownership rights to cryptocurrency.

Mining is defined as the computational operations performed by the miner with the help of own and/or leased specialized equipmentin order to ensure the efficiency and security of the blockchain systemand, depending on the conditions of the blockchain system receives the remuneration of the blockchain system. The cryptocurrency is obtained as remuneration of the blockchain system, as a result of its generation in the blockchain system by the miner, who fulfilled necessary conditions for its obtaining. It is owned by miner and is subject to taxation [6]. The mining activity is planned to introduce to the Classifier for the support of functioning of the distributed database in class 63.11 "data processing, informa-

tion placement on web-sites and related activities", since mining includes support services and the operation of the distributed data registries including using the blockchain technology, data processing and smart-contracts in distributed blockchain-registries [14].

This definition of mining carries purely technical character and does not provide any criteria for the legal qualification of this type of activity. The consolidation of such a legal definition of mining does not solve the problem of its qualification and in general does not make any practical sense. Obviously, the law should stipulate that mining is a type of entrepreneurial activity that is more consistent with the world practice and facilitates an approach to solving the question of taxationof this activity [5].

The order of using cryptocurrency and implementation of cryptocurrency transactions [6]:

The subject of cryptocurrency operations has the right to freely dispose cryptocurrency, in particular, to carry operations for mine (exchange) of cryptocurrency of any kind to another cryptocurrency, to exchange it into electronic money, currency values, securities, services, goods, etc.

To the cryptocurrency the general norms are applied that can be spread to the right of private property.

In accordance with the legislation of Ukraine, the general provisions about the mine contract are applied to cryptocurrency transactions.

Data on cryptocurrency transactions coincide in the blockchain system and are open and public for all subjects of cryptocurrency operations.

The cryptocurrency transactions contain information about the cryptocurrency basket from which the transfer was, the recipient, the amount of transfer, the timestamps that determine the moment of transfer. The cryptocurrency basket is a specialized software or platform that allows the user of the blockchain system to store the cryptocurrency and carry cryptocurrency transactions.

The subject of cryptocurrency operations independently guarantees the conduct of transactions of cryptocurrency. The subject of cryptocurrency operations undertakes to keep data on carried out transactions within 5 years.

The activity of cryptocurrency exchange [6]:

The cryptocurrency exchange is an organization that provides the interconnection between the subjects of cryptocurrency operstions and exchange of the cryptocurrency into electronic money, currency value, securities.

The creation and activity of cryptocurrency exchange is carried out solely in accordance with the procedure established by the National Bank of Ukraine.

Thecryptocurrencyexchange is obliged to carry out monitoring of all transactions, identification and personification of the subject of cryptocurrency operations in the order established by the National Bank of Ukraine.

The exchange of cryptocurrency to electronic money, financial values, and securities is carried out exclusively by the cryptocurrency stock exchange.

The income received by cryptocurrency exchange on the implementation of cryptocurrency operations is subject to taxation in accordance with the requirements of the current legislation of Ukraine.

The exchange (moving) of cryptocurrency can be carried out with the help of online-services on cryptocurrency exchange on the Internet.

The subject of cryptocurrency operations carries the mine (exchange) of cryptocurrency with the help of online-services on cryptocurrency exchange at their own risk.

The above mentioned provisions on cryptocurrency exchange mainly have framework character and directly contain clauses of regulatory character.Anumberofimportantissuesinthismarketare generally left unregulated. In this regard, the world practice of the legislative regulation of the issue and placement of token by analogy with securities deserves attention [7].

CONCLUSIONS

For the worlds leading countries the virtual currency is a fully fledged and legally regulated part of the economy. It is not considered as money, currency or payment means, but is qualified as an intangible asset or commodity. The possibility of using the blockchain technology in different spheres, especially financial ones, are actively explored and implemented. Forexample, the introduction of the blockchain is a priority for the banks of such countries as Sweden, Estonia and Denmark.

Today there is a situation in Ukraine in which the active use of cryptocurrency s combined with the lack of legal support of this process. Most settlements occur through the conclusion of mine agreements, in which the cryptocurrency acts as a commodity that is exchanged for another product or services. The absence of a sinle position and interpretation leads to the fact that such operation can be recognized asone-way transaction or giving of the goods, and a transaction that is contrary to the law. Such contradictions lead to problematic legal situations and put the more acue questions about the legislative regulation of virtual currency. The difficulty here is in the absence of the relevant object of civil law, to which it could be equated. Therefore, for a full legal settlement it is necessary to either equalize the cryptocurrency to one of the existing objects (which is the easiest way for the legislators), or to create a new system of objects of civil rights.

The conducted research gives grounds for the conclusion about the positive dynamics in legal regulation of virtual currency. Despite explanations of the National Bank of Ukraine in which the cryptocurrency was named as money surrogate and its use was used to be illegal, the development and spread of the blockchain technologyina few years led to a revision of such position and the implementation of the first real steps for its legalization. This is, in particular, the Draft Law "On the Circulation of Cryptocurrency in Ukraine", which is under the consideration of the Verkhovna Rada, the adoption of which will regulate the main issues of the circulation and use of virtual currency in Ukraine.

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SOME PROBLEMS OF PROTECTION OF PROPRIETARY RIGHTS OF CHILDREN

Children's property rights intheir broad sense include children's rights to maintenance, to property, children's right to use the property of the parents, the right to the standard of living necessary for children's physical, mental, spiritual and social development, housing rights, children's hereditary and corporate rights [1, 135].

A special place among children's property rights is devoted to the right of ownership and the right to use housing. The Declaration of the Rights of the Child (Principle 4) of November 20, 1959 [2] states that children are entitledto the right to proper nutrition, **housing** [highlighted by us. – T. B.], rest and medical service.

These provisions have received consolidation and further development in national legislation.

In particular, as set forth in Art. 18 of the Law of Ukraine of April 26, 2001 "On the Protection of Childhood" [3], the state ensures the right of the child to reside in sanitary and hygienic conditions sufficient enough not to harm its physical and mental development.

The children of atenant or an owner of an apartment have the right to use the occupied premises on a par with the owner or the tenant.

At the same time, the provisions of Part 3 of the article entrusts the guardship authority with the duty to exercise control over the observance of the property and residential rights of children by the parents or legal guardians whenever an alienation or purchase of new housing takes place.

Forms of such control are enshrined, in particular, in Art. 177 of the Family Code of Ukraine (hereinafter – the FCU) [4], Part 3 of Art. 17 of the Law of Ukraine "On the Protection of Childhood".

In accordance with Part 2 of Art. 177 of the FCU, the parents of a minor are restricted (without permission of a guardianship authority) to carry out acts concerning their property rights, such as:

entering into contracts that are subject to a notarial certificate and (or) state registration, including contracts for the division or exchange of a residential building, apartmentetc.;

issuing written commitments on behalf of a child;

abandoning the property rights of a child.

Parents have the right to consent the commission of the above-mentioned acts by a minor only with the permission of the guardianship authority (Part 3 of Article 177 of the FCU).

The permission to enter legal acts concerningimmovables of a child is provided by the guardianship authority after an inspection conducted within

one month and only if the child's right to housing is guaranteed.

A guardianship authority may refuse to grant permission to enter legal acts concerning immovables of a childwhile-appealing to a notary to impose a ban on the alienation of such property only in cases where it is established that:

1) mother and/or father of the child who requested permission are deprived of parental rights by the court in accordance with Art. 164 of the FCU;

2) a court, a guardianship authority or a prosecutor has made (taken) the decision to take the child from the parents (or those who applied for permission) without depriving them of their parental rights in accordance with Art. 170 of the FCU;

3) a lawsuit is filed in court to deprive the parents of the child (or those who applied for permission) of the parental rights by the persons aslisted art. 165 of the FCU;

4) the person applying for permission has provided false information that is essential for the provisionof the permit or the refusal to provide such;

5) the absence of an agreement between the parents of the child regarding the commission such act;

6) there is existing litigation concerning immovable property (that is essential to the permission to commit the transaction) between the parents of the child or between one of them and third parties;

7) the commission of such action will result in a reduction of the existing property rights of the child and/or violation of the child's protected legal interests.

Part 3 of Art. 17 of the Law of Ukraine "On the Protection of Childhood" provides that parents or other legal guardians shall not have the right, without the permission of the special guardianship authorities and bodies provided in accordance with law, to enter into legal acts that are subject to notarization and/or state registration, to waive child property rights, to divide, exchange, alienate property, to legally bind on behalf of the child, or to issue written commitments.

In particular, according to the legislation of Ukraine, the subjects of mandatory notary registration arethe agreements on alienation (sale, purchase, endowment, donation, rent, permanent alimony (care), inheritance contract) of immovable property in accordance with the provisions of Art. 657, 715, 719, 729, 732, 745, 1304 of the Civil Code of Ukraine (hereinafter – the CCU) [5]; and mortgage contracts in accordance with the requirements of Art. 577 of the CCU and Art. 18 of the Law of Ukraine "On Mortgage"[6].

The mechanism for granting permissions to commit such legal acts is established in the art. 66–68 of the Procedure for the conduct of activities related to the protection of the rights of the child (guardianship authority internal regulations), approved by the Resolution of the Cabinet of Ministers of Ukraine dated September 24, 2008 No. 866 (hereinafter – the Procedure) [7].

The difference in the legal consequences of the commission of legal acts related to property rights of a child without the permission of the guardianship authority by legal guardians (Part 1 of Article 224 of the Civil Code of Ukraine) and the parents of the child draws special attention.

Thus, Part 1 of Art. 224 of the Civil Code of Ukraine regulates that entry

into a legal actionwithout the permission of the guardianship authority (Article 71 of this Code) is null and void.

Part 1 of Article 1 71 of the Civil Code of Ukraine stipulates that the guardian has no right without the permission of the guardianship authority to:

1) abandon the property rights of the ward;

2) issue written commitments on behalf of the ward;

3) enter into contracts that are subject to a notarial certificate and (or) state registration, including contracts for the division or exchange of a residential building, apartment;

4) enter into contracts related to other valuable property.

The trustee, in accordance with Part 2 of Article 71 of the Civil Code of Ukraine, has the right to consent to the commission of legal acts provided for in part one of this article only with the permission of the guardianship authority.

The Family Code of Ukraineregulates the relations related to obtaining a permission from the guardianship authority somewhat differently.

While establishingin Part 2 and Part 3 of Art. 177 of the Family Code of Ukraine the parents' duty to obtain permission of the guardianship authorityin order to be able to commit certain legal acts related to the property rights of the child, the legislator did not providein the said article for the legal consequences of concluding transactions concerning real estate without the permission of the said authorities, which can be explained by different legal status of guardians (trustees) and parents of the child.

Today this gap, in our opinion, can be filled by filing by the children's services to the head of a district state administrative authority, an executive body of a city or a corresponding authority, the petition prompting the need to apply to acourt for the protection of the property and housing rights of the child, as provided for in paragraph 68 of the Procedure. Executive bodies, in turn, may apply to the court in accordance with Part 1 of Art. 56 of the Civil Procedural Code of Ukraine [8] with claims for the invalidation of transactions concluded without the permission of the authorities of guardianship, since according to par. 4 part 3 or art. 5 of the Law of Ukraine "On the Protection of Childhood" local executive authorities and local self-government bodies are obliged, in accordance with their competence, determined by law, to ensure, in particular, the resolution of issues related to the protection of personal and property rights and interests of children.

At the same time, one should admit the unjustified absence in Art. 177 of the Family Code of Ukraine of a provision that would include a direct indication of the right of parents (one of them) to apply to a court with a claim for the invalidation of an agreement entered into by another parent concerning the property of a minor child without the appropriate permission of the guardianship authority, in spite of the fact that, in the case of the commission by of one of the parents (believed to be acting with the consent of the other parent), of a transaction concerning the property of a minor child that goes beyond petty everyday transactions without the consent of the other parent, the latter has the right to apply to the court with an in-

validation requirement since the transaction was made without his consent (p. 6 Art. 177 of the FCU).

In this regard, we propose to supplement Art. 177 of the Family Code of Ukraine, with part 4 stating that: "4. A legal action, committed by one of the parents without the permission of the guardianship and trusteeship authority, may be declared invalid in a court by the suit of the second parent or guardianship and trusteeship body", and parts 4–10 of Art. 177 of the FCUshould be considered as parts 5–11.

We believe that this will allow the increase in efficiency of protection of the violated property (residential) rights of minors and children through the application of the provisions of Art. 203 and 215 of the Civil Code of Ukraine.

The case law of the application of Art. 177 of the Family Code of Ukraine regardingthe legal consequences of the lack of permissions of the guardianship authorities for the commission of real estate deals involving children is quite ambiguous.

Thus, in some cases, the courts declare such transactions invalid, in others – refuse to satisfy the claims.

The judgement of the Chamber of Civil Cases of the Supreme Court of Ukraine on February 10, 2016 (case number 6-3005цс15) [9] cancelled the court judgement of the local court and the judgements of the courts of appeal and cassation (at the time of consideration of the case) on invalidation of a mortgage agreement. The Supreme Court of Ukraine based its decision, in particular, on the fact that the courts incorrectly applied the norms of Art. 12 of the Law of Ukraine dated June 2, 2005 "On the Basics of Social Protection of Homeless Persons and Homeless Children" [10], Art. 17 of the Law of Ukraine "On the Protection of Childhood" and Art. 177 of the Family Code of Ukraine.

As stated in the court judgment, even though the parents of a minor child committed a certain transaction that without prior permission of guardianship authority violates the established Art. 177 of the Family Code of Ukraine, this fact alone is not, as stated by the court, an unconditional confirmation of the existence of grounds for the invalidation of a transaction. Suchact, as further noted by the court, may be declared invalid if such an act by the parents without prior permission of the guardianship authority has led to the violation of the right of the person in whose interests the action is brought in the first place, that is, to reduce the existing property rights of the child and / or to violate the interests protected by law, to reduce or limit the rights and interests of the child in relation to the accommodation.

The above-mentioned position of the Supreme Court of Ukraine, perceived by lower courts (given there is a lot of such examples, especially when it comes to loan agreements, mortgage contracts, etc.), cannot be agreed on and here's why.

The Law of Ukraine "On the Basics of Social Protection of Homeless Persons and Homeless Children", Part 2 of Art. 12 of which stipulates on the unacceptability of reduction or restriction of the rights and interests of children in the course of committing any contracts concerning residential premises, defines the general principles of social protection of homeless people and homeless children, ensures the legal regulation of

relations in society, which are aimed at the implementation of rights of homeless persons and homeless children and freedoms provided by the Constitution and legislation of Ukraine. Consequently, the said law applies only to a certain group of persons, namely, to homeless persons and homeless children, therefore the provisions of Art. 12 cannot be extended to all children, as it was doneby the Supreme Court of Ukraine. Moreover, this article is featured in the section, the norms of which are aimed at preventing homelessness.

In its other resolutions, particularly from June 6, 2016 (case number 6-589цс16) and on 13 of September 2017 (case number 6-1414цс17) The Supreme Court of Ukraine expressed the legal position according to which the normsthat require for a prior permission of the guardianship authority in order for the parents to enter a property contract, are aimed at protecting the property rights of children, thus the basis for invalidation of the relevant agreement is the violation of property rights of the child (narrowing of the scope of existing property rights violations legally protected interests, reduction, restriction of rights to premises, etc.) as aresult of signing the contract, and not the fact of the absence prior permission of the guardianship authority to conclude such an agreement, which is not absolute proof of grounds for declaring the transaction invalid. The stated cases also stress on the inadmissibility of violation of the principles of fairness, honesty, reasonableness of civil law by the person who commits the transaction, the obligation to refrain from actions that could violate the rights of others, inadmissibility of actions to be committed with the intent to harm another person, as well as abuse of law in other forms.

The above arguments, in our opinion, do not refute the requirements of the law on the need for parents to obtain permission to commit transactions in respect of children's property in cases provided for by law.

It comes as obvious that the grounds for the invalidation of the transaction concerning immovable property of a minor child committed by parents without the prior permission of the guardianship authority, or the lack of permission to consent to the commission of a legal actionby an underage child is the very fact of the absence of such a permit, regardless of whether the property rights of the childare violated.

Consequently, the **presence of the permission of the guardianship authority** for the commission of legal actions regarding property rights of a minor child (Part 2 of Article 177 of the FCU) or the granting of consent to the commission of such legal acts by an underage child (Part 3 of Article 177 of the FCU) should be considered the only one, however, **extremely important, condition for the validity of these actions**.

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THE PRINCIPLE OF SOCIAL DIALOGUE IN THE FIELD OF LABOUR AS ONE OF THE MAIN PRINCIPLES OF LABOR LAW

The concept and the content of the principle of the social dialogue in the field of labor are defined in the article. The place of the principle of the social dialogue in the field of labor in the system of principles of labor law is ascertained. Proposals on the implementation of the principle of the social dialogue in the field of labor in the current Code of Laws on Labour of Ukraine, draft Labour Code of Ukraine are introduced.

Key words: *basic principles of labor law, social dialog, the field of labor, definition of the principle of the social dialogue in the field of labor, content of the principle of social dialogue in the field of labor.*

Formulation of the problem. Principles of labour law are the most important fundamental foundations, the basis of this branch, which permeate the content of its norms and have a universal, general scope. One of the current tasks of the modern science of labour law is a comprehensive study of the system of principles of the industry, based on the international and European labour standards, domestic legal tradition, comparative analysis of Ukrainian labour legislation and the legislation of foreign countries, and the practice of its application by law enforcement agencies. Separate principles of legal regulation of labour relations, including the principle of social dialogue in the field of labour, require special research.

In the context of the codification of the national labour legislation, researchers are tasked to formulate specific proposals regarding the legislative consolidation of the basic principles of legal regulation of labour relations in the draft Labour Code of Ukraine.

The state of research of the topic. In the modern science of labour law, the principles of legal regulation of labour relations are researched in the works of N. B. Bolotina, I. P. Zhigalkin, O. Ya. Lavriv, D. A. Pankov, O. V. Starchuk, G. I. Chanysheva and others. However, the principle of social dialogue in the field of labour has not yet been the subject of a special comprehensive study. Issues that require the attention of researchers should include the question of the definition and content of the above-mentioned principle, its place in the system of principles of labour law.

The **aim** of the article is to determine the definition and content of the principle of the social dialogue in the field of labour, its place in the system of principles of labour law.

Presentation of the main material. In the science of labour law, social dialogue is recognized as one of the main principles of legal regulation of labour relations. This conclusion is reached by both the researchers who determine the definition of the social dialogue in the field of labour [1, p.98; 2, p.91], and researchers who study the system of principles of labour law [3, p. 11; 4, p.7].

As one of the basic principles of modern labour law, the principle of social dialogue in the field of labour may be defined as a guiding idea, a fundamental foundation that expresses the essence, basic characteristics and general orientation of the norms of the legal institutes of collective labour law, as well as particular institutes of individual labour law.

Particular attention should be paid to the importance of the systematic approach to the study of the principles of legal regulation of labour relations that exists in the modern science of labour law. Thus, I. P. Zhigalkin emphasizes that the consistency of the system of the principles of labour law requires:

a) their conformity with each other,

b) a unified approach to their understanding and application,

c) taking into account the nature and content of heterogeneous principles,

d) on the one hand, a differentiated, and on the other hand – an integrated approach to the legal regulation of relations in the field of labour,

e) compliance of the principles of labour law with the true interests of society and the state. Each of the principles can be interpreted and applied only with respect of the essence of the other principles connected with it [5, p.166].

There is no single approach to determination of the place of the principle of the social dialogue in the system of principles of labour law. This is explained by the existence of different classifications of the principles of legal regulation of labour relations.

Thus, in carrying out the classification of the principles of labour law, I. P. Zhigalkin distinguishes fundamental, general and special principles [5, p.165–166]. Fundamental are those that form the basis of labour law as a whole, which acts as a mandatory social regulator of labour and related relations and serve as the embodiment of the most important values, inherent to this field of law. These include humanism, social justice and equality. General and special principles, as derivatives from the fundamental principles, ensure their implementation. General principles reflect the specifics of labour law as an independent branch of law, its place and purpose in the national system of law, and determine the focus of its norms. Special principles are the guiding ideas that develop the essence of the norms of one or more institutes (subinstitutes) of labour law.

I. P. Zhigalkin singles out as one of the fundamental principles of labour law the principle of equality and considers it as a basic for a number of principles of legal regulation of relations in the field of labour, including the principle of social dialogue in the field of labour.

In the science of labour law exists another classification of the principles of legal regulation of labour relations, according to which these principles are divided into four main groups:

1) those that express the policy of the state in the field of legal regulation

of the labour market and effective employment;

2) those containing the guidelines in the field of the establishment of working conditions;

3) those that determine the legal regulation of the employment of waged workers;

4) those that reflect the main directions of legal policy in the field of health care and protection of labour rights of workers [6, p.26].

According to this classification, the principle of social partnership is included into the group of principles that determine the establishment of working conditions of employees. At the same time, the emphasis is on the right to participation of workers, employers, their associations in the contractual regulation of labour relations and other directly related relations.

N. B. Bolotina believes that the principle of social partnership is inherent to collective labour law. This principle is complex in its character and composition and includes the following principles-rights: the right of workers and employers for association in order to protect their rights and interests; freedom of association; equality of rights and opportunities [7, p.107].

In our opinion, the above-mentioned approaches to the definition of the place of the principle of social dialogue in the system of principles of labour law carry a narrow understanding of the content of this principle. One cannot agree with N. B. Bolotina that the principle of social partnership is typical only for collective labour law. This principle is also applied to the regulation of individual labour relations, which has recently become more and more manifest in the norms of such institutes of individual labour law as working time, leisure time, remuneration, health protection of workers at the production site.

If we follow the existing approach in the science of labour law to the definition of the system of principles of labour law as a set of principles of legal regulation of individual labour relations (the principles of individual labour law), the principles of legal regulation of collective labour relations (principles of collective labour law) and the principles inherent to the labour law in general, then in this system the principle of social dialogue in the field of labour belongs to the last group of principles, that is, those which are guiding ideas, fundamental foundations of legal regulation of individual and collective labour relations, which are distinguished in the subject matter of labour law.

At the same time, there is no unity among scholars regarding the definition of the content of the principle of social dialogue in the field of labour. The complex nature of this principle is noted in the literature. According to N. B. Bolotina, the principle of social partnership is complex in nature and composition. The researcher includes in it the following principles-rights: the right of workers and employers to association in order to protect their rights and interests; freedom of association; equality of rights and opportunities [7, p.107].

D. A. Pankov also notes the complex nature of the principle of the social dialogue in the field of labour and includes into its contents the principles of real recognition of the right to collective bargaining and ensuring the participation of employees and their represen-

tatives in the management of the organization [3, p.11].

In our opinion, such position of scientists cannot be agreed with. The principles of freedom of association, equality of rights and opportunities, real recognition of the right to collective bargaining and ensuring the participation of employees and their representatives in the management of the organization in international legal acts are recognized as independent principles in the field of labour and are not considered as elements of the principle of social dialogue. Thus, the ILO Declaration of 18 June 1998 proclaimed four fundamental principles and rights in the field of labour, including freedom of association and the effective recognition of the right to collective bargaining. To the realization of the principle of ensuring the participation of employees and their representatives in the management of an organization are devoted the ILO Recommendation No. 94 on Co-operation at the Level of the Undertaking of 1952 and the ILO Recommendation No. 129 on Communications within the Undertaking of 1967.

Some scholars somewhat narrow the content of the principle of the social dialogue, linking it only with the collective-contractual regulation of labour relations and the resolution of collective labour disputes [2, p.91].

At the same time, in the ILO practice to the social dialogue are included all types of negotiations, consultations and simply the exchange of information between or among representatives of the government, employers and employees concerning common interests related to economy and social policy. The ILO considers social dialogue to be the most successful means of improvement of living conditions and working conditions and establishment of social justice [8].

The content of the principle of social dialogue in the field of labour is associated with the participation of workers, employers and their representatives (trade unions, their associations, employers' organizations, their associations) in the contractual regulation of individual and collective labour relations. In a civilized society, it is on the basis of the social dialogue, contractual establishment of working conditions that a balance is struck between the productive and social interests of employers and workers, since only centralized regulation does not allow this objective to be achieved.

However, the content of the principle of social dialogue should not be reduced only to the participation of workers, employers and their representatives in the establishment of mutually acceptable working conditions. This principle requires the need for constructive cooperation between the parties to the social dialogue at different levels (national, sectoral, territorial, local) to reconcile their objectively opposing interests, finding a compromise, achieving socially meaningful and useful results. This follows from Art. 1 of the Law of Ukraine "On Social Dialogue in Ukraine" of December 23, 2010, No. 2862-VI [9], which formulates the definition of the social dialogue as a process of identifying and converging positions, achieving common agreements and making agreed decisions by parties to the social dialogue, representing interests of employees, employers and executive authorities and local self-gov-

ernment bodies, on the issues of formation and realizatiom of state social and economic policy, regulation of labour, social and economic relations.

This principle became the basis of the legal regulation of the creation and operation of social dialogue bodies in the field of labour (National Tripartite Social and Economic Council, sectoral (intersectoral) tripartite or bilateral socioeconomic councils, territorial tripartite socioeconomic councils), different forms of interaction and cooperation of the parties to the social dialogue: information exchange; consultations; conciliation procedures; collective bargaining on the conclusion of collective agreements; realization by representatives of employees of the rights in the field of informing and consulting, as well as other rights related to participation in the making of decisions by the employer; participation of employees and their representatives in the management of the organization; conciliation procedures for resolving labour disputes; implementation of joint control over fulfillment of obligations under collective agreements; participation of employees in the distribution of profit of organizations, etc.

Under the new economic conditions, the content of the principle of social dialogue in the field of labour is increasingly expanding. Specification of this principle is carried out in the norms of various institutes of labour law. These are such institutions of collective labour law as the legal bases for social dialogue in the field of labour, the legal status of labour collectives, the legal status of trade unions, their associations, the legal status of employers' organizations, their associations, collective agreements, the resolution of collective labour disputes (conflicts). Increasingly the principle of social dialogue is reflected in the norms of the institutes of individual labour law, such as, for example, working time, leisure time, remuneration, occupational safety and health of workers in the workplace. It is in the norms of these institutions that the contracting method of regulating labour relations, connected with the conclusion of collective agreements, other agreements, is further developed.

The principle of social dialogue in the field of labour, as well as other principles of legal regulation of labour relations, is not enshrined in the Code of Laws on Labour of Ukraine, which is its essential disadvantage.

This principle is also not foreseen in Art. 2 "Basic principles of legal regulation of labour relations" of the draft Labour Code of Ukraine. In Art. 2 prepared for the second reading of the bill of July 24, 2017, there are 15 principles left, most of which are the principles of legal regulation of individual labour relations. The principles of legal regulation of collective labour relations include only the principle of ensuring the right of workers and employers to freedom of association for the representation and protection of their rights and interests. This approach of the drafters of the Labour Code of Ukraine to the system of basic principles of labour law is questionable.

Conclusions. As one of the basic principles of modern labour law, the principle of social dialogue in the field of labour is a guiding idea, a fundamental foundation that expresses the essence, basic characteristics and general orientation of the norms of the legal in-

stitutes of collective labour law, as well as specific institutes of individual labour law.

In the system of principles of labour law, the principle of social dialogue in the field of labour belongs to the principles inherent to labour law in general, that is, those that are guiding ideas, the basic principles of legal regulation of individual and collective labour relations, which are distinguished in the subject matter of labour law.

The principle of the social dialogue in the field of labour is the fundamental foundation of the legal regulation of the participation of employees, employers and their representatives in the contractual regulation of individual and collective labour relations, the creation and operation of the bodies of the social dialogue, various forms of interaction and cooperation of the parties to the social dialogue at different levels: information exchange; consultations; conciliation procedures; collective bargaining on the conclusion of collective agreements; realization by the representatives of employees of the rights in the field of informing and consulting, as well as other rights related to participation in the adoption of decisions by the employer; participation of employees and their representatives in the management of the organization; conciliation procedures for resolving labour disputes; implementation of joint control over fulfillment of obligations under collective agreements; participation of employees in the distribution of profit of organizations, etc.

The list of principles enshrined in Art. 2 of the draft Labour Code of Ukraine does not include some principles that should indeed be recognized as the starting point, the main provisions of the legal regulation of labour relations. These include the principle of social dialogue in the field of labour, which needs to supplement the list of basic principles of legal regulation of labour relations in Art. 2 of the draft Labour Code of Ukraine.

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RELATIONSHIP BETWEEN THE RULES OF FAMILY LAW AND THE PROCEDURAL FORM OF NON-RECOURSE CIVIL PROCEEDINGS

Abstract. *The scientific article is devoted to the general provisions of the relationship between the rules of family law and the procedural form of non-recourse civil proceedings. To achieve this goal, the authors used a variety of theoretical scientific methods, such as systematic, dogmatic, formal-logical and methods of induction (deduction). It was established that the general and special procedural form of non-recourse civil proceedings is conditioned by the content and nature of the rules of the family law of the complex legal nature, which is manifested in the generic and categorical properties of court cases. The generic properties of court cases determine the specifics of the procedure for consideration of civil cases, a special civil procedural form. Categorical properties of court cases determine their jurisdiction and jurisdiction, the composition of persons involved in the case, the subject of evidence, that is, the general civil procedural form. By the degree of influence from the family-legal regulation, all institutes of civil procedural law that regulate the procedure for reviewing cases concerning the protection of family rights and interests, are proposed differentiated by: 1) institutes of civil procedural law, which are the subject of direct influence from the family law regulation, which is confirmed by the largest volume of complex family-legal norms; 2) institutes of civil procedural law, which are the object of indirect influence from the family-legal regulation, which manifests itself in the establishment of special rules at various stages of the civil process during the consideration of the court cases on the protection of family rights and interests.*

Key words: *norms of family law, procedural form, non-recourse civil proceedings, interconnection.*

INTRODUCTION

The problem of the relationship of material and procedural rules of law is one of the most urgent problems of modern legal science [1, p. 115]. It is considered as a general scientific problem, as well as a problem of correlation between different branches of law, legal institutes and separate legal norms. An analysis of general concepts of the division of law to material and procedural argues that such a delimitation of law is rather arbitrary, since it is impossible to divide legal norms mechanically and clearly into material and procedural [2, p. 31].

It should be noted that each procedural branch of law is closely connected, first of all, with the branch (branches) of material law, which it

"serves". This connection is decisive in terms of clarification of the legal nature of procedural procedures defined for the maintenance of basic material legal relations [2, p. 31]. Thus, the system of each type of civil procedure is determined, first of all, by the material and legal nature (category) of those cases that fall under the relevant jurisdiction, because the different legal nature of cases influences the order of their trial. The determining influence of material and legal component of cases is, first of all, on the activity of the court of the first instance [3, p. 41].

At the same time, it is clear that the relevant impact is not absolute. Not every branch or institute of material law and, moreover, not every norm requires an independent civil procedural form. One and the same branch of procedural law can serve several branches of material law, connected with certain similar signs. But as soon as the legislator attributes certain categories of cases to the jurisdiction of the court which, by their material and legal nature, are essentially different from those that are traditionally dealt with by civil procedure, there is a need for the division of legal proceedings into separate types, since the essential material and legal peculiarities of cases require the use of specific means and methods of protecting the law and protected by law interest [4, p. 4–5].

So, what specific elements of civil procedural form of non-recourse civil proceedings are influenced by the material and legal nature of family cases? To answer this question, we will give the thoughts of the scholars-processualists about the interconnection and interdependence of the norms of material and procedural law.

1. LITERATURE REVIEW

In the similar context V. V. Komarov states that it has become traditional to determine the correlation between material civil law and civil procedural law as content and form [5, p. 40]. The problem of correlation between material and procedural law reflects the intersystem relations of civil procedural law and civil and other material branches of law in the aspect of the functioning of material and legal and procedural and legal in the mechanism of legal regulation in general. In view of this, material law without procedural guarantees cannot be potentially real. Procedures for judicial proceedings and judicial decisions in the mechanism of legal regulation for impossibility of realization of material rights ensure the legal definition of specific legal relations and law and order in general [6, p. 168].

In the same angle O. V. Ivanov also mentions: "The material and legal character of cases referred by the law to the competence of the judicial authorities, can stipulate, within the framework of a single procedure of civil proceedings, some procedural features of their consideration… . But one should not exaggerate the importance of this factor in deciding the question of the impact of material law on the process: not always procedural features express the peculiarities of material and legal character of this category of cases" [7, p. 53].

R. Ye. Hukasian expressed his own position on the above problem, who in the scientific article "Influence of material and legal relations on the form of the process in legal proceedings" came to the conclusion that material law in-

fluences such elements of procedural form, for example: 1) on the definition of the subject and grounds of the claim; 2) on the composition of persons involved in the case and have a material interest in it; 3) on the definition of the subject of evidence, and the admissibility of evidence; 4) on the ways of protecting of the broken or disputed subjective rights of citizens and organizations [8, p. 31–32].

R. Ye. Hukasian also noted that it is precisely within these limits that the process in a particular case and, accordingly, civil procedural law, determined by material law. The rest – specifically procedural phenomena that are relatively independent, not related to material legal relations and set by the legislator in order to solve problems facing the judicial authorities [8, p. 31–32].

From the point of view V. I. Tertyshnikov, material law and process are in a dialectical relationship between content and form. Civil process is an external form of material law, the form of its manifestation, implementation (of course, not the only one), because sanctions of legal norms are also realized in the process, which means that the material law gets the most complete expression in the process, "lives" in its own form [9, p. 4].

Analyzing the interrelation between institutes of material and procedural law, Zh. K. Staliev drew attention to the fact that a number of institutes of the civil process are based on material and legal factual departments, institutes or complications of civil legal relations such as procedural legal capacity, procedural capacity, legal representation, obligations to prove, etc. [10, p. 19–20].

In the relevant context N. M. Kostrova noted that the boundaries of active interaction of material and procedural law pass through such basic elements of civil procedural form as a lawsuit, jurisdiction, subjects of the process, and basic rules of proof. All these elements of the procedural form create preconditions for the development of material (protective) legal relations in the procedural envelope. Therefore, the influence of material law on the basic elements of the procedural form is as follows: 1) the specificity of the controversial material and legal requirement defines the procedural side of the claim; 2) the need for material law in defense forms general and special rules of jurisdiction; 3) the place of the party in the process occupy subjects of probable or actual material legal relation; 4) the specificity of the basic rules of proof is associated with the need for the court to apply the rules of material law regulating the legal relations from which the dispute arises in court [11, p. 30].

"The content of civil material legal relations determines ways to protect the rights of the parties to the process, the basic elements of the rules of proof, the dispositive and competitive nature of the process of consideration of civil cases", – wrote S. O. Borovikov [12, p. 10].

In the opinion of I. K. Piskariov, the rules of material law determine the subject matter of the relevant cases, the subject of cognitive activity, admissibility of evidence, etc. [13, p. 7].

Some scholars emphasize the reciprocal influence of civil procedural law on the rules of material law. Thus, O. V. Ivanov stipulates the presence of such a reciprocal influence by the fact

that the legislator, when deciding the question of the forms of protection of certain subjective rights, takes into account the properties of the civil procedural form, fixed in the procedural law, as well as the possibility of judicial protection they have [14, p. 53].

Consequently, most scholars tend to think about the precondition of the main elements of the procedural form of the material and legal nature of cases that are subject to review and resolving in civil proceedings. In this case, the object of material and legal influence, mainly, enumerate such elements of procedural form as: procedural guarantees, the subject and the basis of the application, the composition of the participants of the case, the subject of evidence, the admissibility of evidence, the means of protecting the violated, unrecognized or dispute subjective rights and interests, etc. At the same time, some scholars do not deny the existence of reciprocal interconnection.

2. MATERIALS AND METHODS

In accordance with the aim and tasks, general scientific and special methods of knowledge of legal phenomena have become the basis of the methodology of the study of the general provisions of the interconnection of the norms of family law and procedural form of non-recourse civil proceedings.

Particularly, the comparative legal method has been used in comparison of scientific views with the outlined issues. The comparative legal method has allowed studying the whole nature of civil proceedings, discovering set of legal norms and principles that regulate and protect the personal and property relations of individuals that arise between members of the family.

Method of induction and deduction facilitated the classification of institutes of civil procedural law depending on the influence of the rules of family law on the procedural form of non-recourse civil proceedings. The system method allowed establishing the existence of the interconnection of the norms of family law and procedural form of non-recourse civil proceedings. Due to this, it has been discovered that family law is an independent branch of law that is separated from the civil. The sociological method allowed studying the features of family law, using various normative documents and examples of court cases. Established data can be used as a baseline at an initial stage, as well as for checking all information, preparing the relevant findings.

The dogmatic method was used in the interpretation of legal categories, which resulted in a deeper and more precise definition of the categorical apparatus of protection of family rights and interests in the order of non-recourse civil proceedings. The formal and logical method was used as a universal means of argumentation of scientific conclusions. Using the formal and logical method, the authors came to the conclusion that the general and special procedural form of non-recourse civil proceedings is conditioned by the content and character of the rules of family law of the complex legal nature, which is revealed in the generic and categorical features of court cases.

3. RESULTS AND DISCUSSION

3.1. General provisions of the interconnection of norms of family law and procedural form of non-recourse civil proceedings

Undoubtedly, the authors agree that the material nature of the cases in one or another way influences the procedural form of their consideration and the decision in the order of civil proceedings. In this case, such influence have general institutes of civil procedural law (evidence and provability, participants of the case, jurisdiction, etc.), as well as special institutes, among them – special procedures for the consideration and resolution of certain categories of civil cases, i.e. types of civil proceedings. The condition of the general and the special procedural form of civil proceedings by the content and nature of norms of material law, regulating the relevant material relations and reflected in the properties of the civil case, depends on the character of the latter, which, according to the criterion, are differentiated by generic and categorical properties.

The generic properties of litigation (that is, the properties that are the criteria for the separation of the types of court cases) [3, p. 35], such as: the affiliation of the certain group of material relations; the legal nature of material legal facts, which is a prerequisite for the emergence of the civil process), being properties of the highest order (scale), determine the specifics of the procedure for consideration and resolution of civil cases, i.e. a special civil procedural form. In this case, the main differences in the procedure for considering a particular category of cases arise precisely in the court of the first instance [15, p. 121–123]. In particular, with regard to non-recourse civil proceedings, in which determined by the law civil cases are considered in order to defend protected by law (legal) interests or undeniable subjective rights, the influence of generic properties is revealed, for example, in limiting the principle of competition and the limits of trial.

Categorical properties of court cases (that is properties that are criteria for distinguishing categories of court cases [16, p. 25], such as: subject structure, object and content of material relations) affect the jurisdiction of court cases, the structure of the participants in the case, the subject and grounds of the statement, the subject of evidence, the division of duties for proof, the lawful presumptions, etc. The manifestation of the influence of categorical properties of court cases on the general procedural form of their consideration may be, for example, the structure of the participants in the case of dissolution of a marriage on the application of a spouse who has children characterized by the plurality of persons who acquire the civil procedural status of the applicant.

Consequently, the influence of material nature of civil cases, the external manifestation of which are their generic and categorical properties, on general and special civil procedural forms is indisputable. In turn, this is the consequence of the placement of certain procedural norms in the codified acts regulating the material relations. And, as stressed in the legal literature, if earlier the procedural norms only split into regulations, which contained mostly material and legal requirements, then at the present stage of development of the law the number of strictly procedural norms significantly increases [17, p. 78]. For example, a number of norms of civil procedural law are reflected in the FC of Ukraine.

Regarding the correlation of procedural norms contained in procedural laws and procedural norms contained in the material law, the latest native legislation adopted the corresponding Soviet doctrinal approaches and legislative traditions, according to which general procedural norms, as a rule, are contained in procedural laws, and special norms concerning certain categories of cases – in material laws [18, p. 20–21].

What are the reasons of so-called "implementation", in particular, the norms of civil procedural law in the family law of Ukraine?

In the scientific doctrine it is considered that procedural norms are included in procedural legislation through: inextricable connection of such procedural rules with the material norm; historical preconditions for such consolidation; the desire to avoid detailing of particular issues in procedural laws; the necessity to eliminate gaps in legal regulation, due to the fact material legislation, as a rule, changes faster than procedural [19, p. 9–10].

The need to ensure "the stability" of general norms of civil proceedings justifies the expediency of consolidating the peculiarities of the opening of proceedings and consideration of certain categories of cases in K. S. Yudelson codes of material law [20, p. 6].

According to L. O. Hros, the need to create special norms arises only within the framework of separate procedural institutes, characterized by a special sensitivity to changes in material law (jurisdiction, parties and third parties, evidence and provability, court decisions, etc.) [21, p. 15]. However, as a rule, the legislators do without the introduction of special procedural norms, introducing only special material norms. An example of this can be material norms, containing provable presumptions, particularly the presumption of good faith of the addressee [3, p. 37].

"The inclusion of the most important norms of the process in the legislation on marriage and the family is explained by the meaning of these norms, which determine the behavior of the participants of civil process and aimed at protecting the rights of citizens. Repetition in the family law of some norms of legal proceedings is dictated by the need to facilitate the use of laws. Thus, it is permissible to include family law in procedural laws, which not only establish new rules, but also repeat the provisions of procedural legislation", – writes V. S. Tadevosian [22, p. 58].

V. K. Puchynskyi considers it is justified that in the normative legal acts, which by their name and general direction are acts of material and legal content, quite often placed some rules of justice. At the same time, he clarifies that this should be done within certain limits and that the main issues should be regulated by procedural legislation, which may be supplemented, if necessary, y special rules [23, p. 21].

Yu. K. Osypov also states that it is reasonable to include to the sources of material law only general rules that determine admissibility of cases arising from legal relations, which are regulated by a certain branch of material law, and the exceptions from the rules [24, p. 29].

N. M. Kostorova pays attention to the fact that a large number of procedural norms in family laws is caused by the need to accept special procedural rules which regulate the consideration

of cases arising from family relations. The need is caused by the peculiarities of the subject of legal defense in such cases, particularly, by the special interest of the state and society in solving such cases, and also by their personal character. Thus, the author considers that availability of procedural norm in family law is a naturally determined phenomenon, especially when procedural problems are solved in it, which are not settled in procedural regulations [25, p. 17].

The analysis of the scientific doctrine gives reasons to make a conclusion that the main reason for placement of procedural norms in material codes, mainly, is the need or expediency in special legal regulation of a single aspects of procedural order of consideration and solving of separate categories of cases in material law in order to avoid "overload" with special norm of procedural law. Is it a justifiable approach of the legislator? In order to obtain the answer to this question it is necessary to determine the legal nature of procedural norms included in the structure of family law.

From this point of view there are three main positions in legal literature.

According to the first position, the procedural norms included in the structure of material legislation are considered such which are included in the corresponding branch of law. This conclusion scientists spread to material branches, which do not have the same procedural branches of law. Since the family law relates to such branches, the procedural norm of which are included in the structure of family legislation, and can be considered as a structural part of the family law. However, norms containing procedural rules are norms of material law, but still have a procedural character. There is an opinion within this conception according to which procedural norms, placed in CLC of Ukraine, have a priority over the norms of material law concerning several issues of civil process [17, p. 92].

A postulate of the second position is the thesis in accordance with which procedural norms, which contains material law, are the component part of the procedural law, as the arrangement of some norms that regulate civil legal proceedings in another branches of legislation does not change their nature, but is explained by the connection of these norms with material and legal relations, to the protection of which they are directed and the specificity of which they reflect [26, p. 321].

The supporters of the third position consider that to every branch of material law corresponds the branch of procedural law. So procedural norms are not included in the structure of neither family, nor civil procedural law, but are the layer placed between relations regulated by material law, and form independent procedural branch – a family and procedural law [27, p. 38–40].

In the similar context we defend the position according to which material and legal norms, which regulate the peculiarities of the general procedural form of consideration and solve some categories of family cases, are necessary to examine as special norms of complex and legal nature. The specificity of the last lies in the fact that the corresponding norms, although placed in codified material and legal act – FC of Ukraine, at the same time are the sources of civil procedural law. The complex

character of such norms reflects the availability of special relation between material and legal and procedural rules, when their separate codification is not appropriate, and also the specificity of the structure of civil procedural legislation that lacks procedural norms which concretize the peculiarities of procedural form of consideration and solving family cases.

Therefore, we agree with N. M. Kostrova that procedural norms, which regulate the legal defense of family rights and interests, arrange a certain system consisting of:

а) general and special rules of civil proceedings, established in civil procedural legislation and included in the structure of civil procedural law;

б) procedural norms containing in family legislation and included in the structure of not only one branch of law, but civil procedural law [11, p. 52].

Taking into account the above mentioned, the authors find the approach of legislator who placed special norms of complex and legal nature in material and legal act – FC of Ukraine well-founded enough, thereby "avoiding" the overload by the corresponding rules of the civil procedural law.

That is why, general and special procedural form of non-recourse civil proceedings caused by the content and character of norms of family law of complex and legal nature, which simultaneously are the sources of procedural, as well as material law and revealed in generic and categorical properties of family cases, explained with substantiated desire of legislator to provide stability of CPC of Ukraine and avoid overload of the last with special rules.

3.2. Classification of institutes of civil procedural law by the degree of influence from the side of family and legal regulation

Finally, the main question to which the authors should give the answer – what are the exact institutions of non-recourse civil proceedings and to what extent are they materially and legally influenced by family law?

It should be noted here that non-recourse civil proceedings are the set of procedural institutions of different legal nature. Therefore, the influence of norm of family law on the procedural form of non-recourse civil proceedings is different depending on the object of such influence – a specific procedural institution. Based on this, by the degree of influence on the part of family and legal regulation, all institutions of civil procedural law, which regulate the order of consideration of cases concerning the protection of family rights and interests, can be differentiated into:

1) institutes of civil procedural law, the set of which is an embodiment of general civil procedural form (institute of jurisdiction and competence of corresponding applications, institute of the participants of the case, institute of evidence and proof, etc.). Such institutes are the object of direct influence from the part of family and legal regulation, which is confirmed by the largest number of complex family and legal norms.

As N. M. Kostrova timely points out, this group of procedural institutes belongs to the main "links" of interaction with material, including family law and reflects the basis of procedural regulation of protection of family relations in court [11, p. 37–38].

For example, in cases of divorce on the application of a spouse who has children, exactly by norms of family law (Article 109 of FC of Ukraine) the circle of persons is established who may be applicants in such cases (both spouses), as well as the circumstances which are included to the subject of proof (the existence of mutual consent of the spouses regarding the dissolution of the marriage; the presence of minors; the existence of the agreement on which of them will live with children, what participation in ensuring their living conditions will take one of the parents who will live separately, as well as the conditions for exercising the right for personal upbringing of children, and the amount of child support; the absence after divorce of violations of personal non-property and property rights of the spouses, as well as the corresponding rights of their children).

In addition, if regulatory legal relations are closely connected with the person of a certain participant of these relations, in the procedural laws in this regard a rule on the mandatory participation of these persons in the process may be introduced. Particularly, such provisions are found in the procedures concerning consideration of cases of adoption of a child (P. 1, 2 of the Article 313 of CPC of Ukraine) [3, p. 40].

The form of legal action to initiate (changes, terminations) regulative legal relations is closely connected with the admissibility of evidences and their evaluation in the trial. Therefore, special rules concerning the admissibility (inadmissibility) of individual evidence in relevant litigation or on the assessment of evidence in a case may be established in material laws [3, p. 40].

The character of material legal relations (objects, subjects and content), which is the main criterion for distinguishing categories of court cases, has a decisive influence on the necessity of introduction and content of the relevant special procedural norms. Particularly, the object of material legal relations affects the introduction of special ways to protect the rights of their members, special rules of jurisdiction, etc. In turn, the content of legal relations may impose special requirements for the content of the court decision in certain categories of litigation [3, p. 36];

2) institutes of civil procedural law, the total amount of which is the embodiment of the special civil procedural form (institute of opening proceedings in the case, institute of preparatory proceedings, institute of examination of the case on its merits, institute of appeal proceedings, institute of cassation proceedings, etc.). Such institutes are the subjects of indirect influence by family law regulation, which is manifested in the establishment of special rules at various stages of civil process during the consideration of cases by the court for the protection of family rights and interests.

For example, the specificity of material and legal regulation of the adoption in the family law is expressed in the special rules of the trial of relevant cases. In particular, according to the Part 1 of the Article 313 of the CPC of Ukraine, the court examines the case on the adoption of a child by the obligatory participation of the applicant, the guardianship and care body or the authorized executive body, as well as the child, if it is aware of the fact of adoption by the age and state of health, with the call of

interested and other persons, whom the court finds it necessary to interrogate.

The given examples show the existence of a number of norms of civil procedural law that regulate alternative territorial jurisdiction of applications, the representation of which is mediated by the protection of family rights and interests, reduced time limits and special civil procedural status of the applicants in some categories of cases, an exhaustive list of circumstances of procedural character that form the subject of proof in such cases, etc. These norms are the reflection of the simplicity of civil procedural form, which, in view of the above, should be considered as one of the main conceptual foundations of protection of family rights and interests in the order of non-recourse civil proceedings.

Returning to the differentiation of the institutes of civil procedural law by the degree of influence from the family and legal regulation, the authors summed up: the main object of influence from family law is a general procedural regulation of non-recourse civil proceedings, and special institutes of civil process experience only partial influence.

CONCLUSIONS

The general and special procedural form of non-recourse civil proceedings is subjected by the content and character of norms of family law of complex and legal nature, which manifests itself in the generic and categorical properties of court cases.

The generic properties of court cases (properties that are the criteria for distinguishing the types of court cases: the branch affiliation of certain group of material legal relations; the legal nature of material legal facts, which is a prerequisite for the emergence of the civil process), determine the specifics of the procedure for consideration of civil cases, that is a special civil procedural form.

Categorical properties of court cases (properties which are the criteria for distinguishing the categories of court cases: subject structure, object and content of material legal relations) determine their jurisdiction and competence, the composition of the participants, the subject of proof, that is the general civil procedural form.

By the degree of influence from the side of family and legal regulation, all institutes of civil procedural law, which regulate the procedure of consideration of cases concerning the protection of family rights and interests, can be differentiated into:

1) institutes of civil procedural law, which are the object of direct influence from the family and legal regulation (institute of jurisdiction and competence of the relevant applications, institute of participants of the case, institute of evidence and proof and other institutes,the total number of which is the embodiment of general civil procedural form), and it is proved by the largest amount of the complex family and legal norms;

2) institutes of civil procedural law, which are the object of the indirect influence from the side of family and legal regulation (institute for opening proceedings in the case, institute for preparatory proceedings, institute of court consideration and other institutes, the total number of which is the reflection of special civil procedural form), which is manifested in the establish-

ment of special rules at various stages of civil process during the consideration of cases by the court on the protection of family rights and interests.

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CONTRACTUAL REGULATION OF RELATIONS OF JOINT OWNERSHIP OF INDIVIDUALS IN UKRAINE (ON THE EXAMPLE OF AGREEMENTS ON THE TRANSFER OF PROPERTY INTO OWNERSHIP)

Reglamentación contractual de las relaciones de propiedad conjunta de personas en Ucrania (sobre el ejemplo de los acuerdos sobre la transferencia de bienes a propiedad)

Abstract. *The article is devoted to the theoretical analysis of legal regulation of contractual relationships related to the acquisition a right of common property by individuals in Ukraine. A civil contract as a regulator of relations common property of individuals is analyzed. The place and role of civil contract among the grounds of the appearance of a right of common property of individuals are found out. The author notion of a civil contract as a regulator of owners' relations of property is proposed and its essential terms are singled out.*
Key words*: Civil legal contract; hereditary contract; life abstinence; right of common property.*

INTRODUCTION

The importance of scientific development on the meaning and role of civil contract law in the occurrence of common property of individuals is caused, above all, by the integration of Ukraine into the European and world community and the need of taking account of the positive foreign experience in these matters. The success of implementation

of these tasks at this stage primarily depends on how civil legislation of Ukraine meets modern tendencies of development of contract law of the European Union, its adaptation to the current economic and political conditions and integration processes related to the signing of the Ukraine Association Agreement with the European Union. The importance of civil contract directly reflected in the Civil Code of Ukraine (hereinafter – CC) (Dovgert, 2004), where among other grounds of the occurrence of civil rights and obligations a contract is specified, and freedom of contract is one of the general principles of civil law. Therefore, the study of new doctrinal position contract as a legal fact that underlies the acquisition of common property and complex scientific research of civil contracts, legal result of conclusion of which is the acquisition of common property are relevant.

CIVIL CONTRACT AS A REGULATOR OF RELATIONS OF COMMON PROPERTY OF INDIVIDUALS IN UKRAINE

Civil contract is an effective regulator of relations common property of individuals in Ukraine, which took an independent place in the mechanism of legal regulation. In the works of the modern period of contract law the term "contractual regulation" is used increasingly. Contractual regulation of relations of common property is individual, because it provides binding nature to specific order to acts of counterparties concerning committing of which they agreed. The contract is concluded between equal subjects and aimed at mutual satisfaction of their needs at the expense of each other. Since one of the essential characteristics of any agreement is absence of possibility of either party to impose its terms to other party, the conclusion of the contract is only possible when each party considers fair contractual terms for them. Upon reaching this agreement, the parties are guided by the understanding of justice that is generally accepted in society. That is actually very civil contract is one of the ways of objectification of imperatives that are the essence of natural law of a society. In this understanding, an agreement is a way of legal regulation of conduct of the parties in civil obligations, because the will of the parties is fixed in the contractual terms, in accordance the conditions for contractors are flush with dispositive legislative provisions (Wilkinson-Ryan and Hoffman, 2015).

In this regard, it is advisable to state that the legislator in Art. 6 Civil Code of Ukraine recorded a provision that civil contract has acquired the status of an independent regulator of property relations of coowners between themselves and with third parties, thus giving to the regulation of contractual relations of common property prevailing value comparing to statutory regulation. According to p. 3 of the Art. 6 of Civil Code of Ukraine civil relations can be regulated not only by the acts of civil law, but also by their participants – subjects of these relations. That is in the relations associated with the emergence of common ownership of individuals the shift from their legislative regulation to contractual determination can be traced. However, civil contract must meet the rules that are mandatory for the parties and valid at the moment of the conclusion. Thus the legislator in par. 2 of p. 3 of Art. 6 of Civil Code of

Ukraine emphasizes the objective headship of the imperative rules of the law above contract. It can be concluded that the equality of dispositive provisions of Chapter. 26 of Civil Code of Ukraine and terms of the contract is possible when this equality is assumed by discretionary norm. However, with entering into force of a new law that regulates the common property of individuals differently, the conditions of previously concluded civil contract remain in force, unless otherwise will be provided by law. It should be understood that the rights and obligations of the contracting parties are related directly to the rules of Ch. 26 of Civil Code of Ukraine, as they are defined by the parties aiming at regulating their actions on pre-defined rules of conduct (contractual terms). Therefore, the contract is not just an agreement between the contractors, but primarily an individual regulator of relations between owners and third parties. Instead, the law acts as a general normative regulator of the relations of common property.

Therefore, it can be concluded that the contractual regulation by its impact on the relations of common property is wider than the statutory as legal regulation is aimed to managing the co-owners of property relations and contractual – to their organization and formation. Therefore, the contract serves the one unique social and legal structure of private law that determines its specificity and at the same time gives the parties the widest freedom of actions, provides the opportunity to become a sort of "legislators" for themselves, but in the limits defined by law.

The relationship arising from conclusion of the contract are recognized not only legal and not so much because they are directly regulated by rules of positive law, but because there is close legal connection between contractors. Law recognizes the rules of a contract created by the parties (subjective rights and obligations), that is it ensures their forced realization and protection. As a striking example of the recognition of legal relations arising from the contract may serve a deed of gift of shares in the right of common property under which the rights and obligations for contractors occur not by transferring the prescriptions of the law on the real situation through their voluntary actions, but directly from the agreement of the parties. In the process of concluding of such a treaty legal norms of individually direction are created, i. e. concerning specific and well-defined subjects and are designed for them.

Thus, contractual regulation in mechanism of legal regulation of property relations co-owners occupies a special place, forming a separate subsystem – a set of elements that form in their systematic unity mechanism contractual regulation of relations of common property of individuals. It appears that aforesaid subsystem of contractual regulation has determining value for the mechanism of legal regulation of relations of common property, since it establishes the content of other elements, and, consequently, the mechanism of regulation of private relations in general. The mechanism of regulation of contract is formed by model of contractual relationships approved by positive law; principles of contract regulation, contracting manners. Thus, the mechanism contractual regulation, the core of which is a civil contract, is an integral compo-

nent of the mechanism of regulation of private relationships. Contractual regulation of property relations of coowners and third parties performs the following functions:

– law-making (is shown in shaping the content of the agreement, which serves as the basis of occurrence, change and termination obligations);

– organizational (organizing a self-regulation of property relations between owners and third parties);

– informative (containing information about the content of a civil contract);

– preventive (prevents conflicts of interests of participants);

– ensuring compliance with the law terms of a civil contract and the legality of action for its implementation.

THE CONCEPT AND THE ESSENTIAL TERMS OF THE CONTRACT AS A REGULATOR OF RELATIONS OF PROPERTY CO-OWNERS

In civil literature the position of the multiple meaning of the term "the contract" is predominant, which covers such legal phenomenon as legal fact (bilateral or multilateral transaction), which is the basis of civil rights and obligations; contractual obligations (relationship) arising from the concluded contract; a document that fixes the fact of establishing binding relationship between contractors (Dzera *et al.,* 1998; Yoffe, 1975).

It should be noted that the concept of multiple meaning of the concept of a contract has found its realization in the civil codes of many countries, built on pandectists (Germany, France, the Netherlands). It is adopted in contemporary Ukrainian legislation too.

Among general contractual provisions, the defining place certainly belongs to the definition of the concept of a contract by the Civil Code of Ukraine. According to p. 1, Art. 626 of the Civil Code of Ukraine the contract is defined as an agreement between two or more parties aimed at the establishment, modification or termination of civil rights and obligations. We cannot argue that this definition is completely new for the jurisprudence because before the adoption of the Civil Code of Ukraine in 2004 sufficiently established views on the concept of civil contract had evolved in the legal doctrine. Analyzing this definition contract, V. V. Luts says that the agreement is not limited to the fact that it affects the dynamics of civil relations (creates, modifies or terminates them), but also determines the content of specific rights and obligations of the participants of contractual obligations according to legal requirements, business traditions and requirements of reasonableness and fairness. In this sense the contract is a means of regulating the behavior of parties in civil relations (Luts, 2001). So the contract is also a legal fact and form of existence of relationship, and a document that fixes rights and obligations of the parties, and a regulator of property relations, herewith co-owners are recognized as the subjects of the contractual regulation that allows to establish criteria for their possible behavior. Taking into account that civil contract is aimed at regulating property relations of co-owners and third parties such its meaning fully covers all the above roles because as a regulator of property relations the contract may take different forms: in some cases, it is a commit-

ment, in others – legal fact, action, transaction or document containing conditions for the regulation of property relations of co-owners.

Considering the above, as regulator property relations of co-owners civil contract is system of actions fixed in statutory form and achieved by the parties to meet their own interests by the mutually agreed will of both counterparties of the future contract aimed at emergence, modification or termination of their right to common property. I. e. the legal model of a civil contract as a regulator of relations of property of co-owners and third parties is that it is:

– legal fact (legitimate action – legal act) upon which obligations of the parties arise;

– a document containing the conditions for legal regulation of property relations;

– the form of existence of property relations of co-owners and/or third parties (commitments).

To become a civil contract legal, it must meet certain requirements, compliance with which is necessary (West, 2017). Before adopting of the Civil Code of Ukraine validity of the contract terms were taken from the norms of civil law by doctrinal means. Today these general requirements for transactions are provided at legislative level in art. 203 of the Civil Code of Ukraine and are reduced to the thesis that the agreement does not contradict a number of criteria. First, the content of the contract cannot contradict the Civil Code of Ukraine, other acts of civil law and the interests of the state and society and its morals. We can see that the legislator in one norm actually combined two conditions: legality and morality. According to art. 628 of the Civil Code of Ukraine contents of the contract terms are points determined at the discretion of the parties and agreed by them, and conditions that are binding under civil law. In other words, the content of the contract is a set of conditions under which mutual rights and obligations are fixed.

Regarding such a condition as the compliance of the content of the transaction (contract) with the interests of the state and society, its morals, it is appropriate to note that the accordance of the content of transaction to these requirements is novel among the conditions of its validity and caused by increasing of moral justification of legal regulations (Bell and Parchomovsky, 2005). The literature on philosophy of law it is rightly noted that in terms of overall value system that have been developed in modern society, law must comply with morality. However, the right should comply not with all requirements, and even more – not ideological (such as the requirement of "communist morality"), but with generally accepted, universal, basic ethical requirements, the basic principles of Christian culture or a culture that is the same with Christian, including the culture of Buddhism, Islam. Analyzing concrete examples of interaction between morality and law, S. S Alekseev concluded that "the right in its organic is a phenomenon of deeply moral order and its functioning is impossible without direct inclusion into the fabric of the right moral criteria and assessments" (Alekseev, 1999). It can be concluded that the category of morality (the moral principles of society) is used in the context of the "inner sanctum" of civil rights, namely the right of property,

contract law, the legal capacity of individuals and entities and more.

The second condition for the validity of a civil contract as a regulator of relations of property of coowners is sufficient amount of legal personality of them and of third parties who want to acquire a share in the right of common ownership. Thus, the right to conclude contracts is an element of civil legal personality of individuals, legal entities of the state, local communities and others. These persons acquire and exercise civil rights (and therefore – perform obligations) by the implementing legitimate acts, among which the prominent place is occupied by agreements. Taking into account that scientific interest in this work is devoted to the common ownership of individuals, it should be noted that invalidity of contracts the parties of which are the individuals is based on the same criteria as the general rules of the appearance of capacity, namely age and mental attitude to committed actions. According to these criteria, the Civil Code of Ukraine has formulated such of invalid transactions:

– transactions committed by juvenile person outside of the civil capacity;

– transactions committed by minor person outside of the civil capacity;

– transactions committed by an individual, whose civil capacity is limited outside of the civil capacity;

– transactions committed by incompetent individual.

On the basis of the analysis of norms of the Civil Ukraine it can be concluded that neither individuals who have partial capacity, nor individuals who are recognized as incapable, do not have the required volume of civil capacity to be a party to the contract under which joint ownership of individuals arise or terminate. However, minors and individuals who have limited capacity may be parties to such agreements. We can make such a conclusion, given that according to Art. 32, 37 of Civil Code of Ukraine minors and individuals whose capacity is limited may perform other transactions, except those which are provided by the noted articles, with the consent of the parents (adoptive parents) or trustees. So they can enter into a contractual relationship regarding the occurrence or termination of their common ownership on the property with the consent of their parents or guardians. In some cases, according to Art. 35 CC under which full civil capacity can be provided to an individual who has attained the age of sixteen and works under an employment contract or wants to do business; such person acquires full civil capacity since the state registration as a business entity (entrepreneur). That is quite possible that the party of the contract of sale of shares in the right of common partial ownership may be minor who has legally acquired the entire volume of civil capacity. The same applies to such ground of providing full civil capacity (p. 1 of the Art. 35 of Civil Code of Ukraine) as a fact of recording a minor as mother or father of the child. Thus, depending on the volume of capacity of an individual he or she can take part in a contractual relationship involving the appearance and transfer of ownership from one person to another. One of the conditions of validity of a civil contract is compliance of outward expression of the will of the participant (expression) to his or her true inner freedom. The will of the party of the agreement should be freely, with-

out any pressure from the counterparty or others and meet his or her inner freedom. The unity of the will and its detection is the basis for the legal assessment of the behavior of the subject and the recognition of this behavior as such that has legal value. There is no unity of will and determination, if the contract is concluded under the influence of fraud, violence, threats or due to malicious agreement of a representative of one party with another party or coincidence of difficult

circumstances. Such agreements are declared invalid because the will of the person to commit the transaction is absent, and will reflects not the will of the party of the agreement, but the will of other person who has influence on party of a transaction.

Another criterion of the validity of a civil contract is compliance with the statutory form. The form of contract is a way of expressing the will of the parties, aimed at the entry and staying in contractual relations; that is, for the receiving by the will of a person as a subjective phenomenon a legal matter, it is necessary to provide some objective expression, i. e. some form. Art. 205 of Civil Code of Ukraine discloses the contents of objective expression of the form that simultaneously reflects means of the external expression of will of the subject of a transaction. Civil law of Ukraine provides for two forms of committing transactions: oral and written (simple or notarial).

In the Civil Code of Ukraine (p. 1, 2, Art. 639) the general rule is fixed according to which a contract may be concluded in any form if the form requirements of the contract aren't provided by law. In general, the practice of concluding of agreements that are the basis of the right of common ownership written form of their conclusion prevails.

Particular requirements for the registration of the contract in a written form are provided to individuals who owing to illness or physical defect cannot personally subscribe. On instructions from such a person contract is signed in the presence of another person. Signature of another person in the text of the transaction, which is notarized, is certified by a notary or an official who has the right to commit such notarial acts with reasons of which the text of the transaction cannot be signed by the person who commits it (p. 4 of Art. 207 of the Civil Code of Ukraine).

Notarization of contracts is mandatory only in cases when the right of common ownership of real estate is transferred under the contract or the parties themselves insist on such certificate. Notarization of contracts is mandatory only in cases when under the contract is transferred to joint ownership of real estate or insist on such certificate the parties themselves. Notarization of the contract means that its content, time and place of, the intentions of the parties, its compliance with the law and other circumstances are inspected and officially fixed by a notary, and therefore are regarded as established and reliable (Kharytonov and Saniakhmetova, 2003). In case of failure of the requirement for notarization of the contract by the parties, such contract is invalid. However, there are exceptions to the rule, namely, if the parties have agreed on all essential terms of the contract and there was a full or partial implementation of the contract, but one of the parties avoided its notarization,

the court can recognize the contract valid. In this case, the following notarization of the agreement is not required.

Among the general requirements, compliance with which is necessary to force civil contract, an important role plays the requirement that the transaction should be directed to the actual occurrence of legal consequences that are conditioned by it (Cassier, 2002). Earlier this condition actually was not isolated separately, though the Civil Code of the Ukrainian SSR in 1963 envisaged the invalidity of the imaginary and fictitious transactions, in which there was no focus on the occurrence of legal consequences. On this occasion, it was stated that such a condition actually does not need legislative consolidation as in legal practice, such transactions are rarely concluded and their members do not have normal mental abilities (Meyer, 1997). In modern investigations, legal parties of the contract are required to have a serious intention to achieve a particular legal result that is allowed by law. Persons who enter into a contract should understand what their action would cause, that is they should understand the aims and nature of their actions. Therefore, the court recognizes as invalid fictitious transaction that is committed without the intention to create legal consequences that are conditioned by this transaction.

Another criterion of validity of a civil contract is compliance with conditions of consistency of contract exerted by parents (adoptive parents) to rights and interests of juveniles, minors or disabled children. As it was noted above, the volume of civil capacity of juvenile children is that such persons can independently perform only small domestic transactions and exercise moral rights on results of intellectual activity protected by law. Minors (aged 14 to 18) can independently conclude agreements related to the management of their earnings, scholarships or other income, as well as can independently enter into a contract of bank deposit (account) and manage deposits made by them in their name. Other transactions should be concluded by these persons with the consent of the parents (adoptive parents) or trustees. Of course, at the conclusion of transactions by minors with the consent of the parents (adoptive parents) they shall primarily take care of the interests of their children.

Thus, compliance with general requirements for of validity the transaction mentioned in Art. 203 of the Civil Code of Ukraine is important first of all for contracts aimed at transferring ownership from one person to another, because only valid transaction may create legal consequences that are conditioned by this agreement.

THE MOST WIDESPREAD TYPES OF CONTRACTS ON THE TRANSFER OF PROPERTY IN COMMON OWNERSHIP (SALE, EXCHANGE, PERMANENT ALIMONY, GIFTING, HEREDITARY CONTRACT).

The most widespread kind of agreements on the transfer of property in common ownership is a contract of sale, which is used in realization of sales for production purposes, on the wholesale market of consumer goods, particularly through commodity exchanges, wholesale fairs, exhibitions, sales, etc., retail and catering, in implementing agreements of commission and consignment,

in the privatization of state and municipal property, foreign trade turnover, etc (Merrill and Smith, 2001).

From enshrined in Art. 655 of the CC Ukraine determination of the sales contract it is shown that this contract is always compensated, bilateral, and may be as consensual (the seller is obliged to transfer, and the buyer is obligated to accept property) and real (the seller gives and buyer takes property). That is, in any case, the basic and defining feature of all types of sales contracts are compensatory and irreversible alienation by the seller the property (goods) and transfer it in the property of the buyer – otherwise the contractual relationship is no longer possible to qualify as a sale.

One of the main features of contracts of sale is the fact that they mediate the transfer of ownership from alienator to the acquirer. That is, they are legal mechanism that ensures the dynamics of the fullest property right as the legal fate is determined by the property owner, he has the right to sell (of course, with the abidance to general rules of civil law about the legal capacity and capability). This fact is reflected in the art. 658 of the Civil Code of Ukraine, which states that the right to sell the goods belongs to the owner, except the cases of forced sale and other cases established by law.

Parties of the contract of sale may be any subject of civil legal relations – individuals and legal entities, municipalities, the state, but the conditions of participation of each of these subjects in these contracts are not always the same, since they depend in particular on volume of legal capacity of every specific subject of civil relations. Thus, the possibility of conclusion by individuals of certain kinds of purchase agreements also depends on if they have the status of a business entity, inasmuch as only an entrepreneur can be, for example, seller (supplier) in the contract of retail sale, delivery and more.

During a conclusion of a contract of sale, the type of ownership of the alienated property is important. According to Art. 361 of the Civil Code of Ukraine each participant of common partial ownership owns particle in ownership of the common property, according to this each owner independently manages his share in the right common property. I. e. each participant of common property has the right to compensation or donation of his share to others. In this case, we aren't talking about transfer of the part of the property in kind, but about share in the right of ownership. This transfer of the share may be done by the owner by conclusion of the contract of sale. Choosing of the way of disposition of shares in common partial ownership of the property depends entirely on his will, discretion and interests (Krupchan, 2005).

In civil law some guarantees of protection of the rights of co-owners who are not interested in the alienation of shares in the common property to third parties are established. Thus, in accordance with Art. 362 of the Civil Code of Ukraine in case of sale of the right of common property by one of its members to a third person other co-owners have the right on preferred purchase of the particle at the price at which it is sold, and at other equal conditions except the sale by public auction. It is important to determine the moment of transition of the share in common par-

tial ownership to the purchaser under the contract. Inasmuch as we are talking about the share in right, common rules for the moment of transfer of ownership from the moment of transfer of things in this case cannot be applied, and the principle enshrined in Art. 363 of the Civil Code of Ukraine acts. Share in the common partial ownership is transferred to the acquirer from the date of conclusion of the agreement unless other is provided by agreement of the parties. Exceptions to this rule are cases when the contract should be notarized. Share in the right of common partial ownership under the contract, which must be notarized, passes to the purchaser upon notarization or since a court decision on the recognition of a valid contract enters into force, and (or) state registration of rights.

Providing for co-owners a preferred right of buying is caused by several factors. First, they may be interested in acquiring the alienated particle to satisfy their material and cultural needs. Also, they care about the person who will become participate in the right in common partial ownership, how he or she will perform obligations of maintenance of the common property, using it. Given these circumstances, the seller must notify in a written form the other participants of common ownership its intention sells the share indicating the price and other terms on which he sells it.

In case of refusal of co-owners from the preferred right of buying or their failure of the right to immovable property, within one month, and in respect of movable property – within 10 days from notification the seller may sell the share to any person (p. 2, Art. 362 of the Civil Code of Ukraine). This is a specific term and it cannot be renewed or extended. If several co-owners claim the share, the seller can sell his part of each of them. Other co-owners cannot hinder it from doing it, even if they have more need for the acquisition of the said share.

The issue of guarantees of realization by the participants of common partial ownership a preferred right of buying is important for the cases of sale, particularly in the case of violation of the right and sale to third party. Limitation of action for such claims is set by of the Civil Code of Ukraine at one year. Transfer of rights

and obligations of the buyer to co-owner, as it arises from the content of the law, is carried out without preliminary recognition of the transaction on the alienation of the share in common property to a third person invalid. Under violation of the right of a preferred buying we should understand the cases of transmission of the preferred right of purchase in common partial ownership by co-owner to others.

Sale of property that is in common joint ownership can be made only with the consent of all co-owners. Spouses as a subject of civil relations may also acquire and dispose of property by a contract of sale on the right of joint ownership, unless otherwise provided in their agreement. Thus, in accordance with Art. 65 of the Family Code of Ukraine wife, husband manage the property that is the object of joint ownership, by mutual agreement. During the conclusion of an agreement by one of the spouses it's considered that it acts with the consent of other spouse. The same rule is provided concerning disposal of property that is the object of

joint ownership. That is, each of the owners is entitled to perform various transactions concerning joint property, that is significantly different from the rights of common partial ownership, where each of the owners has the right to dispose of only his share with the compliance to preferential right of purchase and sale of shares, while in common joint ownership the disposing of joint property is made with the consent of all co-owners. In the case of conclusion of a contract of sale by one of the spouses under Art. 657 of the Civil Code of Ukraine consent of the other spouse must be submitted in a written form and notarized.

The ground of acquiring by an individual the right of common ownership on the property can be barter; its main difference from the contract of sale is that the transfer of property ownership is not mediated by movement of funds. According to p. 3 Art. 715 of the Civil Code of Ukraine in case of inequality of exchanged property agreement can install additional payment for goods of greater value that is exchanged on commodity of lower value. Moreover, this cost difference can be compensated by performing certain works or provision of services – there are no legislative obstacles for the implementation of such calculations under the contract of barter.

According to p. 1, Art. 715 of the Civil Code of Ukraine under the agreement of exchange (barter) each party undertakes to transfer the other party into the ownership one commodity in exchange for other. Each of the parties of barter contract is the seller of the commodity which he or she transmits to the exchange and the buyer of the goods which he or she receives in return. That is the legislator considers the concept of "exchange" and "barter" as synonyms. We immediately express that our disagreement with this identification, as opposed to of exchange contract, barter is a business transaction and may include nonmonetary exchange of goods based on the results of work, services etc., while exchange according the Art. 715 of the Civil Code of Ukraine means the exchange of one property (thing) in kind to another property.

One of the characteristics of exchange contract is the moment of occurrence of the right to joint ownership in the contracting parties on the exchanged property. According to p. 4, Art. 715 of the Civil Code of Ukraine the right to ownership on the exchanged goods passes to both sides after the execution of obligations on transfer of property by both parties, unless otherwise is provided by contract or law (one of the examples of the other case is the exchange of real estate, joint ownership on which arises from the moment of notary license of contract and state registration of rights owners).

The issue of liability of the seller in case of recovery of goods from the buyer by third party is quite original and at the same time not regulated. According to the fixed in the Art. 661 of the Civil Code of Ukraine general rule, in case of withdrawal by court order goods from the buyer to a third person on the grounds that arose before the sale of goods, the seller must compensate the damages to the buyer if the buyer did not know or could not know about the presence of these bases. However, sometimes members of civil relations recourse to an exchange contract when

there is a mutual interest of each of them in the property of his counterpart, and the exchange carried out on condition of the transfer of the same property, but not the other. The application of the legal consequences in this case under the Art. 661 of the Civil Code of Ukraine would mean that property which the owner exchanged only on the condition of the purchase of the property of counterparty cannot be returned, as the latter only covers the damage. It seems that in this case it would be appropriate to consolidate in the Civil Code of Ukraine a special rule that party of the contract of exchange, whose goods have been removed by a third party, would be entitled to claim, along with compensation of his or her losses, returning the commodity which has been passed for exchange, because the application of such legal consequences will allow to protect adequately the rights of counterparties of the contract.

Civil law of Ukraine, in contrast to the of the Civil Code of the Russian Federation, rather advisable does not allow the use of rules for the preferential right of purchase of the share in common partial ownership during the alienation of a particle under the contract of barter, because in this case participants of the joint property will need to assume all obligations on granting equal property provided under the contract of exchange, and it, of course, will complicate, the preferential right of purchase shares in common property. Preferential right of buying will not be applied in case of exchange of things defined by individual characteristics, that is, if such things are endowed with unique characteristics that distinguish them from others of similar things (Prostybozhenko, 2005). Thus, if the share in common partial ownership to car is exchanged, for example, to land, in this case it is nearly impossible to implement preferential right on purchase of a particle. Because the things with individual characteristics are irreplaceable, so a co-owner cannot meet the interest of the other co-owner (seller). Thus, during the concluding a contract of exchange concerning the share in the right of common partial ownership it's necessary to pay attention to the object of exchange. If this thing is expressed by individual features, it is necessary to give possibility the other coowner to exercise the preferential right on purchase such shares.

However, the participants of joint property (such as spouses) as subjects of civil relations may also acquire and alienate property under a contract of exchange on the right of joint ownership. Thus in accordance with Art. 65 of the Family Code of Ukraine wife, husband manage the property that is the object of joint ownership, by mutual agreement. During the conclusion of an agreement by one of the spouses it's considered that it acts with the consent of other spouse. The same rule is provided concerning disposal of property that is the object of joint ownership (p. 2, Art. 369 of the Civil Code of Ukraine).

A contract of exchange of property can be certified without the consent of the other spouse if the latter is not a resident at the location of the property and place of residence is not known, or if the property is acquired by one of the spouses during the separation of the second spouse due to actual termination of marriage. The conclusion of a con-

tract by one of the spouses with third party concerning the exchange of his share in joint matrimonial property is possible only in case of its definition and separation in kind or determining the order of use of property. A contract of exchange which is concluded between the spouses and the subject of which is the share in right of common compatible property of one spouse may be certified by a notary without separation of a particle in kind.

A contract of lifetime maintenance is quite common in practice of contractual regulation of relations of common ownership. In the Civil Code of Ukraine this contract is placed after a contract of sale, gifting and rent. This, in our view, underscores the fact that the contract of life maintenance (care) mediates the transfer of ownership from alienator to the acquirer.

Unlike of the Civil Code of Ukraine of 1963 under which the alienator could act only person who is unworkable because of age or health status (Art. 425), according to the Civil Code of Ukraine an alienator in a lifetime maintenance contract may be an individual regardless of age and health (p. 1, Art. 746 of the Civil Code of Ukraine). The purchaser may be capable adult person or entity. In this regard it is advisable to emphasize quite controversial legal positions assigned in Art. 3. 746 CC of Ukraine that in some cases when acquirers are individuals they become co-owners of the property transferred to them under a contract of life maintenance (care) on the right of joint ownership. The expressed position causes criticism because if the acquirers want to obtain property not into joint compatible property, but into joint partial property, and alienator doesn't deny, the question appears if there may be some obstacles to the solution of this issue. It seems that for avoiding all sorts of misunderstandings in p. 3 Art. 746 of the Civil Code of Ukraine it makes sense to consolidate discretionary rule, which will provide that if the acquirers are several individuals, they become co-owners of the property transferred to them under the contract of life maintenance (care) on the right of joint compatible ownership, unless otherwise is provided in their agreement. If recipients are several individuals their duty before the alienator is solidary.

In the Civil Code of Ukraine some features are provided concerning conclusion of the contract of life maintenance in regard of the property that is in common joint property of individuals. Thus, according to Art. 747 of the Civil Code of Ukraine property belonging to the co-owners on the right of common property, including property owned by spouses also can be alienated by them under a contract of life maintenance. In the case of death of one of the co-owners of property which was alienated under a contract of life maintenance, the amount of liabilities of the acquirer shall be reduced accordingly. However, the legislator does not regulate the widespread situation when one spouse wants to enter into a contract of life maintenance (care), and another – no. In this regard it is advisable to note that if the alienator is the member in rights of joint ownership, the contract of life maintenance can be signed after determining the share of the co-owner in the common property or determining the order of using this property between owners. If the object of contract of life

maintenance is a house or part of it, the allotment of the share in common partial ownership is possible if separate part of the house with independent access can be allocated for each party. Allotment may also occur when it is technically possible to convert premises into isolated apartments.

The contract of gifting also belongs to a group of agreements on the transfer of property ownership under which common ownership rights may occur. It aims to irreversible termination of ownership regarding the giver and emergence of property rights regarding gifted individuals.

Parties to the contract of gifting can be individuals, legal entities, state Ukraine, Crimea, local community. Property under this agreement can be gained by individuals both into the right of private and of common ownership. However, each co-owner according to Art. 361 of the Civil Code of manages his or her own share in common partial ownership. I. e. under the contract of gifting, a participant of the joint property is entitled to free alienation his share in the common property to others. In this case, other participants of common ownership don't have preferential right to obtain this share.

The subject of the contract of gifting can be not only moving things, including money and securities and immovable property, but property rights – both those which the giver already has and those which may occur in his future. Of course, during gifting it is also necessary to comply special rules established for acquiring the right of property by individuals regarding certain types of property (for example, objects restricted in turnover).

Analyzing a hereditary contract as the basis of emergence of the right of common ownership of individuals, it is appropriate to emphasize that it is relatively new for the Ukrainian legal system of civil contract because it was not provided nor by the Civil Code the Ukrainian SSR in 1922, nor by the Civil Code the Ukrainian SSR in 1963, or other laws in the field of regulating of hereditary relationship. We should note that a hereditary contract is a special type of binding relationship. Relations between the alienator and the acquirer of under the contract are binding in their nature. A thesis that a hereditary contract can be regarded as one of the possible types of inheritance is contentious. The very definition of hereditary contract is very similar to the definition of individual contracts (rent, life maintenance). Thus, binding nature of these relationships can be traced from a legal definition of hereditary contract. In our view that is why the issue of structural place of hereditary contract remains debatable: leaving it in the Book of inheritance of the Civil Code of Ukraine or placing it after the contract of life maintenance and rent.

To our mind, given the binding legal nature of a hereditary contract there are all reasons for allocating of this contract in a group of agreements on the transfer of property ownership. We come to this conclusion given that it's inappropriate to talk about the possibility of legal regulation of hereditary relations by this contract because it does not belong to species of inheritance. In addition, a hereditary contract in its content provides acquisition of certain rights and obligations during the life of alienator that contradicts to the legal nature of inheri-

tance because acquisition and implementation of the hereditary rights is possible only with the prerequisite – the death of the testator (Zaika, 2007).

Under a hereditary contract purchaser undertakes to fulfill the order of the alienator and in case of his death acquires ownership to his property. An alienator may be one or more individuals – spouses, one spouse or another person. A purchaser may be individuals or entities. During the conclusion of a hereditary contract a purchaser, if he is the heir by will or by law, does not lose the right to inherit property in the same proportion that was not mentioned in the hereditary agreement.

The subject of the hereditary contract is both an acquisition of property of the alienator and acting (works, services) of the acquirer. Moral rights, property rights over another's property (perpetual lease, superficies, servitude) etc. may not be the subject of the contract.

A hereditary contract with the participation of spouses has essential features. In this case the subject of the contract may be property belonging to the spouses on the right of common property and property that is private property of any of them. Regarding the conclusion of the hereditary contract by spouses, there should be noted that at the conclusion of each contract regarding joint marital property requiring notarial form there must be written consent of the other spouse. If the contract was concluded without the consent of the other spouse, it causes an invalidity of a contract.

A hereditary contract may be certified without the consent of the other spouse, unless the legal documents, marriage certificate and other documents show that stated property is not common but private property of the other spouse, and when the latter is not residing in the location of the property and his place of residence is unknown. A copy of the court decision, which became final, should be given to confirm this fact.

However, another situation can arise when one of the spouses wants to conclude a hereditary contract, and another – no. In case when both spouses as alienator are not agree with the inclusion of joint property into a hereditary contract or the spouses did not reached agreement on this property, one spouse may judicially establish his or her share in the common property and then enter into a separate hereditary contract. Also it can be established by a hereditary contract that in case of death of one spouse inheritance is transferred to another, and in the case of death of the other spouse his property passes to the of the acquirer under the contract. However, as it is rightly pointed by S. Fursa, p. 2, Art. 1306 of the Civil Code of Ukraine should be taken on the subject of hereditary contract, and not as the concept of "heritage" that has a different meaning and has no relation to of hereditary contract (Fursa, 2007).

If there is the marriage contract, which defines the rights and responsibilities of spouses on property acquired before marriage as well as during the latter, received as a gift or inherited by one spouse, a notary during the certificate of hereditary contract is obliged to be managed by the terms defined by a marriage agreement. If at the conclusion of a hereditary contract the conditions of previously concluded marriage

contract were violated by the alienator, it is a ground to declare contract invalid.

Summing it is advisable to note that a hereditary contract as a relatively new legal institution is not yet widespread in practice. And the legal nature of hereditary contract, its place in civil law with its inclusion into the Civil Code of Ukraine, has become the subject of diverse scientific debate, which should further promote the development of the institute of hereditary agreement and the positive application of the rules into court and notarial practice in Ukraine.

CONCLUSIONS

In conclusion it is advisable to note that self-regulation of property relations of owners is an important personal right of participants of common ownership, which is realized by them at their own discretion regardless of normative regulation of these relations. Contractual regulation of relations of common ownership is significantly different from the independent regulation of such relations that occurs under the relevant rules within the discretionary regulatory of Ch. 26 of the Civil Code of Ukraine and Ch. 8 of the Family Code of Ukraine. The legal model of a civil contract as a regulator of property relations is that it is:

– legal fact (legitimate action – legal act) upon which obligations of the parties arise;

– a document containing the conditions for legal regulation of property relations of co-owners;

– the existence of a form of property relations of co-owners (obligations). Contractual regulation of property relations of co-owners executes the following functions:

– law-making (shown in the shaping of the content of the agreement, which serves as the basis of occurrence, change and termination obligations);

– organizational (self-organizing of property relations);

– informative (containing information about the content of the contract);

– preventive (prevents conflicts of interests of participants);

– ensuring compliance with the law and the legality terms of the contract action for itsimplementation.

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DEVELOPMENT TRENDS OF THE PRIVATE LAW OF FRANCE

Abstract. *The article is devoted to the establishment of the essence and content of the transformations in the field of private law of the French Republic in the context of today's European integration processes as well as the development of scientific conclusions. According to the results of the study, a general description of the legal system of the French Republic was presented, its features were singled out; the historical and legal foundations of the genesis of reforming the private law of the French Republic in the context of European integration are revealed and summarized; the peculiarities of the reformist influence of European integration processes on the investigated transformations in the field of private law are revealed; four periods of private law reform in the French Republic were proposed, in particular: the first – Colbert's; the second – "Napoleon's"; the third – "Integration"; the fourth – "Contemporary"; The necessity of the development and adoption of the Concept of private law reform in the French Republic was substantiated. The work provided the opportunity to formulate theoretical conclusions and outline the prospects for the further development of the private law of the French Republic in the context of European integration, taking into account the need to preserve national identity and world significance.*

Key words: *Napoleonic Code, legal system, European Union, reformation influence, codification.*

INTRODUCTION

The recent years have been characterized by the multilateral development of international cooperation and interaction at different levels: between states, commercial structures, public organizations, academic communities. The multifaceted cooperation covers not only the sphere of state, business and private relations, thus creating the need for their updated legal regulation. The above summary sets the objective preconditions for raising the focus on private law. The European Union is a unique entity that can be considered as the foundation for solving globalization challenges of our time, as within the framework of the united Europe there is an opportunity for the participating states to solve key problems of socio-economic, political, cultural, ecological development and issues of internal and external security. In the EU law various legal cultures, traditions and

norms, transformed fragmentarily by the national peculiarities of each participating state-member, have been united, leading in its consequence to the formation of a powerful and effective regulator of social relations in the union. Consequently, the convergence of the legal systems of the Community members is an indispensable qualitative feature of its development and integrates the innovations in the national legal systems.

The Community enlargement process has raised before the whole association in principle and, France in particular a number of serious challenges that led to a rapid adjustment of the development vectors of private law in the country. The French legal system itself relates to the matrix law and order of the modern legal world. The development models, selected by French lawyers to generate national law, have become the conceptual and normative basis for the development of legal systems all over the world. Famous French comparativist R. Leger even relates it to the so-called "Great legal systems of the present". It should be noted that just the only civilization heritage of this country, which has been formed for centuries, led to enormous legal transformations around the world, providing impetus to the rapid development of jurisprudence as such [1].

Thus, the FrenchRepublic has a long legal history, and at present the regulatory and legal acts of the Napoleonic era remain its foundation. It is generally acknowledged that, despite the introduction of numerous changes and additions, the foregoing sources of law are considered as outdated, so in today's world, France is characterized by a significant legal monolith of archaic codification. The issue of the attractiveness of French law and its influence have become a significant impact in France after the bicentennial of the Civil Code [2]. The nature and format of civil and commercial (business) relations objectively has a certain specificity of their legal regulation, which determine the use of separate legal means in this process. The abovementioned not so much separates the commercial (entrepreneurial) right from the civilian one, as it specifies it within the civilist system. Today, the FrenchRepublic comprehensively and conceptually approaches the development and improvement of national legislation, which is why many countries are recognized as an example of up-dating the implementation of reform measures and unification of their results [3].

In particular, over the past 20 years, significant changes have been made to national legislation directly related to the influence of the European Union, since, in accordance with article 55 of the Constitution of 1958, international law prevails over domestic law [4]. Legislative transformations take place through coverage of recent European and international trends, without complex blind copying or subordination to European norms. Thus, in the context of the limited resources and capabilities of France, the European integration impetus is considered as an instrument for implementing its foreign policy strategy. The composition of Europe as an international authority (Europe-puissance) should increase the influence and significance of France in the world, which, in its turn, implies the need to

ensure the leading role of the country in the EU, its activity and initiative [5].

At the same time, in view of the above-mentioned conditions, for the present stage of the development, the private law science is characterized by a rising interest to the study of its practical and mostly rather specific issues. At the same time, due attention is not always paid to the consideration of the leading theoretical aspects of the private law of the French Republic in the context of European integration. Issues of future transformations of both the entire legal system and the sphere of private law of France under the conditions of a globalized world, the preservation of the state identity and world significance are of vital importance. Reformational legal relations in the field of private law of the French Republic are marked by their variability, innovative component and in many respects improve the previous rules developed and applied in cases over the past two centuries. It is advisable to carry out an analysis of the main innovations in order to develop a system of factors that contributed to reformational changes, in conjunction with a comparative analysis of old norms with novelties.

Taking into account the foregoing, the purpose of the article is to determine the essence and content of the transformations in the field of private law of the French Republic in the context of today's European integration processes. In accordance with the stated goal, the following main tasks of the article have been outlined: 1) to present a general description of the legal system of the French Republic, to distinguish its features; 2) to reveal and generalize the historical and legal principles of the private law reformation of the French Republic in the context of European integration; 3) to identify the peculiarities of the reformational influence of the European integration processes on the investigated transformations in the field of private law; 4) to formulate theoretical conclusions and outline the prospects for the further development of the private law of France, based on the results of the analysis. The private law of France, as a branch of legal science, has a long history of appearance and development; its theoretical foundations were disclosed in the works of P. Asner, K. Bickerton, F. Bozo, P. Bonifas, T. Homar, J. Hubert-Rodier, J.-P. Darny, A. Dumoulin, E. O. Obichkina, V. Pertuso, J. Rubinsky, S. Serfati, P. Timofeyev, J. Fardo and others.

Considerable attention is paid to the reform of compulsory law in professional French literature. In particular, it is a question of the study of F. Ansel, M. Latin [6], B. Fowarck-Cosson and J. Gest [7], F. Terre [8], F. Stoffel-Munk [9], G. Shantepi [10] and others. Political scientists also indirectly involved in their work the questions of private law. Thus, the study of the European dimension of the foreign policy of the French Republic predetermines scientific interest to the problems of transformations and the sphere of private law, in particular, the works of scientists are devoted to the analysis of various aspects of the state's activities in international relations in the post-bipolar age and are based on the theories of multidimensionality and dynamism of political processes, analysis of the main characteristics of reforms at the national and European levels, in view of the regional integration program declared by France.

1. MATERIALS AND METHODS

The methodological basis of the article is the following methods: dialectical, system and structural analysis, functional, sociological, formal-dogmatic, historic and legal, synergetic, method of legal modeling, comparative-historical, and others.

A special place has been given to dialectical and synergetic methods of cognition. The first is manifested in the fact that its provisions and requirements make it possible to trace the development of the French system of private law, to consider it not as static, but as constantly evolving phenomenon. In addition, this method allows determining the state, trends and prospects for the development of scientific research in the given field. The use of the synergetic method allows to simulate a map of the transformational possibilities of the field of private law and its elements. In the light of the ideas of synergetics, the internal logic of the development of the investigated branch and its core are traced. In this case, its reformation will become not a process of imposing an external and artificial for it legal method, but, on the contrary, it will manifest itself as a logical legal process.

Through the historical and legal method, the formation and development of legal foundations for the reformation of the private law of the French Republic have been studied. The comparative historical method by comparative opposition of archaic articles and novelties allowed to distinguish the most significant changes in the system of private law in the context of European integration. In addition, this method has allowed substantiating the proposed authoritarian periodization of the reform of private law in France. The formal-dogmatic method was used to identify relationships and contradictions in the developmental periods that were proposed by scientists in the field of the theory of private law. It should also be noted the legal modeling method as well, which gave an opportunity to predict the potential prospects for the further development of private law of France in the light of European integration processes and to propose to the development and adoption of the Concept for reforming private law of the French Republic.

2. RESULTS

The final rooting of the continental-European style of legal thinking on the French social basis occurred at the end of the eighteenth century, substantiating the doctrine of the unity of the French legal system. This fateful turn in its history, the country is definitely obliged to political events of 1789. Since then, only the law has had the right to restrict the freedom of the individual, it also guaranteed the equality of citizens in the realization of their personal and property rights.

In its structural composition, the genetic roots of the French legal system extend back to the Roman tradition of the division of the law to private and public, vertical architectonics has an explicit cross-sectional nature of construction, and directly the sectoral approach to law has certain specific features [11].

The legal system of the French Republic is distinguished by the duality of private law, which lies in the separation of legal norms in the regulation of commercial (trade) activities from the norms of civil law. Such a phenomenon should

be considered as a form of internal distribution that does not violate sector integrity and allows taking into account the peculiarities of legal regulation of commercial relations. Consequently, the relevant commercial relations do not contradict the civil ones and emphasize a certain level of their systemic differentiation within a single civilized approach. The country under investigation is globally known for its distinct, codified regulatory and legal framework in the above area. Thus, R. Kabriak notes that in France the doctrine of codification is historically one of the sections of civil law science, and it were mainly civilians who formed it [12]. O. V. Kazakova, in turn, emphasizes that the methodology of codification of the French type cannot be blindly copied by other states, given that it is adapted specifically for its own legal system [13]. Taking into considerationthe international significance of the regulatory and legal framework for the existence of the field of private law of the French Republic, it is expedient to propose own periodization of its reformation.

The analysis of national regulatory and legal acts of France shows that the periodization of private law of France can be started with the emergence of trade law, in particular, in 1563 in the era of Charles XX when "Ordinance on trade" was adopted (which was issued at the request of the merchants, for the purpose of introducing to the trade the principle of decency to reduce disputes between traders). In 1673, the Commercial Code (Ordinance on Land Trade) was adopted; in 1681 – the Marine Code ("Ordinance on Maritime Trade"), which became known as "Colbert's Ordinance". Taking into account the above, it can be stated that the trade legislation was the first and foremost to be codified. The first period should be defined as "Colbert's period".

The beginning of the second period, the "Napoleonic period", is definitely related to the codification held at the time of the reign of Napoleon Bonaparte. "Code civil des francaise" was adopted on March 21, 1804, and constituted a set of unified laws that operate throughout the country and have a special structure and logic of representation (by institutions), which contain precise legal definitions or conditional legal terminology (civil death, etc.). It can be stated that the civil law of France was codified only 130 years after the commercial law [14].

The code replaced about 360 local sets of coutumes (legal norms) and became accessible to all citizens by the unity of clear and understandable laws. In particular, the Civil Code consolidated the gains of the French Revolution, laid the foundation for the codification of law in Europe and became the foundation of the Roman civil law tradition. During his development, special attention was paid to the clarity and consistency of the wording. This regulatory and legal act contains the fundamental provisions on the right of private property, compensation for damages, contractual law, and others. Its structure involves an introductory title, the first book "On Individuals", the second book "On Property", the third book "On Different Methods to Acquire the Ownership" – altogether 36 titles and 2281 articles. It should be noted that a significant number of articles of the Code has never changed for 200 years. This codified regulatory and legal act has played

a huge role in strengthening bourgeois relations in France and become in fact, the ideological "core" of the revolution, and subsequently was recognized as the patron of the Belgian, Bulgarian, Spanish, Italian, Polish and Swiss Civil Codes. Civil law has played its role in the fundamental field of law, and as a result of expanding the subject of its regulation, in most social relations in the field of private law.

The same period includes the Commercial Code of France, adopted on September 15, 1807, which contained 648 articles and united all the current at that time, regulations governing the relations of trade. Within the framework of the law reform of France a separate legislative act "On Companies", was adopted on July 24, 1867.

It can be considered as a characteristic that the issues of entrepreneurial activity, which needed to be dealt with, received their legislative regulation, not by improving the existing codified act, but through the adoption of autonomous legislative acts on specific issues. Thus, the legal regime of business was determined by the laws of 1909 (the Law "On the sale and pledge of goodwill" of March 17, 1909) and of 1935 (the Law "On the sale price of business" of June 29, 1935) without codification. The same applies, for example, to the commercial lease, which was the subject of specific rules since 1953 (Decree of September 30, 1953, No. 53–960, which regulates the relationship between lessors and lessees in the renovation of the lease of a building or premises for commercial, industrial or artisan use) [15].

It would be appropriate to link the launch of the third integration period of reforming of private law in France to a major event for the whole of Europe, when, along with Belgium, Italy, Luxembourg and the Netherlands, France became the pioneer of the European integration movement by signing the Treaty of Establishing the European Coal and Steel Association in Paris on April 18, 1951, and later the Treaty on the European Union. It is these regulatory acts that have led to a gradual, powerful reform movement in the field of private law and have become the so-called "road map" of reforms.

The constitutional basis for the expanding of European law in the French legal space was set much later by Article 88–1 of the Constitution, enacted by the Constitutional Law No. 92–554 of June 25, 1992, which provides that "the Republic shall participate in the European Communities and in the European Union, formed by the states which entered them freely for the joint exercise of the defined competence on the basis of the international treaties that these states had developed. The Republic may participate in the European Union subject to the conditions laid down in the Lisbon Treaty signed on December 13, 2007, replacing the Treaty on European Union and the Treaty establishing the European Community"[16].

In a context of increasing globalization, the French legal system is undergoing increasing transformations. These include, in particular, the increase of the level of its convergence and internationality, the transformation within the regulatory (regimes of supplementing and replacing regulatory and legal norms), interpretative (expanding the basis of reasoning when making judgments) and the law-enforcement components of the legal system.

Thus, with the creation of the European Union, the investigated legal system has acted as a matrix beginning for various borrowing options in the law. The greatest influence of French law was designed on the territory of the colonial rule of France. The dispersion of French law has manifested itself in the specified regions in two main directions: 1) regulatory (the influence of the French right on formation of colonial territories); 2) value (the complexity of the overall range of social and ethical grounds in the legal existence of the African and Malagasy regions).

However, subsequently the private law of the French Republic, designated by the unique archaism, was forced to undergo reformational changes. The root cause of the reforms became the realization that the impact of the Civil Code abroad had diminished. Initially, this document served as a source of inspiration and, as already noted, even a pattern in many countries of Europe, Africa, Asia, Central and South America and some parts of North America [17]. France has become one of the few legal systems that have had such a dominant influence on other legal systems, therefore, the country is generally considered to be the "dominant jurisdiction" of the whole legal family which expanded from Chile to Vietnam. Its phenomenal international flow has brought pride among French lawyers, for whom the Code has become "a symbol of national identity" [18]. Reducing the influence of the Code of Napoleon has become essential at the turn of the 21st century. In particular, countries such as the Netherlands, Canada (Quebec) and Germany, which had once used it, departed from probing it after reforming their own civilian legal regulations.

Another factor that has led to transformations in private law field was the harmonization of European Union treaties that went beyond consumer protection. The European Parliament has called to work on the European civil or contractual code [19] and, according to the report of 2001 the European Commission has begun debates on the future of European contractual law [20]. These projects caused concern and even hostility in France, partly because they were developed with a relatively small contribution from French lawyers, and threatened to create an influential rival to the Civil Code. However, as of today, no European civil or contractual code has been adopted.

The above factors made the French legislators aware of the fact that the Civil Code would not have a sufficiently powerful further influence on the European level, taking into consideration such a significant gap between its articles and the actual state of law. Therefore, prolongation of its existence as a legal model, ready for borrowing by other countries, requires a quality and effective modernization of this regulatory and legal act.

Thus, the Napoleonic design of codification, which perceives it as a process, is associated with the processing of different various sources of law and the creation of a single major act in its place, has been replaced by the principle of so-called "administrative codification", which is not associated with the introduction of amendments directly to the regulatory acts, and does not require interference of the parliament. One more important feature of the represent-

ed codification concept is that the code itself consists of two parts – legislative and regulatory. It's exactly the reason why the new codes of the French Republic (Code of Civil Procedure of 1976, Criminal Code of 1994, Commercial Code of 2000, etc.) tested the abovementioned structural construction.

The Law of July 24, 1966 No. 66–537 "On Commercial Companies" has abolished Title III of the Commercial Code "On Societies" without its updating in the text of a regulatory and legal act. The same applies to Book III, "On insolvency and bankruptcy", which, as a result of the 1967 reform, was abolished and, without replacing its provisions, and included in the Law "On Bankruptcy in Autonomous Legislation" (dated July 13, 1967).

It is appropriate to begin the last, fourth period of the present time with the characterization of the most significant changes and additions which, in particular, concerned inheritance (2001-2006), divorce (2004), the origin of children (2005, 2009), securities (2006) , burns (2007), limitation periods (2008), marriage (2013), and others. At the intersection of the periods, in 1999, the Law "On the Civil Solidarity Treaty" was adopted, and in 2013 the law consolidated the right to marry for all types of couples. It should be noted that family law and the right to persons were the areas of limited interference by the legislator, without a doubt, taking into consideration the imperative nature of the legislative norms.

At the intersection of periods in 1999 the new law "On the Civil Contract of Solidarity" and in 2013 the law secured the right to enter into marriage for all kinds of couples were adopted. It should be noted that family law and the right of individuals were areas of limited interference by the legislator, without a doubt, taking into consideration the imperative nature of the legislative norms.

The beginning of this period was also marked by the adoption of the new Commercial Code of the French Republic. The created legal tradition of a separate legal regulation of relations of a commercial nature, which was due to the nature of the social and economic formation of that time, has retained its features at the present stage of the development of the private law of France as well. Since the era of the Napoleonic codifications, commercial law has been recognized without distinction as an independent and original branch of law. Today, the Commercial Code of 2000 (Code de commerce) [21] is in effect in the state. Structurally, it consists of: a legislative part approved by the Ordinance of the Government of France on September 18, 2000, no. 2000–918 [22]; the regulatory part, which specifies, develops and amends the legislative part as a form of ensuring its proper application (introduced by the Decree of the Government no. 2007–431 dated March 25, 2007, [23]), a part summarizing the legal provisions suspended. Taken together, the legal act includes nine books and unites 1976 articles distributed by title and chapters in accordance with the subject of legal regulation of a particular type of public relations, regulated by the Commercial Code of France. It can be stated that the current Commercial Code of France has a bicorporal and more divisional struc-

ture of regulative material than the Civil Code.

This regulatory and legal act contains provisions defining the types of anticompetitive actions, the nature of the operations leading to concentration, the actions that restrict competition, other prohibited acts, and measures to ensure transparency of activities. Thus, in accordance with Article L 420–1 of the Commercial Code of France, anti-competitive actions are concerted actions of the direct or indirect participation of companies that are part of the group and which are intended to restrict production, goods markets, technical and technological development, investment or control over them; the distribution of markets or sources of supply according to the territorial principle, the range of goods, the volume of their sale or purchase, by the range of sellers, buyers or consumers or by other features, etc. [21]. Particular attention should be paid to the structural content of this regulatory and legal act. Thus, the first book of the Commercial Code of France "On Commerce as a whole" covers 146 articles, which are united in 6 chapters and presented in 4 titles. It reveals the main provisions of commercial activity, determines the legal status of the merchants, their rights and obligations.

The second book "On Commercial Companies" is devoted to commercial legal entities. The book gives a general description to commercial legal entities; the relevant organizational and legal forms are considered, that include full partnership, simple commandite partnerships, limited liability companies, joint-stock companies (joint-stock company, joint-stock commandite partnerships and a simplified joint-stock company) [21].

The third book of the Commercial Code of France contains provisions on exclusive sales terms. In particular, they received legal regulation of non-typical types of alienation, such as liquidation sale, warehousing sale or goods sale in branded stores.

The entrepreneurial nature of the relations governed by the Commercial Code of France provides the codification of antitrust laws and economic concentration laws, the issues the fourth book of the Code is devoted to. The relevant section includes a regulation of anti-competitive actions, conditions for economic concentration, consolidates the provisions of the antimonopoly council, its legal status and procedure for consideration of relevant cases and appeals against decisions of the antimonopoly council [21].

The fifth book of the Commercial Code of France consists of two titles, devoted to the legal regulation of the circulation of commercial securities and the types of commercial obligations.

The sixth book of the Commercial Code of France contains the norms of legal regulation of the restoration of solvency of the company and the competitive process. Today, the sixth book includes 9 titles, the last changes of which were introduced at the end of 2017, indicating a rather dynamic development of legal regulation of the recovery of solvency ratios in this part of the codified act.

In 2006, the seventh book devoted to the organization of the activity of chambers of commerce and business and the activities of commercial courts

was included in the Commercial Code. The procedure for the organization of activity of the chambers of commerce and industry has been substantially improved, the competency of commercial courts, the procedure of their formation, election of governing bodies was established; the jurisdiction of commercial cases was determined, and the administrative principles of the judicial authorities were established.

The eighth book contains provisions for regulated professions that are mentioned in the Code in the process of regulating commercial activity.

Thus, in this section of the Commercial Code of France, the tasks and qualification requirements for court executives, court officials and experts of economic diagnostics of enterprises in the process of restoring the solvency of an enterprise or declaring it bankrupt are set.

Finally, the ninth book contains special warnings concerning the five territories of France: 1) San Pierre and Miquelon; 2) Mayotte; 3) New Caledonia; 4) French Polynesia and 5) Wallis and Futuna Islands.

The contractual law of France is being updated far beyond the borders of the Republic, providing favorable conditions for competition between the legal systems. Thus, the Decree "On Reform of Contractual Law, General Obligations Regime and Evidence of Commitments" no. 2016-131dated February 10, 2016 provides numerous advantages in terms of "legal certainty" and "economic efficiency" [24].

The report to the President of the Republic states that "the international challenge of such a reform of French law is economical," and explains that "the creation of a more comprehensible and predictable written contractual law, by adopting a simplified style of editing, as well as a more precise and didactic presentation is the factor which can attract foreign investors who want to conclude their contract on the basis of French law". When acquainted with the text itself, in fact, in the final version most of the original text remains unchanged. The said report points to a consensus between the reform project and the final text, which aims to create a more accessible and understandable regulatory and legal act without undermining the authentic and unique style of the Civil Code. In addition, it is reinforced by the country's aspirations to respond to a globalized world where the legal systems are actively competing. French private law shall be modernized in order to maintain the status of the most qualitative law-making in the given sphere, which is potentially eligible for borrowing [25].

During the confrontation, the idea of reproducing French private law as an attractive model of reforming depends on a well-designed image of an updated and modern legislation directly related to the trends of European integration [26]. It should be noted that the renewed contractual law contains numerous provisions, where confidence, efficiency and justice become the motto of the new law on commitment.

Regarding the Civil Code, it should be noted that for more than two centuries after its adoption, it has remained the main tool of private law in France. The first book of the Civil Code of France "On Individuals" consolidated the general principles for the implementation of civil rights, regulated fam-

ily relations, defined the civil and legal status of an individual, its location, the procedure for recognizing a person to be missing, establishing guardianship and guardianship, and others like that. It should be noted that this section of the regulatory legal act has undergone the slightest adjustments in view of European integration. It can be argued that in its original form it was significantly ahead of its time.

Nevertheless some parts of the codified act fell under the influence of European integration processes and were modernized in order to meet the norms of today's challenges. In particular, in 2016 a comprehensive reformed, corrected and reorganized section on contractual law entered into force. Normative consolidation of legislative Europeanized transformations marked the end of the existence of the articles of the Code of 1804, familiar to many generations of practitioners and scholars, and at the beginning of a new era 150 articles replaced the previous ones, having consolidating the multilateral aspects of French contractual law. However, it can't be argued that only the sphere of contractual relations fell under perturbation (the Articles 1101-1231-7); among other things reforms were also made in such sectors as "general legal regime of obligations" and "evidence of obligations". Thus, in total 353 new articles were introduced into implementation. In particular, these are the norms of the Civil Code on the duty to provide information, economic violence, adaptation of the treaty on the basis of unpredictable events and unfair terms in the standard form of the treaties. The introduced new items concerned the obligations, treaties, order of their conclusion, content and validity of treaties, changes in their terms, interpretation of the provisions and legal implications of the conclusion of the treaties. It should be noted that despite the fact that the outline changes were the subject of lively discussion and substantial criticism, the norms, beyond doubt, are consistent with the essence of civil law systems, as well as with the latest European and international codifications [24].

Such legislative transformations have become a significant event on the territory of the French Republic, especially in view of the immutability of codified articles on contractual law over a long period of time. The reform was implemented to the full extent, absorbing all the aspirations of previous years, which were affected by the enhanced Europeanization of legislation and attempts to reconcile the sphere of private law with world standards and requirements.

It is worth noting that the classical closure of civil law in France, the code of which is one of the oldest codified legal acts of the world, is currently in a state of convergence of law traditions of Western Europe. Evidence of such fact is the dynamic process of reforming the lawfulness of France, in which, in recent years, three draft amendments to the Civil Code have been prepared [27]: the first was developed under the direction of Professor Francois Terre; the second – by a group headed by the Professor Pierre Catala; 3) the authorship of the third one belongs to the Ministry of Justice of France. The main directions of perfection of the French contractual law were defined by the Law "On Modernization and Simplification of Legal Norms and Procedures

in the Sphere of Justice and Home Affairs" dated February 16, 2015. The changes made may not be considered as separate amendments to the text of the regulatory and legal act, since all the articles appear as a single array of norms, which includes both the already existed provisions, which were introduced with technical changes, and fundamentally new provisions that regulate the relevant legal relationship.

Prior to the reforms, most articles in the Code of Contractual Law have remained unchanged, even when the society and technology around them changed beyond recognition. Instead, the courts gradually interpreted archaic articles, so the creation of a precedent set of decisions with a list of necessary and already approved changes allowed gradually to accommodate to adaptation.

To summarize, it can be argued that the main results of the reform of French contractual law are the conceptual refusal of the casual nature of many of the rules of the Napoleonic Code. That entails refusing to consolidate single rules for specific situations with their replacement by the general rules and regulations. The new provisions of the Civil Code of the French Republic entered into force on October 1, 2016 and were included into the Book III "On different ways of acquiring property".

Some European norms have been included in this legal act, but this does not mean the final adaptation and implementation of European standards, therefore the European Union's directives on liability for poor quality (defective) products, electronic signatures and electronic commerce have been added to the norms of the Civil Code, while the others have become an integral part of other legislative acts. For example, the Decree on Unfair Terms has been incorporated into the Consumer Code.

Now the adherents of the empirical approach characterize the Community as an innovative legal laboratory. The European Union is rooted in the diversity of member states and their legal cultures, and the rapid development of law leads to profound changes in its understanding. The relationship between French national legislation and EU law has gradually been formed by judges through complex structures that were different from traditional representations based on the pyramid of norms. The above shows that the modern legal system of France is under the influence of tectonic breakdowns that occur in Europe. Consequently, economic integration may not be successfully developed without a proper legal basis, which is the European Union's communitarian law. Despite the fact that 28 states are represented in the association, France and Germany are the centripetal force that forms the institutional scrapers of the communitarian legal system. The synergetic influence of both states on the development of modern European legal thinking requires the gradual convergence of the two institutional systems of legal regulation of social relations [28]. This process objectively requires the reform of the country's legislation, bringing it to the needs of those processes of economic integration that take place in Europe. Therefore, in today's conditions, for the modernization of private law, the country must simultaneously maintain unquestionable legal values and be ready to innovate,

even at the risk of abandoning some of the law institutions.

3. DISCUSSION

The reform of private law and legislation is largely objectively determined, but its effectiveness depends largely on who and how directs and implements relevant processes. Many researchers directly or indirectly associate the adverse socio-economic consequences of the transition to a market economy type in the 90s of the XX century with the effect of private law that did not ensure the proper implementation of the social purpose of civil law, and therefore did not comply with the two main objectives of civilian-legal regulation: the approval of legal order in property relations and the introduction of certainty and stability in these relations by establishing clear rights and obligations of the participants, as well as their responsibility [29].

Scientists note that the transformations in French private law in the context of European integration are somewhat chaotic and associated with the emergence of specific problems of law enforcement in practice [30]. Some justify such a phenomenon by the reluctance to modify outdated norms because of their uniqueness and global significance. The Belgian scientist in the field of civilization and comparative law Marcel Fontaine noted: "In other countries of the world, it is not usual for citizens to be attracted by the international influence of their own law system". That is why the problem and the need for urgent intra-system transformations penetrated French lawyers after the celebration of the bicentennial of the Civil Code and the publication of the World Bank's Doing Business reports, and was compared to the profound influence on global law constructs of the processes of globalization and Europeanization.

The adopted regulatory and legal acts of the latter modern period, designated by us, shall already restore confidence and authority of the French lawyers and economists, thereby contributing to the strengthening of the image of the French Republic in the international arena [31]. The greatest expectations rely on the originality and attractiveness of the new French contractual law. The Professor of the Montpellier University Remi Kabriak notes that the reform of private law in France is characterized by the fact that much of the legislative framework was limited to consolidating the approaches developed earlier in judicial practice. Enhancing the flexibility of the contractual mechanism is a keynote regarding all legislative transformations, facilitating, in particular, the adaptation of contractual law to new contractual models and economic realities [32].

Taking into account the views of scholars, it can be stated that the reform of private law in France in the context of European integration is taking place too slowly and is reflected in its selectivity in improving the legislative framework. Therefore, the most urgent and expedient is the author's proposal to develop a Concept for reforming private law of the French Republic, based on the latest trends in the development of this branch of law, European standards and requirements and peculiarities of the country's law system. Practitioners, judges, scholars and international experts should be involved in the development of such a document. It is

then that with the development of qualitative route guidance for transformation, the country will be able to create a worthy replacement to the archaic law heritage.

CONCLUSIONS

Realization of the reformation of the sphere of private law is a priority direction of the state policy of many democratic countries of the world, taking into account the European principles of the construction of society. The new fundamental private law is based primarily on judicial practice, consolidating the approbated and tested ways of regulating social relations. That is why the evolutionary changes that are currently taking place in French law are of great importance for the entire law system of the country and are of considerable interest to the science of comparative law.

The general vector of development of law systems of continental-European orientation has defined as the dominant, first of all, the legislative way of activity in the law-making sphere of modern France. Unfortunately, contrary to the positive transformations, so far, the French law system has not made a quantum leap and partly retained loyalty to the past sovereign development way. Today, within the framework of the Europeanization of rights and politics, the country faces a decisive choice between two determinants: either the independent status of the law system will be preserved, or, if converging pressure is applied, its internal organization will be changed.

The authors noted that the French Civil Code of 1804 (known as the Napoleonic Code) and the Commercial Code of 1807 became the first codified acts among the countries of the Romano-Germanic legal family that systematically formed the basis of the dualism of civil and commercial law of modern Europe.

In turn, in recent years, the most significant changes have taken place in the Civil and Commercial Codes in the field of contractual and binding law. The reforms were featured by their chaotic nature and long-term agreement of legislative proposals.

It should be noted that one of the main results of the performed transformation of French contractual law is the inclusion in the Civil Code of the general provisions on obligations, which for the first time were enshrined in the codified act as a single set of norms, numerous definitions and general provisions for a whole range of civil law institutions. Of course, one of the main features of the reform is to raise the level of abstraction of legal norms. The latter is an unconditional indication of the harmonization of French law with other European private law institutions, in particular those relating to the German legal tradition. Taking into account the foregoing, one can single out the following features of the private law of France: the international and comparative perspective; great ability of self-restriction in order to meet the imperatives of state laws; high degree of formalization.

As a result of the performed analysis, four periods of the reform of the private law of the French Republic weresingled out, in particular: the first "Colbert’s period", the second "Napoleonic period", the third "Integration period" and the fourth "Modern period". The most significant changes in the private law of France fall into the integration and modern periods in view of the

strengthening of European integration and globalization processes. Moreover, upon the condition of adoption of the comprehensive route guidance for reforms, such as the proposed author's Concept for reforming private law of the French Republic, the country will be able to create a more powerful analogue of the Napoleonic codification and regain winning positions in the world community and become a role model.

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ENVIRONMENTAL, ECONOMIC AND AGRICULTURAL LAW

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ECOLOGIZATION OF THE ORIGIN OF THE OWNERSHIP RIGHT ON THE OBJECTS OF FAUNA IN THE AQUACULTURE AREA

Abstract. *The authors of the article have studied theoretical and practical problems of delimitation of the ownership right to the objects of aquaculture and the fauna objects in the context of determining the grounds for the emergence of property right. The mechanisms of resolving disputes concerning the belonging of the fauna objects that are located in a water object together with the objects of aquaculture have been offered. The authors have developed propositions for making amendments and alterations to the current legislation.*

Key words: *use of natural resources; aquiculture; objects of fauna; objects of aquiculture; property right on the objects of fauna****.***

Introduction

Public relations in regard to the protection and use of natural objects have been regulated by the norms of environmental law. It has been emphasized in the legal literature that the current stage of the development of environmental law is characterized by two opposite, but interconnected tendencies: on the one hand, the termination of the expansive development of certain branches of environmental legislation, ensuring their internal structuring and differentiation, and, on the other, – an adequate response to the change of social and economic factors, the emergence of new objects of legal regulation and factors affecting them, the realization of the objectives of environmental policy of different levels (international, national, public, industrial) and orientation (internal or external). Considering this fact, in the context of the tendency towards sustainability, environmental

science can not help but respond to modern challenges, by transforming in accordance with the needs of society and era, involving new and emerging phenomena to the sphere of its influence [1, p. 105].

The modern development of the branches of the economy is characterized by a high degree of dynamism and such a dynamics is not always positive with a tendency to increase. However, the state, society and certain business entities make all necessary efforts to increase the socially useful result that ultimately should be derived from one or another type of activities: an increase in production, a decrease in the price of a unit of production, an increase in profits, creation of new jobs, etc. This is the basis of the economic demands of society that must be satisfied.

But along with economic requirements there are other needs of society and its individuals. Spiritual, aesthetic, cultural, recreational and other needs are inherent to both an individual and a social being. And these needs of one subject quite often go against the economic needs of another one. A similar situation occurs in the field of aquaculture. On the one hand, there is, at a minimum, the need to ensure the needs of the population of Ukraine in the consumption of fish products, as a maximum – to increase the volume of production to create export potential. For this purpose, the procedure for the use of existing reservoirs is regulated, the procedure of conducting this type of business is simplified, the creation of new jobs is encouraged, etc. However, it is at the state level. At the level of a water facility, the issue arises differently: can anyone fish for free or can an entrepreneur charge a fee for this? In practice, the answer to this question depends on the definition of when and how the ownership right to the objects of fauna can occur or transfer in case of the latter being in the reservoirs provided for aquaculture.

Degree of the topic development. The research of the legal nature of the ownership right to natural objects or its certain aspects was the scope of interest of the works of lawyers in the field of environment as: V. I. Andreitsev, H. V. Anisimova, H. I. Baliuk, A. H. Bobkova, Yu. O. Vovk, A. P. Getman, V. I. Hordieiev, I. I. Karakash, V. V. Kostytskyi, S. M. Kravchenko, P. F. Kulynych, N. R. Malysheva, V. L. Muntian, V. V. Nosik, O. O. Pohribnoi, V. K. Popov, S. V. Razmietaiev, B. H. Rozovskyi, A. K. Sokolova, P. V. Tykhyi, O. M. Tkachenko, V. S. Shakhov, Yu. S. Shemshuchenko, V. V. Shekhovtsov, M. V. Shulha and others. But the issue of determining the basis for the origin of the ownership right to the objects of fauna in the sphere of aquaculture remains unresolved.

Analysis and Discussion

The key theoretical aspect in solving the issue of the origin of ownership right to the objects of fauna, including in the field of aquaculture, is the fact what law doctrine is used to study this issue. Scholars in the field of environmental law have already emphasized the negative tendencies of "commoditization" of environmental and natural resource law [2; 3]. The urgent main short-term problem of the state is to ensure economic growth. The regulatory base becomes only an instrument for implementing such a state policy. Scholars within the law sphere, in turn, must

develop propositions to the law on the basis of the doctrinal approaches of each branch of law, which is one of the external forms of consolidation of state policy.

Doctrinal approaches to the elaboration and further development of environmental law, through a number of controversial issues in the field of environmental and natural resource law, are increasingly interfered by scholars who study the issues of related branches of law. The feasibility of the existence of environmental law as an independent branch is put in question; and the authors prove the need to include an array of legal regulation of nature-oriented or natural resource legal relations, for example, to administrative [4, c. 348] or commercial law [5 c. 58].

At the same time, it is necessary to pay attention to the fact that by defining the high level of research within the various scientific specialties, while respecting scholars who formed their scientific and methodological basis, it should be noted that the activity of specialists of a particular scientific specialty affects the approaches in regard to solving scientific problems, demonstrating sometimes one-sided approach. Taking this into account, attempts to enter environmental legal relations into the system of administrative or civil or commercial law are prior doomed to failure that has already been emphasized before [6, p. 100].

In our opinion, the issue of determining the ownership right to the objects of fauna, regardless of their scope of use, should be considered from the standpoints of environmental law. Wild animals, in all their biological diversity, irrespective of their place of residence and species characteristics, are an integral part of the natural environment, a link of the food chain, the allocation of which is impossible without causing harm to all other links. Ecologization of material production in the field of aquaculture should be realized through scientifically grounded admissible inclusion of economic activity into natural processes, and not vice versa – granting of "permission" to the elements of the environment to be present at the realization of the economic activity by a person. Moreover, the economic activity, which includes some natural objects, should be made taking into account the requirements of the Art. 13 of the Constitution of Ukraine, which establishes the ownership right of Ukrainian people to natural resources, as well as the right of everyone to use natural objects of property rights of the people in accordance with the law.

Aquaculture in its legal nature should be considered as one of the types of special natural management, and accordingly, to a certain extent, should take into account the requirements of the current environmental legislation in ensuring the right of general natural management. Moreover, scholars generally distinguish as a principle of the right of natural management – the priority of general natural management, the essence of which is paramount restitution of the needs for overall natural management due to the natural resources [7, p. 97].

Thus, in case of the allocation of natural resources for the implementation of aquaculture – a water object or objects of the fauna, it should be primarily taken into account that they are an integral part of the environment and

are subject to the rights of other citizens.

Another problem that causes the need to ecologize aquaculture is the task of creating an environmental network. In previous scientific papers, the authors emphasized on the tasks of creating the indicated network and the problems that arise in this connection [8, p. 286–287]. Most of the reservoirs, including Ukrainian fishery waters, were largely built more than 30 years ago, for a long time were part of the landscape and performed certain functions in the ecosystems of the territories of the location. The practice of forming an ecological network indicates that, for the most part, such reservoirs are used as connecting territories (ecological corridors), which combine key areas among themselves, provide for the migration of animals and the exchange of genetic material. It is especially actual for reservoirs, which exist in the form of a cascade – sequential placement along the watercourse.

Everything above stated causes the need of the ecologization of the activities in the field of aquaculture.

Having analyzed the current legislation, primarily we would like to stress that according to the Art. 1 of the Law of Ukraine "On Aquaculture" [9] aquaculture (fish farming) – is an agricultural activity for artificial breeding, maintenance and cultivation of aquaculture objects in fully or partially controlled conditions for obtaining agricultural products (aquaculture products) and their sale, production of feeds, reproduction of biological resources, conduction of breeding and stock breeding, introductions, resettlement, acclimatization and re-acclimatization of aquatic organisms, replenishment of aquatic biological resources, preservation of their biodiversity, as well as providing recreational services.

It is obvious that we do not aim to research property relations in the entire aquaculture industry. This activity can be carried out using various technologies, intensification stages, species composition of the livestock, etc. All these features impose their imprint on both legal regulation and the very nature of property in this sphere. Thus, according to the Law of Ukraine "On Aquaculture" there is an industrial aquaculture – activity on artificial breeding, maintenance and growing of aquaculture objects with the use of fishing and floating gardens, fishing pools, other technological devices, including the use of closed water supply plants. Essentially, such activities are isolated from the environment, often do not occur on the territory of water facilities, and therefore in practice there is no question of the belonging of the fish and the rules of its use. Besides, in case of industrial type of aquaculture, there is a question: whether there is a natural object – the object of fauna, or there is a peculiar form of keeping live-stock animals.

We should focus attention on the issue of the ownership right to the objects of fauna that are in the water facility in the state of natural will and are not objects of aquaculture in the context of the possibility of exercising the right of their general natural management. In turn, aquaculture objects are aquatic organisms used for the purposes of breeding, maintenance and growing in aquaculture conditions.

From the content of the mentioned Law it is understood that the subjects of aquaculture (legal entities or individuals engaged in fishing activities in the field of aquaculture) have the right "to own the objects of aquaculture and aquaculture production, as well as to receive income from their implementation". And although the norm is not very well written out, it is clear that business entities engaged in aquaculture acquire the ownership right to its objects.

At the same time, if we correlate all the aforementioned concepts, then for the recognition of each individual fish or other object of fauna as the property object of a business entity, it must correspond to the following features:

be artificially bred, maintained or grown;

kept in a fully or partially controlled environment;

be an agricultural product.

Part 3 of the Art. 38 of the Law of Ukraine "On Environmental Protection" stipulates that citizens, enterprises, institutions and organizations according to the procedure of special use of natural resources are provided with the possession, use or lease of natural resources on the basis of special permits registered in the established procedure for a fee for the implementation of production and other activities, and in cases stipulated by the legislation of Ukraine – on concessional terms [10].

The Art. 17 of the Law of Ukraine "On the Fauna" also stipulates that special usage of the objects of fauna includes all kinds of using fauna (except for the cases of free amateur and sport fishing on water facilities of general use, stipulated by the law), which are carried out from their extraction (plunder, collection, etc.) from the natural environment" [11].

From the systematic analysis of the norms of the Laws of Ukraine "On Aquaculture" and "On the Fauna" it becomes obvious that those species of animals that were in the water facility before the start of aquaculture activities remain in a state of natural will and are not the objects of aquaculture. Since, all the sub-normative acts, researched by us, regulating the procedure for conducting aquaculture, do not contain provisions on the assessment and transfer to the ownership or use of the objects of fauna (fish), already contained in a water facility.

Moreover, a document establishing the right to own and use an existing water facility for aquaculture purposes is a lease contract for a water facility. Analysis of the typical form of this agreement shows that the elements of the environment, the right of use of which is transferred under this agreement, are water and lands [12]. The objects of fauna are beyond the scope of this agreement. In addition, because of the very nature of animals, the Law of Ukraine "On the Fauna" does not at all consider the concept of renting objects of fauna that we consider to be justified.

Thus, in accordance with the requirements of the same Law of Ukraine "On the Fauna", the person who owns the objects of fauna (fish) must documentary verify the legality of their acquisition. Synthesis of all the requirements of the legislation allows to assert that for the emergence of the ownership right for all species of fish and water invertebrates in a water facility provided for aquaculture, the business entity must documentary verify the purchase

of all fish contained in the water facility or demonstrate the documents on the implementation of special nature management – industrial fishing. It should be noted that in the course of a multi-year study, we were unable to find any case of the receipt of documents of the special use of objects of fauna by the business entity, which would precede the receipt of the water facility for use. This provides grounds for concluding that the types of objects of fauna that were located in the water facility before its transfer for aquaculture, as well as those that were not the subject for breeding (acquisition), were not the property of the subject of aquaculture.

As we have already stressed [13, p. 52–54], the analysis of the provisions of the Law of Ukraine "On the Fauna" reveals certain problems. Thus, the Art. 6 of the Law states: "The objects of fauna, which are maintained (kept) by enterprises, institutions and organizations of the state or communal form of ownership are the object to the right of respectively state or communal ownership". In fact, the law links the right of state and communal property with the maintenance (storage) of such objects by respectively state or communal enterprises, institutions and organizations. Part 1 of the Art. 7 of the Law states that the objects of fauna withdrawn from the state of natural freedom, bred (received) in a semi-free conditions or in captivity or acquired by another way, not prohibited by law, may be privately owned by legal entities and individuals. This made it possible to conclude that the right of state, communal and private property primarily relates to the removal of the objects of fauna from the state of natural freedom on the basis of appropriate permissions. Then it is logical to ask: who then acts as the owner of the objects of fauna that are in a state of natural will?

The consolidation of this right exclusively by the Ukrainian people, which does not actually belong to civil society participants, is not endowed with adequate capacity and legal capacity by the Civil Code of Ukraine, seems inappropriate in relation to the existing works within environmental law [14, p. 80; 15, p. 78]. Therefore, it has been offered to consolidate the relevant provision in the Law of Ukraine "On the Fauna", establishing that all objects of fauna, other than those removed from the state of natural freedom, are bred (received) in semi-free conditions or in captivity acquired in the state property other way not prohibited by law by enterprises, institutions and organizations of communal ownership, as well as individuals and legal entities.

The discussion about the membership of "aboriginal" species of fauna in leased water facilities is becoming more acute in society [16]. Adoption of the Law of Ukraine "On Aquaculture" further complicated this area. Formally, aquaculture can be carried out to provide recreational services. Providing services to fishermen to organize and conduct sports and amateur fishing may be such recreational services. However, the service must be paid, and indicated types of fishing are types of general nature management, that is, free of charge.

The Art. 47 of the Water Code of Ukraine, which specifies that the general use of water is carried out by citizens to meet their needs (bathing, boating, amateur and sports fishing, watering animals, taking water from water

facilities without the use of buildings or technical devices and from wells) free of charge, without fixing water objects by individuals and without issuing appropriate permits, did not add clarity to the researched issue [17]. The legislator has indicated the possibility of amateur or sports fishing in the general water management and use by fauna members. It is clear that to allow the usage of the objects of fauna, in particular fish, by the right of general nature management can only be given to the objects of state or communal property. The private owner has the right to independently determine the range of people, the time, the volume of use of his property.

In our opinion, in order to determine the ownership right to the objects of fauna that are in the reservoir simultaneously with the objects of aquaculture, it is necessary to take into account the mode of these animals that existed before the transfer of the water facility to use. Based on the analysis of regulatory acts regulating accounting and reporting in the field of aquaculture, the aquaculture subject must fully reflect in the documentation the species, number, age groups, mass and other characteristics of each type of aquaculture object.

Consequently, there are no grounds for claiming that the subject of aquaculture has the ownership right to all fish in the reservoir that was provided to him. Accordingly, he has no right to impose restrictions on the use of local fish species in the implementation of general nature management.

Moreover, the typical form of a lease contract for a water facility is one of the grounds for termination of such an agreement, which stipulates the prohibition of general water management, which, according to the Art. 47 of the Water Code of Ukraine, includes sports and amateur fishing.

Another important issue is the implementation and protection of the ownership right to the objects of fauna – aboriginal species of fish that were in the reservoir before it was handed over for aquaculture in case of their destruction. It is not about such cases of unlawful destruction as illegal catching, poisoning, immorality, etc. The legal development of events is possible, namely, the death of fish during the implementation of measures of fishing melioration – reduction of water level or complete discharge of water from the water facility, and some others.

In accordance with c. 8 of the Art. 17 of the Law of Ukraine "On Fisheries, Industrial Fisheries and Protection of Water Bioresources" the level of water in fish-farming water agencies should be sufficient to ensure the natural reproduction and life of aquatic organisms. The increase or decrease of water level in water facilities is agreed with the central executive agency, which implements the state policy in the field of fisheries [18].

Thus, the legislator has foreseen the need to agree the issue of water discharges from the water facility with the fish protection agencies. However, there were no compensatory mechanisms for the reimbursement of losses of natural fish stocks. Since, as it was earlier indicated, aboriginal species of fish are not transferred to the property of the subject of aquaculture. Thus, the legislator's logic regarding the lack of compensation for losses of aquatic living resources that occurs as a result of economic activity is not clear.

In our opinion, we should foresee a mechanism for restoration of the state or compensation of losses of biodiversity in case of the destruction of water level in a water facility. It is advisable to establish the owner's obligation to restore the biological diversity of aquatic organisms or to compensate for the costs of such a restoration. In case of the restoration of species diversity in a water facility, such aquatic living resources shall not be the property of a business entity. In case of the compensation for the cost of destroyed water facilities, the funds received should be target-oriented and to be used to implement measures to increase fish stocks in the region, but not necessarily in the water facility, which became the source of the corresponding funds.

In turn, it will allow restoring the aquatic living resources of the region, while not engaging such activities on water objects, where such restoration is inappropriate (aquaculture facilities with periodic water level reductions). Besides, it disciplines the aquaculture subjects in part of responsible attitude for the species diversity in the provided water facility. Since, there are many cases of water level reduction only to facilitate the catching of commercial fish and its more complete catch without purchasing special means of its catching.

Conclusions

1. Relationships regarding the emergence of the ownership right to the objects of aquaculture in case of its implementation with the granting the right to use a water object, should be regulated by law, which is developed and applied primarily from the standpoint of the doctrine of environmental law, taking into account the right of other citizens to use natural objects, in compliance with the nature-oriented regime of reservoirs. One of the main requirements to be adhered to by the subject of aquaculture is to preserve the property right of the Ukrainian people to the objects of fauna that have fallen into the sphere of its activity together with the reservoir.

2. The basis for the origin of the ownership right to aquaculture objects is the conclusion of agreements for purchasing stocking material and / or artificial breeding activities of such objects. However, this is not the reason for the termination of the right of state or communal property and, accordingly, the emergence of private ownership to the objects of fauna that are in the water facility provided for the aquaculture maintenance.

3. We offer to amend the Art. 1 of the Law of Ukraine "On Aquaculture" with the notion of local (aboriginal) aquatic organisms as those that were before the provision and / or were in a water facility after being used for aquaculture purposes, artificial reproduction or if the subject of aquaculture didn't make their invasion. To supplement c. 2 of the Art. 5 of the Law of Ukraine "On Aquaculture" with the provisions on the obligation of the subject of aquaculture not to prevent the implementation of amateur and sport fishing of citizens for local (aboriginal) aquatic organisms.

4. To develop a methodology for calculating the cost of aboriginal aquatic organisms located in a water facility, and to provide a mechanism for the compensation of their restoration in case of destruction in connection with the implementation of measures of fishery reclamation.

Such changes will make it possible to avoid ambiguous interpretation of the requirements of regulatory acts in the field of aquaculture; to distinguish aquaculture objects – agricultural animals and objects of fauna; to ensure the right of general environmental management on water facilities that were provided for aquaculture.

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ENVIRONMENTAL LAW AS THE THEOLOGICALLY-SOCIOLOGICAL PHENOMENON

Summary. *The article deals with environmental law as a sign of the integrity of the law due to the unity of private and public law, and as well as the most striking example of the combination of the Divine in law – the moral and ethical imperative given to the Man by the God – and the Social – environmental moral standards, traditions and customs, created by the society as the Society of Creators. This constitutes the author's proposed theologically-sociological theory of law, which is analyzed in this article based on the peculiarities of the interaction between the society and the environment, which can be seen in the development of environmental law. The author notes that social life is regulated not only by legal norms, but also by the "non-law", which includes habits, fashion, customs and personal values, therefore protection of human environment from destruction, healthcare and human life protection, and hence securing them from the negative effects of the polluted environment become important social values. The result of legal life here is the environmental and legal culture of society. Consequently, law is a phenomenon of modern civilization created by society within the framework of the moral imperative of good and justice, the upmost laws (Divine, cosmic, as indicated in works of a number of scholars), by which a person, created in the image and likeness of God, is endowed with talent and the right to creativity.*

Law is not the result of the blind imitation of the Highest Will. The Creator gave the person and society the mind and defined basic principles of social life and interpersonal and collective relations, moral imperatives in the commandments. At the same time, we have no right to sin. Any activity in the system "human – environment" or "human – society" or "society – environment" should take into account the rights and interests of the others, including their right to clean environment, in which all of us on the Earth are equal.

According to the author, the principle of social contract, enshrined in the Constitution of Ukraine, adopted by the Verkhovna Rada of Ukraine on 28 June 1996 on behalf of the Ukrainian people – citizens of all nationalities living in Ukraine as a social contract between society and the state, is the basis of the state protection of environmental rights and freedoms of man and citizen. The essence of this Social Contract is en-

shrined in Articles 3 and 19 of the Constitution of Ukraine, according to which human rights and freedoms determine the content and directions of the state's activities and legal order is based on the restriction of the state and state bodies by law, Constitution and other legislative acts, human rights and freedoms. An individual has the right to safe products (food products and household items). An individual is entitled to proper, safe and healthy working conditions, residence, training, etc.

The author emphasizes that development of environmental law, as well as the emergence of massive environmental movements, are due to the powerful development of environmental science. Awareness of the exhaustiveness of the natural resources, necessity to protect the environment as the environment for human life, necessity of legal regulation of these social relations and the state performing its environmental functions were first presented to the society in the works of scientists. Solving problems of rational exploitation of natural resources, protection of nature and ecological safety issues, faced by modern civilization, constitute a single task which lies in the field of creative activity of environmental scientists, including environmental lawyers, and also requires unity of legal regulation based on both state regulation (administrative, economic and stimulating principles, institute of legal liability and moral and ethical imperatives of interaction between the society and the environment, which should be reflected in law) and as well ecological activities of the civil society as the four pillars on which common tasks of the state and civil society (compliance management of natural resources and environmental protection for present and future generations) should be performed.

The latter determines the unity of the system of environmental law as a social phenomenon. This unity is based on: the unity of the state's environmental policy and its ecological function, covering both protection and the use of natural resources and ensuring environmental safety; the unity of the three forms of state regulation in the system of environmental protection – administrative management and control, economic and legal mechanism, legal liability; the joint responsibility of the state and civil society for the protection, preservation and rational use of natural resources, protection of the environment and its preservation for present and future generations of people, which (unity) is based on the ecological ethics and culture, which derive from the moral imperative of social life, determined and given to human by the God; the unity of objects of the environment, the subject and methods of legal regulation and principles of environmental law. Environmental law reflects general patterns and complexities of the formation of the modern Ukrainian system of law, the economic and legal mechanism of environmental protection, which develops under the influence of various factors of economic, social and ecological nature around the idea of human-centeredness, awareness of the understanding of preservation of the environment as a spatial basis of the life of a human as a creative being.

The statement of the issue of ensuring sustainable development in the modern globalized world on the global level requires reconsideration of our

ideas about the law and the state and their role and place in regulating the interaction of civil society and the environment. Hence the study of the concept, place and role of environmental law in public life and the system of law logically begin with analysis of modern understanding of law and legal system, peculiarities of law's structuring and other theoretical and methodological problems.

Modern understanding of law most fully demonstrates its social content, connected with the society, due to the need to preserve the environment for the present and future generations of people and to preserve of modern civilization.

As a social phenomenon, law is expressed in public relations. Law "lives" as long as it is used by the society and is created by it. Lives of both previous and present societies are inextricably linked to the environment, which is not only the spatial environment of human existence, but also the source of vitally important material goods. That is why the concept and content of law, its social purpose can be most fully and reliably disclosed on an example of environmental law.

Law includes both state and imperious commands and as well the rules of customary law, traditions, moral norms. Social norms, from which legal behests grow, arise from the social life in the interaction of society with the natural environment. Here one can find a source for determining the norms regarding use of natural resources, lean attitude to the outside world and rational exploitation of natural resources.

Of course, there is an interest to find the "initial norm" from which the right derives. It is not just a blind adoration of the forces of nature, but the rules of social life given by the God. Formulated in the most concentrated way and transmitted from generation to generation are the Ten Commandments in the Bible of Christians, 607 rules of conduct of the Jews in the Torah, and 73 Muslim rules in the Koran.

The human being is a biosocial creature. The need for standards of behavior is caused by existence of our kind, communication with other representatives of mankind and the need for interaction to obtain vitally important resources.

Since public life is regulated not only by legal norms, but also by non-right, which includes habits, fashion, customs and personal values, therefore protection of human environment from destruction, healthcare and human life protection, and hence securing them from the negative effects of the polluted environment become important social values. The result of legal life here is the environmental and legal culture of society. Consequently, law is a phenomenon of modern civilization created by society within the framework of the moral imperative of good and justice, the upmost laws (Divine, cosmic, as indicated in works of a number of scholars), by which a person, created in the image and likeness of God, is endowed with talent and the right to creativity.

Law is not the result of the blind imitation of the Highest Will. The Creator gave the person and society the mind and defined basic principles of social life and interpersonal and collective relations, moral imperatives in the commandments. At the same time, we have no right to sin. Any activity in the system "human – environment" or "hu-

man – society" or "society – environment" should take into account the rights and interests of the others, including their right to clean environment, in which all of us on the Earth are equal. However, no man-made law can cancel the norms of the Creator [3].

God created human in his own image and likeness, which is, not with an immortal soul and mind only [4], but also with the right to creativity. Certainly, it is not about bodily similarity of a person with the God. Our God-likeness is the presence of an immortal soul, the right to creativity. The God created us as the creators. This is what constitutes our God-likeness.

Unlike all other living beings, a person is endowed with conscience, morality, and ability to live according to moral virtues that are perfected in the process of civilization.

Human as the creation of the God creates the world of his life not only from material objects, but also from spiritual substances. People and society create law as well – traditions, customs, moral norms, normative legal acts, within the framework of upmost laws (Divine, cosmic, as indicated in works of a number of scholars). Hence, the state does not have a monopoly right to create law through the adoption of normative legal acts, because society uses not only such laws and other acts of government.

This is the content of the theological and sociological understanding of law, as a phenomenon that is being created by society and the state based on the moral imperative given by the God.

We will abstain from commenting on the issue whether natural human rights are granted by God, or belong to an individual as a biosocial being and an element of living nature, however, we note that they are based on the imperatives of higher laws, the moral imperative of the Supreme Mind (God).

Moral imperative *per se* not only constitutes the basis of the law, but also causes its integrity, the law is coherent. The manifestations of the integrity of law are found in its understanding and origins. Let us try to formulate the main provisions that would reveal the integral nature of law, which is one of the decisive grounds for the theological and sociological understanding of law. The law, according to the ancient Roman proverb, is a measure of good and justice, created by society "around" the above-mentioned Moral Imperative in the interests of all members of society [5].

An individual is created free, as well as the Creator. The will of a human is always free [6]. Adam Smith considered economic and political rights and freedoms, that is, on one hand, the right to private property, electoral rights and freedom of speech on the other hand, to be the basis of human freedom. Here, the liberal model of the state, which, with the participation of the author of these lines, is enshrined in the Constitution of Ukraine of 1996, finds its purpose as a duty of the state to ensure the realization of the rights and freedoms of the free individual.

Legal system as an aggregate of all legal phenomena of the state is defined not only by the features of interaction between the human, the society and the environment, but also by the scope of human rights and freedoms guaranteed by the state, the form of government, political (legal) regime, model of gov-

ernment. It also characterizes the features of modern state law development, since modern state cannot remain isolated in the global world.

Legal system can be understood either as the system of legal norms, or as legal norms and legal relations, or as the construction of law consisting of norms, combination of law-making and the application of law [7]. Law in the general social sense means certain features of social life, which are determined by the level of development of the society [8]. Thus, law becomes a phenomenon rather than the legislative limitation, and the system of restrictions and duties of an individual corresponds to the responsibilities of the state and the capabilities of an individual.

Over the past decades, law in Ukraine has traditionally been viewed as a mirror of social relations, which only captures the level of development achieved and is deprived of creative power as a secondary (superstructural) element of reality, an addition to economic relations that serves the tools of the economy and is just an instrument of the state.

The peculiarity of the aforementioned approach to the understanding of law was the Soviet subjective normativism [9], that is, the denial of private law, the absolutization of public law, caused by the foreseen state ideology within the framework of the vision of law. This, in our opinion, gave rise to legal nihilism, underestimation of law, ignoring it in the socio-economic scales of a giant state. In the sphere of the interaction of the society and the environment, this phenomenon manifested itself in the absolutization of the human right to selfishness in the use of natural assets, embodied in the well-known formula of Ivan Michurin: "We cannot wait for favors from the Nature. To take them from it – that is our task". As a result, we received an absurd anti-natural economy, predatory exploitation of natural resources, when each social group exploited nature thoughtlessly over possible and necessary rate. In pursuit of the plan, tons of fish caught rotted unprocessed, and the ships at that time kept on catching new tons, stealing fish stocks from the subsequent generations. Unused gasoline or diesel fuel was poured into the ditch at the sake of being entitled to refueling the car tank next day for work purposes. Millions of tons of harmful substances were emitted into the atmosphere at the sake of collecting one or two elements from the reserves of natural resources, with the rest ones thrown away into dumps and sedimentations. And this is exactly what happened in all areas of interaction between society and the environment – anti- natural, anti-human and anti-God-based behavior with the hope of inexhaustible natural resources, rewards from power, present-day benefits…

Such a vicious practice was consecrated with the idea of building communist future, "when the wealth will come in a full flow", as the Moral code of the builder of communism stipulated. At the same time, indifference was kept as to how such unknown wealth could appear on a flattened land destroyed by the culture of our ancestors under the reservoirs or the turned flow of the northern rivers of the former Soviet Union. Fate of our children and grandchildren, their needs for non-energy resources, minerals, food were not taken into account and neither was the special

role of law as a phenomenon that occurs in society, and not only the state, and therefore is a form of social life. "The Law is, first of all, the immediate presence of life", G. Hegel wrote in his "Philosophy of Law" [10], meaning that law is the phenomenon and the essence necessary to imagine modern society. The fashion on G. Hegel did not disappear, but his definition of law as the necessary element of being was understood in a simplified manner.

Civil society used exclusively the state-created norms of law. The state exploited natural resources, produced means for life, and controlled itself as to compliance with environmental norms in the process and social production. Traditionally, the user in the person of the ministry controlled the fair use of natural resources on its own: the fish inspection was part of the Ministry of Fisheries, the Water Protection Inspectorate was part of the Ministry of Land Reclamation and Water Resources, etc. Law, as a social phenomenon [11], the acquisition of spiritual culture, art, was deprived of the creative basis, through which the new social and economic relations are being developed. Attempts to break such normative stereotypes were introduced only in the post-Soviet period. Ukrainian experience, the 1996 Constitution of Ukraine, drafted with the author's participation as a model of the state development, the formation of a system of law, civil society and a new free individual, is the best argument in favor of such a statement.

First of all, law is a moral imperative, based on the Divine will and which is recognized, authorized and ensured by the state. An immoral law is doomed to social negativism and public condemnation. It does not fulfill one of the basic functions of law as it does not shape legal order. Law, as the ancient Roman proverb states, is a measure of goodness and justice.

Law as a living matter of high spirit manifests itself in a way that we have not noticed before. Let's remind ourselves that the ancient proverb interpreted law as art of good and justice. In the Constitution of Ukraine, evidently, this provision is elaborated in Article 3, establishing that the individual and his freedom determine the content and directions of the state activities. Thus, law is transformed from a possibility granted by the state into the system of contractual norms of equal entities – individual and state.

Since each human is born free, freedom and necessity are two real criteria, two true keys to understanding law as a holistic phenomenon that combines public and private life of society. Freedom as such exists when a bird can have two wings, one of which is the private life of an individual established from the right to own identity and private property, and the second is the right to participate in public life, primarily the electoral rights. And then the necessity is understood as the duty of the individual to take public and private interests into account in course of realization of his or her own interests.

Our traditional ideas about the law and attempts to differentiate between public and private law as frontiers of the integrity of the law now require, of course, certain studies, which will be based on the analyzing previous experience. Famous German scientist F. Savigny in this pointed out regard that in public law the whole is the purpose, and

the individual is of secondary importance (it should be noted that we have lived with this understanding for a certain and rather long historical period), whereas in private law a separate individual is a purpose and the whole as a state is only an instrument.

Unlike the legal system as a set of all legal phenomena, the system of law includes branches of law and institutes of law. The rationale is whether it is possible to identify the branches that relate to private law and public law in the system of law separately? On the level of division of the law into the branches, one can still say: civil law is undoubtedly the basis of private law. Natural law, as Ulpian said, also refers to private law. Natural law contains human rights and freedoms that are inherent to an individual as a biosocial being and that can't be granted by the state, but only due to their recognition by the state they are enshrined in the constitution as a social contract between citizens, civil society and the state. In this case, the level of publicity of natural law corresponds to the level of publicity of civil law.

Apart from that, constitutional law, administrative law and criminal law are branches of public law. However, considering law is a system that includes structural units, there is a certain convention of division of law into public and private. Certain rules of public law exist even in civil law, as the basis of private law, in particular, in regard to legal regulation of intellectual property. Rules governing relations connected to the lease of land can be found in such branches of public law, as constitutional law and land law. Local self-government bodies and state executive authorities, on one hand, and individuals or legal entities, on the other hand, can be parties to the lease agreement. Conclusion of such lease agreement is preceded by the local self-government bodies' or state executive authorities' authorization procedure, which is lies well in the sphere of public law. The procedure of the legal entity deciding on entering such lease agreement is a matter of private law.

One of manifestations of the integrity of law, along with its division into public and private, and the unity of the latter two, is the formation of a comprehensive branch of law called "environmental law", which combines the forms of public law and as well the forms of private law, including both the norms of environmental legislation and the norms of others branches of law.

Let's try to highlight the signs of such phenomenon. First of all, we should note that the basis of environmental law lies in the natural right of an individual to favorable environment for life and safe for health and life. This right corresponds to the obligation of the state, which is now enshrined in Article 16 of the Constitution of Ukraine, namely the obligation to ensure the environmental safety and maintain the environmental balance on the territory of Ukraine, overcoming the consequences of the Chernobyl disaster – the disaster of a global scale, preservation of the genetic potential of the Ukrainian people are the obligations of the state. This norm of public law has developed in the "Basic Law" of private law – the Civil Code of Ukraine, which came into force on 1 January 2004. Article 293 of the Civil Code of Ukraine ("*Right to safe environment for life and health*") pro-

vides that: "an individual has a right to safe environment for life and health, the right to reliable information about the state of the environment, the quality of food products and household items, as well as the right to collect and distribute them".

The principle of social contract, enshrined in the Constitution of Ukraine, adopted by the Verkhovna Rada of Ukraine on 28 June 1996 on behalf of the Ukrainian people – citizens of all nationalities living in Ukraine as a social contract between society and the state, is the basis of the state protection of environmental rights and freedoms of man and citizen. The essence of this Social Contract is enshrined in Articles 3 and 19 of the Constitution of Ukraine, according to which human rights and freedoms determine the content and directions of the state's activities and legal order is based on the restriction of the state and state bodies by law, Constitution and other legislative acts, human rights and freedoms. The source of human rights should be sought in the dignity of every human being [12]. An individual has the right to safe products (food products and household items). An individual is entitled to proper, safe and healthy working conditions, residence, training, etc. Article 293 of the Civil Code of Ukraine is interconnected not only with Article 16, but also with Article 50 of the Constitution of Ukraine, which also establishes the right of an individual to environmental safety, but is slightly more restrictive in its content.

Activities of individuals and legal entities, leading to destruction, damage, pollution of the environment, are illegal. Everyone has the right to demand termination of such activities. Activities of individuals and legal entities causing harm to the environment may be terminated by a court order.

In this context, the restriction of human freedom is due to the environmental rights of other people, and therefore it is not the right of the state, but legitimized by its duty on the basis of the Social Contract (Constitution) in order to protect the rights and freedoms of other people. It is clear that sociological and legal characteristics of these problems require a separate study.

Here we draw attention to the significant difference between the obligation of the state to provide safe environment, as is stated in the Civil Code of Ukraine, and the same obligation of the state to provide favorable environment for life. This, at first glance, is a small difference due to the estimated parameters, but in the context of the state's tasks, it is a very different amount of commitment that requires a separate study.

In any case, the result of the legal regulation of environmental relations should be a certain state of social relations in the field of interaction between the society and the nature, in which the quality of the environment is favorable to man and certain natural components, and quality and quantity of natural resources provide the economy of present and future generations of people [13].

Such order of social relations is possible only in conditions of ecological stability, which is known as the ability of the ecosystem to withstand the abiotic and biotic factors of the environment, including anthropogenic influences [14].

Almost the only one effective and productive, as well as universal instrument for solving these problems is environmental law. Environmental law is intended to establish the foundations for the formation of parameters of behavioral characteristics of subjects of environmental relations (society) with the following:

− formation of a new eco-legal outlook;

− creation of an effective system of ecological upbringing and ecological education;

− formation of modern environmental legislation;

− creation of an effective management system in the field of nature management and environmental protection;

− formation and implementation of economic and legal mechanism of the environmental protection;

− development of effective environmental policy and its consistent implementation;

− creation of legal principles of public participation in management and control in the field of nature management and environmental protection.

The essence of the environmental policy of the state is the human right to a favorable environment for life and health (the right to a favorable environment for life) as a basis for the formation of environmental policy. Modern understanding of the tasks of the state in this sphere involves recognition and implementation of new legal regulation of environmental legal relations of principles: principle of prudence in planning or implementation of any measures to prevent or minimize risks or dangers of adverse effects on the environment, as well as the obligation to hold environmental expertise. In modern conditions, it becomes important to understand the necessity of the equilibrium of expenditures on the implementation of environmental protection measures, financial capabilities of the state and the obligation of the state to ensure environmental safety, as well as the priority of life-supporting (social, recreational, protective) functions of the biosphere for the society in relation to direct (in raw state) exploitation of natural resources.

The purpose of state's environmental policy is to create such a pattern of consumption of natural resources and the interaction of society and the environment, which would ensure the normal process of society's evolution on the basis of sustainable development. Sustainable development is considered here as a condition of the needs of society, the principle and purpose of environmental law, as well as socially, spiritually, economically and environmentally balanced development, aimed to create economic potential, full-fledged living environment for present and future generations on the basis of rational use of resources (natural, labor, industrial, scientific, technical, intellectual, etc.), technological re-equipment and restructuring of enterprises, improvement of social, industrial, transport communication, informational, engineering, ecological infrastructure, improvement of living conditions, recreation and rehabilitation, preservation and enrichment of biological diversity and cultural heritage, provided that this does not lead to deterioration of the environment, degradation of the natural environment and depletion of natural resources, and provides for a continu-

ous progress of society. Actually, creation of legal principles for the realization of this goal is a key problem of the institute of environmental law, which gives grounds for considering it from the standpoint of a universal instrument for solving problems of interaction between society and nature.

The law of each state as a system, including such structural units as the field of law, is in constant dynamics. Along with the traditional branches of law, in particular, such as constitutional, civil, criminal, administrative, financial, labor, civil procedure, criminal procedure and others, other branches of law are formed and established. Today it is universally recognized that the distinction between environmental law as a complex branch of law is discussed, and discussions are on the further development of commercial law as an independent branch of law.

The branch of law combines a relatively independent set of rules of law that govern certain spheres of public relations. Large branches of law can combine both the institutes of law and larger groups – the sub-branches of law, that means the totality of legal rules governing the social relations of one kind (banking, budget law as part of the branch of financial law).

And, finally, the smallest structural component in the system of law is a legal norm – a specific rule of conduct, established or authorized and secured by the state. The norm of law can be compared with the molecule of matter, that is, the smallest component of the substance that preserves the properties of this substance. The molecule of water is water, and the two atoms of hydrogen or of the oxygen atom are different in comparison to water properties. The rule of law is the smallest piece of law that retains the properties and features of law. Therefore, the reduction of the rule of law to a simple rule of conduct simplifies the very nature of law in a certain way.

The most vividly such feature of law is manifested in environmental law, which unites legal norms, aimed at preserving the environment in which an individual lives.

Environmental law is a complex branch of law regulating legal relations in the field of preservation of nature, rational use of natural resources and ensuring environmental safety, that is, relations related to the protection and use of the environment as a whole and natural resources of the environment in order to ensure balanced sustainable development in the interests of present and future generations of people.

Development of environmental law, as well as the emergence of massive environmental movements, are due to the powerful development of environmental science. Awareness of the exhaustiveness adaptive resources of nature, necessity to protect the environment as the environment for human life, necessity of legal regulation of these social relations and the state performing its environmental functions were first presented to the society in the works of scientists. Solving problems of rational exploitation of natural resources, protection of nature and ecological safety issues, faced by modern civilization, constitute a single task which lies in the field of creative activity of environmental scientists, including environmental lawyers, and also requires unity of legal regulation based on both state regula-

tion (administrative, economic and stimulating principles, institute of legal liability [1, 2] and moral and ethical imperatives of interaction between the society and the environment, which should be reflected in law) and as well ecological activities of the civil society as the four pillars on which common tasks of the state and civil society (compliance management of natural resources and environmental protection for present and future generations) should be performed.

The latter determines the unity of the system of environmental law as a social phenomenon. This unity is based on: the unity of the state's environmental policy and its ecological function, covering both protection and the use of natural resources and ensuring environmental safety; the unity of the three forms of state regulation in the system of environmental protection – administrative management and control, economic and legal mechanism, legal liability; the joint responsibility of the state and civil society for the protection, preservation and rational use of natural resources, protection of the environment and its preservation for present and future generations of people, which (unity) is based on the ecological ethics and culture, which derive from the moral imperative of social life, determined and given to human by the God; the unity of objects of the environment, the subject and methods of legal regulation and principles of environmental law. Environmental law reflects general patterns and complexities of the formation of the modern Ukrainian system of law, the economic and legal mechanism of environmental protection [15]. It develops under the influence of various factors of economic, social and ecological nature around the idea of anthropocentrism, awareness of understanding of preservation of the environment as the spatial basis of the life of a human as a creative being.

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NEW BOUNDARIES OF THE ENVIRONMENTAL LAW OF UKRAINE

Abstract. *The article shows the necessity of the newest vector of environmental law development, connected with the expansion of its spatial base to the near-Earth outer space. The historical context of the problem is being investigated, beginning with the first UN treaties on outer space. The gradual penetration of certain principles, provisions and requirements for the environmental safety of space activities into the national space and environmental legislation of space faring countries is analyzed. Taking into account foreign experience, the ways of the Ukrainian environmental law development with regard to involve outer space in the sphere of its protection are outlined.*

Key words: *environmental law, national legislation, international space law, international environmental law, near-earth outer space, ecological safety of space activities.*

1. Introduction

In the 90 years of the XX-th century, that is, during the formation of the Environmental Law of the independent Ukraine, the domestic ecological legal system was oriented to limitation of its scope of regulation by the Earth's atmosphere. This was understandable and justifiable, since it was precisely within such limits that human activities were extended for that period. Of course, this scope was not limited to a purely "terrestrial" environment, taking into account their penetration into the depths of the Earth, and to the bottom of the World Ocean. However, there was no objective reason, at that time, to look into the space outside of the Earth's atmosphere and to regulate the ecological requirements in this space.

The rapid development of astronautics at the turn of the millennium, the diversification of human activities in outer space, intrusion of humans into the extraterrestrial environment (including – in the deep outer space) have posed many questions on environmental sustainability of human life in outer space. This caused a lot of problems face to the environmental law, both international and national, especially of those countries that already carry out their space activities, or plan to implement it in the near future.

Let's try in this article to analyze the current status of the legal regulation of environmental safety of space activities, its improvement, as well as the main directions of further development of the respective branch of law to meet the needs of environmental safety in outer space.

2. Results and discussion

2.1. Overview of environmental threats to the near-Earth space, requiring legal regulation

At the turn of the XX-th and XXI-st centuries, however, there were a large number of environmental threats of space activities that require their legal regulation. Historically first, the pollution and other influence caused by space activities on the Earth's environment and population began to emerge. This was due to the negative environmental effects of the ground space infrastructure operation (space launches, areas of rocket surplus falling, etc.). As these problems fit into the overall context of the environmental impact of economic activities, they fell under the existing environmental legal regulation.

Gradually, however, with the enlargement of space activities, environmental problems that go beyond the traditional boundaries of environmental legal regulation became perceived. These are the ecological legal status of cosmonauts/astronauts and other participants of space missions; the pollution associated with the use of nuclear energy sources in outer space; the problem of contamination of near-Earth space by so-called "space debris" and some other. Let's consider these problems in more detail.

As of March 2018, there are 565 people who performed orbital space flight [2]. Moreover, in addition to professional cosmonauts, at the end of the twentieth century, new actors appeared in space arena – space tourists, that is, persons carrying out space flights or near-Earth space orbit for entertainment or cognitive purposes, financed from their own funds or other private sources. It should be noted that suborbital commercial space flights began before the legal status of these participants in space missions was determined; without guarantees of their safety, including ecological ones. From an environmental point of view, however, is extremely important the definition of sanitary-hygienic and medical factors of life support of astronauts and other participants of space missions, setting threshold values of radiation, weightlessness, noise, lighting, gas composition of the environment, water supply and other factors, affecting the human body aboard spacecraft, space stations and in the open space.

Among the harmful influences on the near-Earth space the use of nuclear power sources (NPS) in outer space is one of the most dangerous. The use of NPS in outer space is a logical result of scientific and technological progress. It is objectively necessary for the successful continuation of the exploration of outer space in the interests of all mankind. But the fuel used in nuclear power sources has extremely dangerous properties that require special precautions. Accidents that can occur with space objects equipped with NPS are of a special nature, the elimination of their consequences is significantly different from the cases of emergency return to the densest layers of the atmosphere of space objects using traditional energy sources [25, p. 3–15].

Another set of environmental threats to outer space is associated with the influence on it of space debris, that is, the remnants of space objects (fragments, splinters, associated and derived elements) that completed their life cycle, used their resources, but remained in outer space, since their return to Earth or destruction after working out of a life cycle proved to be economically ineffective or technically impossible. The

most contaminated areas of orbits are the most often used for the operation of spacecraft: near-Earth orbit – up to 2000 km (NEO), a geostationary orbit (GSO), and a solar-synchronous orbit (SSO). According to the UN Office for Outer Space Affairs (UNOOSA), by date for October 2009, only in NEO, there were about 300,000 objects of space debris with a diameter of more than 1 cm [27]. At the same time, only about 6% of the monitored objects are active. The negative effects of space debris on the space environment and the operating space objects are increasing in geometric progression.

New threats to space environment and celestial bodies will most likely be associated with the exploration of their resources, which is already being actively discussed.

2.2. Current status of the environmental issues of space activities in the International Space Law

Does the law adequately respond to emergence of threats for the outer space environment?

Since outer space is recognized as the common heritage of mankind, it is logical first of all to look for the answer to this question in International Law.

5 international UN instruments in the domain of space activities make the core of International Space Law. One should not forget that these instruments were created in the so-called "pre-ecological" era (the core of this branch of law was formed in the 60's and 70's of the twentieth century), when the problem of environmental protection of outer space has not yet gained today's acuteness; it was considered secondary, in a certain way "exotic"; such that it did not require the taking of immediate measures and adequate regulation. As a result of this – the lack of systematic regulation at the international level of the environmental issues that may arise during exploration and use of outer space. Neither of the International Space Law instruments is particularly targeted at relationships with respect to environmental safety. Nevertheless, some of their provisions are applicable in environmental relations, although they do not directly regulate them.

Therefore, the inclusion of principle to avoid harmful contamination of the Moon and other celestial bodies as well as the adverse changes in Earth's environment as a result of the delivery of extraterrestrial matter on the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereafter – Outer Space Treaty), entered into force on 10 October 1967 (Art. 9) [26, p.6–7], is considered as apogee of prospective international outer space regulation.

We also find separate legal provisions having environmental content in subsequent UN outer space treaties. Thus, the Convention on International Liability for Damage Caused by Space Objects (Liability convention) regulates issues of liability for damage being caused by space objects not only on the surface of the Earth or to aircraft in flight, but elsewhere than on Earth environment, in other words – in outer space or on board of spacecraft [6, p.14–23].

Further regulation of environmental issues relating outer space and other celestial bodies was extended by the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. In particular, according to para.

1 of the Art. 7 of this Agreement, "in exploring and using the Moon, States Parties shall take measures to prevent the disruption of the existing balance of its environment, whether by introducing adverse changes in that environment, by its harmful contamination through the introduction of extra-environmental matter or otherwise" [1, p. 33].

The search for international space law requirements having ecological "coloration" brings us to the analysis of Article 4 of the Outer Space Treaty where States parties undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, not install such weapons on celestial bodies, or station such weapons in outer space in any other manner [26, p. 4]. This provision, aimed at preventing the militarization of space, at the same time, prevents its pollution, first of all, the most dangerous of its kind – radiation. The radiation pollution of space came to the forefront quarter century after with adoption by the UN General Assembly on December 14, 1992 of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. [22]. States parties are primarily required to minimize the amount of radioactive materials in outer space, to restrict space missions which cannot be operated by non-nuclear energy sources in a reasonable way. Although the relevant Principles primarily recognize as objects of protection the Earth's population and the biosphere. The space environment is also recognized as protected; however, the safety criteria for this object are not as rigid: The design and use of space objects with nuclear power sources on board shall ensure, with a high degree of confidence, that the hazards, in foreseeable operational or accidental circumstances, are kept below acceptable levels.

As for space debris mitigation, it should be noted that International Space Law even does not refer to the concept of space debris. That does not imply the total legal vacuum in this domain.

Several specific not binding instruments were grafted to resolve the issue:

– the Inter-Agency Space Debris Coordination Committee (IADC) – the IADC Space Debris Mitigation Guidelines [12];

– the Committee on Space Research (COSPAR) – Planetary Protection Policy [7] ,

– the Committee on the Peaceful Uses of Outer Space – the UN COPUOS Space Debris Mitigation Guidelines [24].

In recent years International Organization for Standardization adopted the set of relevant international standards, including ISO 24113: 2011 ("Space systems – Space Debris Mitigation Requirements") – Technical Committee ISO / TC 20, Aircraft and Space Vehicles, Subcommittee SC 14, Space Systems and Operations [13].

In 2000 the European Space Agency (ESA) adopted the ESA Resolution for a European Policy on Protection of the Space Environment from Debris Damage Caused by Space Debris; in 2004 the European Code of Conduct for Outer Space Activities (CoC) was approved and in 2014 the ESA Space Debris Mitigation Policy for Agency Projects was adopted.

Finally, when examining the problems of environmental safety of space

activities, one can not ignore the concept of the long-term sustainability of this activities, the concept dominant in the consideration of space security issues in UN international organizations (first of all – UN Committee of peaceful use of outer space, but also Conference on Disarmament [5] and some other), starting from 2010. As a result of this, Guidelines for the long-term sustainability of outer space activities have been elaborate on 2017 [11].

All the above instruments belong to the so called "soft" law, as they are not binding, but contain recommendations that guide both states and international organizations in their choice of certain behavior with the purpose to reduce space debris volume. The majority of States use them as indicative materials when they set up their domestic frameworks to limit the space debris amount. At the same time, we should not underestimate the relevant instruments, as their majority point out that implementation of their requirements should take place through formulation of the national instruments or through agreements with the interested states.

2.3. National Space Legislations with regard to the Environmental Safety of Space Activities

To date, more than 20 countries of the world, including Ukraine, have adopted national space legislation. Although we could not find the legislative definition of the environmental/ecological safety of space activities in the national space laws, the content of this concept is done by the general provisions of these laws, with regard to ensure the space activities safety.

For example, Art. 5. §1 of the Belgian Law On the Activities of Launching, Flight Operation or Guidance of Space Objects, among other provides that the King may determine the conditions for granting authorizations with a view to ensuring the safety of people and property, *protecting the environment*, *ensuring the optimal use of* air space and *outer space…* [15].

The Austrian Federal Law on the Authorization of Space Activities and the Establishment of a National Space Registry (Austrian Outer Space Act, adopted by the National Council on 6 December 2011, entered into force on 28 December 2011), determining conditions for authorization of space activities, declares that authorization, among other, shall be issued if the space activity does not cause harmful contamination of outer space or celestial bodies or adverse changes in the environment (§ 4. (1). 5) [3].

In all four laws on space activities, adopted in post-Soviet states, special sections are devoted to the appropriate provisions. This is Section V "Space Safety" (Articles 22–25) of the Federal Law of the Russian Federation of August 20, 1993, No. 5663-I "On Space Activities" ((with following amendments) [9]; Section V "Ensuring the Safety of Space Activities" (Articles 20–25) of the Law of Ukraine of November 15, 1996 No. 502/96-VR (with following amendments) "On Space Activities" [19]; Chapter 5 "Space Safety" (Articles 27–30) of the Law of the Republic of Kazakhstan of January 6, 2012 "On Space Activities" [16]; Chapter VI "Space Safety" (Articles 32–36) of the Law of the Republic of Turkmenistan of November 21, 2015 No. 307-V "On Space Activities" [18].

All these laws, as well as the space laws of other space faring countries, are based on safety relations targeted on humans, environment and property protection on Earth, practically leaving aside the safety of outer space or touching this matter partially and declaratively. Thus, according to the Part 1 of Art. 22 of the RF Law on space activities, such activities should be carried out taking into account the level of permissible man-made pressures on the environment and *near-Earth space (*highlighted by myself – NM). The laws on space activities of Ukraine, the Republic of Kazakhstan and the Republic of Turkmenistan contain provisions regarding the prohibition of the launch into orbit, the deployment of weapons of mass destruction or testing of such weapons in outer space (Part 1, Article 9 of the relevant Law of Ukraine, Article 30.1 (2) of the Law Republic of Kazakhstan and Article 36.1 (2) of the Law of the Republic of Turkmenistan). In accordance with the relevant laws of Ukraine (Part 1, Article 9) and the Republic of Kazakhstan (Article 30. 1 (4)), in addition, the prohibition of violation of the international norms and standards concerning pollution of outer space is declared. Space legislation of Ukraine also extends prohibitions during exercising space activities to use space technology as a means of influencing the environment for military or other dangerous purposes for humanity and for the use of the Moon and other celestial bodies for military purposes.

Unfortunately, these restrictions and prohibitions, proclaimed by many national laws on space activities, have not yet found their detailed development.

On the other hand, many states responded to the not binding guidances of the intergovernmental organizations on space debris mitigation and integrated the requirements related to minimization of debris on orbits into the body of their domestic law on space activities (primarily, it is true with respect to those states that recently adopted their relevant law), or they approved special national standards or other regulations for the purpose of space debris mitigation.

Thus, Belgian Law of 17 September 2005 On the Activities of Launching, Flight Operation or Guidance of Space Objects 2005 requires that, when deciding on the minimization of space debris, the guidelines of international organizations (UN COPUOS, IADC, ITU-R S.1003, as well as the European Code on Space Debris) are to be guided [15].

Austrian Federal Law on the Authorization of Space Activities and the Establishment of a National Space Registry (Austrian Outer Space Act, adopted by the National Council on 6 December 2011, entered into force on 28 December 2011), among conditions for space activities authorization contains the requirements of space debris mitigation: the operator has to make provision for the mitigation of space debris in accordance with the state of the art and in due consideration of the internationally recognized guidelines for the mitigation of space debris. Especially measures limiting debris released during normal operations have to be taken. The law also requires that the European Code for Space Debris Mining and the Standard ISO 24113 be tacked into account when planning appropriate measures [3].

The detailed provisions for the respective issues are in the legislation of

Canada. In particular, according to 2017 Licensing of Space Stations Circular, to obtain a license requires a Satellite Removal Plan. There are also requirements for licensees to develop a plan of destruction, where it is necessary to specify which method is used, its reliability; indicative duration of the removal process; the amount of debris that reaches the Earth, the size, the territory of the defeat; calculation of reliability level; names and number of hazardous materials contained in each satellite; the estimate airborne contamination may be caused by a random explosion, an orbital malfunction, a deliberate breakdown, and measures aimed to reducing the impact of space debris [21].

Standards and guidelines for limiting space debris are actively being developed in the United States [28]. Mandatory legal instruments for the minimization of space debris have also been adapted in France, Germany, Italy, Japan, the Netherlands, Nigeria, the United Kingdom, the United States, Russia, as well as in Ukraine [4].

2.4. International and National Environmental Law in the face of the threats of ecological degradation of outer space due to anthropogenic activities

Environmental law, both international and national, until recently, remained practically inert to regulate relationships associated with new area of space activities – outer space, first of all – its near-Earth part.

International environmental law, being one of the most rapidly developing branches of international law, does not yet consider the space environment as an object of its scope.

This general rule allows exceptions. In this context, we should first of all recall the Moscow Treaty on the Prohibition of the Use of Nuclear Weapons in the Atmosphere, in Outer Space and Under Water, of August 5, 1963. This Treaty traditionally refers to international environmental law, although the scope of its regulation goes beyond the scope of the international environmental law of the 60-th of the XX-th century.

In a specific way, in the matter of protecting the space environment, acts of "soft" ecologic law can be applied. This is, for instance, Principle 13 of the Rio Declaration, which proclaims that

States shall cooperate to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control *to areas beyond their jurisdiction (highlighted by myself – N. M)*. [23].

It should be noted that the national environmental laws of many countries takes more account of the space activities features. In this context, it is useful to draw attention to an interesting innovation of the environmental protection legislations of some post-Soviet states. Thus, Laws @On the protection of the Environment the Republic of Belarus (Arts. 1, 5) [14], of the Russian Federation (Arts. 1, 4) [8], of the Republic of Tajikistan (Art.1) [17] and, determined in their national laws of environmental protection, near-Earth space as one of the components protected by environmental law, along with its traditional components (land, subsoil, water, air, forests, objects of animals and plants).

As to the environmental legislation of Ukraine, it contains a single special provision for taking into account the environmental consequences of planned space activities. This is the rule of Art. 49 of the Law of Ukraine "On Use of Nuclear Energy and Radiation Safety" of February 8, 1995 (as amended on December 18, 2017), which provides special conditions on terms of spacecraft with nuclear installations and sources of ionizing radiation on board safety. When designing, constructing and operating such devices, their possible accidents must be taken into account, and the radiation exposure to humans and the environment must not exceed the limits established by the provisions, rules and standards of nuclear and radiation safety [20] . A similar article 43 is also in the Federal Law of the Russian Federation "On Use of Atomic Energy" of November 21, 1995 (as amended by the Federal Law of 10 February 1997 with subsequent amendments) [10]. Attention is drawn to the objects of protection against the possible harmful consequences of the use of nuclear sources in spacecraft: these are the humans and Earth environment. Space environment in this context remains out of brackets.

It is sure that the modern development of astronautics needs that the environmental legislation of Ukraine includes outer space as a component of the environment to be protected.

But it is necessary to go further in comparison with the above-mentioned post-Soviet states.

It is not enough to proclaim near-Earth space as a component of the environment that needs to be protected by environmental law. It is extremely important to provide special regulation on the matter to implement this general rule. Separate norms and requirements of foreign legislation in this connection can be used. It is also necessary to "weave" this new regulation into the existing environmental law of Ukraine. From the formal legal point of view, it is necessary to take into account the features of the modern period when the concept of the systematization of the environmental legislator is being developed, in particular, the draft of the Environmental Code of Ukraine. In this act, a special chapter devoted to the regulation of the environmental safety of outer space should be allocated.

Conclusions

A feature of environmental law is its linkage to the environment surrounding the human beings. Legal mechanisms of this branch of law aim to ensure the protection of all elements of the environment where humans live and act. Until recently, *conditio sine qua non* was the limitation of this environment by the Earth's biosphere. However, in the past half-century, man's activities has moved beyond the biosphere and began to explore and use outer space increasingly. Every year, an growing number of space objects are launched into outer space, including manned ones. A new kind of travel – space tourism, becomes widespread. At the same time, space objects that have runned out their resources, remain, completely or partially, in orbit, clogging it. The threat to the space environment is represented by nuclear energy sources used in space, and other factors.

Environmental law, both international and national, to date remains inert to the challenges associated with

space activities. Expanding of human activities beyond the Earth's gravity and its spacewalk creates preconditions for expanding the scope of the environmental law regulation into near-Earth space.

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THE RIGHT THE RIGHT TO ECONOMIC MANAGEMENT AND THE RIGHT TO OPERATIONAL CONTROL: THE CONCEPT, ESSENCE AND APPLICATION SCOPE IN UKRAINE

Abstract. *The article investigates the limited real rights which are derivative from the property right: the right of economic management and the right of operational control.*

The purpose of the article is to demonstrate the concept, essence and application scope of the right to economic management and the right to operational control in Ukraine.

The author shows the history of the onset and establishment of the said real rights in the Soviet civil legislation and the post-Soviet economic legislation.

Based on the provisions of the current Economic Code of Ukraine, the article elucidates the differences between the right to economic management and the right to operational control, as well as the powers of participants to economic relations with regard to ownership, use and disposal of the State-owned property assigned to them.

The author notes that, although the civil legislation does not contain any provisions which would explain the essence of the right to economic management and the right to operational control, these rights are widely used not only in the Economic Code of Ukraine but also in other laws that determine the legal status of state and communal institutions and organizations as legal entities of public law.

At the same time, a number of statutory instruments which provisions are referred to in the article evidence that currently there are no uniform approaches to defining the cases and the range of subjects to which property may be assigned by virtue of the right to economic management or the right of operational control, and this entails the possibility or arbitrary interpretation of some provisions of the current legislation and the possibility of speculations with regard to the Economic Code of Ukraine. In this connection, the author criticizes the position of some Ukrainian scholars and practitioners regarding possible liability of legal entities established by the State for the obligations of the State, namely by enforced collection at the expense of the state property assigned to such legal entities.

The article gives a number of proposals to the Civil Code of Ukraine and the Economic Code of Ukraine aimed at improving the legal regulation of the right to economic

management, the right to operational control and the right to operational use the property.

The author believes that implementation of the proposed amendments to the legislation will enable the streamlining of such real rights as the right to economic management, the right to operational control and the right to operational use of property.

Key words: *the right to economic management, the right to operational control, the right to operational use of property.*

In modern scientific civilian studies of rights in rem and property rights, attention are not paid[1] at all to the right to economic management and the right to operational control, or only noted about the affiliation of the said rights to limited rights in rem, which have much in common with trusted property,[2] what can be explained by the lack of appropriate legal regulation of these rights in the Civil Code of Ukraine (hereinafter – the CC of Ukraine),[3] which only allows (Part 2 of Article 395) the possibility of establishing by the law other than those which were listed in Part 1 of this article, real rights to someone else's property, and, accordingly, their rejection by a majority of civilian scientists.

At the same time, there is an unreasonable understanding of the right to economic management and the right to operational control only as categories of economic law, which obviously was caused by the inclusion of these categories to the Civil Code of Ukraine adopted simultaneously with the Economic Code of Ukraine,[4] which caused a violent critique by individual civilians.

The developers of the draft of the Civil Code of Ukraine, commenting its content, noted that it "avoids the concepts of "operational control" and "the right of full economic management", bringing state ownership from the administrative-managerial sphere into the sphere of market relations, where all *entities – owners* (emphasis added)"[5]. Such an idea has indeed found its' enshrining in the Civil Code of Ukraine, in particular, and in Part 1 of Art. 318, which establishes that the subjects of property ownership are the Ukrainian people and other participants of civil relations, defined by Article 2 of this Code, and by Art. 329, which deals with the right to the ownership of an entity of public law (the latter rule is "stillborn", and therefore subject to exclusion from the Civil Code of Ukraine – V. Sch.).[6]

The Economical Code of Ukraine, establishing the legal regime of property, enshrined to the subjects of business (entrepreneurship), went the other way.

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[1] И. Спасибо-Фатеева (ред), *Харьковская цивилистическая школа: право собственности: монография* (Право 2012).

[2] Г. Харченко, *Речові права: монографія* (Алерта 2016) 197–9.

[3] Цивільний кодекс України: Закон України від 16 січня 2003 р. № 435-IV. URL: http://zakon.rada.gov.ua/laws/show/435–15 (дата звернення: 15.05.2018).

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[5] С Головатий та А Довгерт та О Підопригора та інші, *Передмова до проекту Цивільного кодексу України* (1996) 2 (спецвипуск) Українське право 13.

[6] Цивільний кодекс України (н 3).

Ownership to property according to the right of economic management or to the right of operational control is enshrined in other laws, as will be discussed further. Therefore, the mentioned argument of representatives of civil law science does not reflect the realities of neither the legal regime of state (communal) property, nor the corresponding real rights to the property of state or communal property.

As set forth in Part 1 of Art. 133 of the Civil Code of Ukraine, the basis of the legal regime of economic entities, on which their economic activity is based, is the property right.[1] In addition to property rights, the basis of the legal regime of property of economic entities are other rights in rem – well-known by the legislation and legal science the right of economic management (changed name of the former law of full economic management) and the right of operational control.

Having determined the mentioned rights in rem as the basis of the legal regime of property, the Economical Code of Ukraine permits the possibility of conducting economic activity on the basis of other rights in rem (ownership, rights of use, etc.), provided by the Civil Code of Ukraine (Paragraph 2, Part 1, Article 133 of the Civil Code of Ukraine).

In addition, the property of business entities may be assigned to another right in accordance with the norms of the agreement with the owner of the property (Part 2 of Article 133 of the Economical Code of Ukraine).

The aim of the research is to uncover the concept, content and sphere of the exercising the right of economic management and the right of operational control in Ukraine.

One of the forms of legal regime of property, which is enshrined to the subject of entrepreneurship, is *the right of economic management*. The term "*right of economic management*" replaced the term "*the right of full economic management*", which described the right on which property was entrusted to state-owned enterprise in the Grounds of Civil Legislation of the USSR and the Republics dated May 31, 1991 (Article 47) and in the Laws of Ukraine dated February 7, 1991 "On ownership "(Part 1 of Article 10) and March 27, 1991" On Enterprises in Ukraine "(Part 3 of Article 10)

The right of economic management – the legal form, which according to Part 1 of Art. 136 of the Economical Code of Ukraine is used to establish the legal regime of property, which is entrusted only to the subject of entrepreneurship. At the same time, as follows from the content of Part 2 of the article, such entity must be established as the enterprise according to the organizational and legal form.

Property can not be entrusted on the right of economic management to business entities that do not belong to business entities. Other forms of legal regime are applied to them (right of operational control, right of use, etc.).

The right of economic management is a right in rem of the subject of entrepreneurship, which, like the owner, owns and disposes of the property which is entrusted. However, if the specified powers of the owner are absolute, then the subject of entrepreneurship to which the property is assigned

[1] Господарський кодекс України (н 4).

by the owner (the authorized owner of the body) according to the right of economic management, is limited in exercising the authority to dispose certain types of property, which (powers) it can realize only with the consent the owner. Cases of obtaining such consent are established by the Economical Code of Ukraine and other laws.

For example, according to Part 5 of Art. 75 of Economical Code of Ukraine:

A state-owned commercial enterprise has no right to transfer its property to other legal entities or citizens free of charge, except in cases established by the law. The right to dispose the property objects which belongs to main capitals, the state commercial enterprise has the right only with the prior consent of the authority to which management it belongs, and only on a competitive basis, unless otherwise provided by the law. The state commercial enterprise has the right to dispose in another way the property belonging to fixed capitals only within the authority and in the way provided by this Code and other laws.

Disposal of the immovable property, as well as aircraft and ships, inland navigation ships and movable stock of railway transport is carried out according to additional approval in accordance in the established procedure with the State Property Fund of Ukraine.[1]

The right of economic management, in addition to limiting the subject of entrepreneurship in disposal of certain types of property with the consent of the owner (authorized body), is characterized also by the fact that the owner of the property, enshrined by to entity, exercises control over the use and preservation of the property belonging to him. Such control can be carried out by the owner both directly and through the authority authorized by the owner. However, in any case, such control should not lead to interference in the operational and economic activities of the enterprise.

According to Part 3 of Art. 136 of the Economical Code of Ukraine the right of economic management is protected by the same norms of the law as the right to ownership.

Thus, summing up, *the right of economic management* can be defined as derivative from the right to ownership right of legal entities which are engaged in entrepreneurial activity, with the limitation of the authority to dispose of certain types of property by the consent of the owner (the authorized body).

The right to operational control was first legislated in the Grounds of Civil Legislation of the USSR and the Union Republics of 1961 (Article 48), although the construction of direct operational control of state property was proposed by A. Venediktov in 1948.[2] To tell the truth, he did not mention the right to operational control, however, while disclosing of the content of direct operational control of state property, the scientist wrote about the possession, use and disposal of the property[3], it becomes clear what exactly he meant.

As a legal title, the right of operational control was used initially for marking the property rights of state organizations, and subsequently (in 1981) it was extended to cooperative, state-

[1] Господарський кодекс України (н 4).

[2] А Венедиктов, *Государственная социалистическая собственность* (Райхер В ред, Изд-во АН СССР 1948) 323–331.

[3] Венедиктов (н 9) 337–349.

cooperative and interfarms enterprises-legal entities.

In essence, duplicating the provisions of Art. 48 Grounds of Civil Legislation of the USSR and the Republics, art. 39 of the Law of Ukraine "On Property"[1] mentioned that property which is state property and entrusted to a state institution (organization), which is in the state budget, belongs to it on the right of operational control.

Part 1 of Art. 137 of the Economical Code of Ukraine determines *the right to operational control* as a right in rem of a business entity which carries out *non-commercial activity,* that is, an independent systematic economic activity aimed at achieving economic, social and other results without the purpose of profit (Part 1 of Article 52 of the Economical Code of Ukraine). The content of the right of operational control is the authority to own, use and dispose of property, which is entrusted to the subject by the owner (the authorized body). However, the implementation of these powers is carried out within the limits established by the Economical Code of Ukraine and other laws, as well as by the owner of the property (authorized body).

Yes, according to Part 3 of Art. 76 of the Economical Code of Ukraine the property of a state-owned enterprise is fixed by him on the right of operational control.[2] And according to Part 4 of Art. 77:

The state enterprise has no right to alienate or otherwise dispose of the property, which belongs to the fixed assets, which it has been entrusted to it, without the prior consent of the authority to which management it enters. Alienation of real estate, as well as air and sea vessels, inland navigation vessels and rolling stock of the railway transport is carried out subject to additional approval in accordance with the established procedure with the State Property Fund of Ukraine.[3]

On the example of a state-owned enterprise, one can see that the right to operational control differs from the right of jurisdiction by the following features:

a) a state-owned enterprise or other economic entity which is engaged in non-commercial activity is permanently financed by the owner, while the business entity carries out business activity on the basis of the income received from it, that is, on the basis of self-financing;

b) as during the realization of the right of economic management, the owner of the property, enshrined in the right of operational control of a business entity, exercises control over the use and preservation of the transferred to the operational control of property directly or through an authorized body. However, the limits of management of the said property on the part of the owner is wider than on the part of the subject of the right to economic management. The owner has the right to remove excess property from the business entity, unused property, and property used by the business entity not for its intended purpose (Part 2 of Article 137 of the Economical Code of Ukraine).

[1] Про власність: Закон України від 7 лютого 1991 р. № 697-XII. URL: http://zakon.rada.gov.ua/laws/show/697–12 (дата звернення: 15.05.2018).

[2] Господарський кодекс України (н 4).

[3] Там само.

Somewhat narrower in part 3. Article 77 of the Economical Code of Ukraine formulated the powers of the body, whose sphere of management includes a state-owned enterprise. The said authority exercises control over the use and preservation of the property owned by the enterprise and has the right to remove from the state-owned enterprise property which is not used or used for other purposes and to dispose it within the limits of its authority. It is obvious that types of property of a state-owned enterprise, which may be removed by the body to which the management company belongs, should be supplemented indicating the excess property in order to harmonize Part 3 of Art. 77 of the Civil Code of Ukraine in accordance with Part 2 of Art. Code 137.

The right of operational control is protected by law in accordance with the provisions established for the protection of property rights, but the business entity, according to which the property is assigned according to the right of operational control, in contrast to the subject of entrepreneurship (Part 3 of Article 136 of the Economical Code of Ukraine), is not endowed the right to protect its property rights from the owner.

The right of operational control is a substantive right of a business entity that carries out non-commercial activities, that is, an independent systematic economic activity aimed at achieving economic, social and other results without the purpose of profit (Part 1 of Article 52 of the Civil Code of Ukraine). The content of the right of operational control is the authority to own, use and dispose of property, which is entrusted to the subject by the owner (the authorized body). However, the implementation of these powers is carried out within the limits established by the Civil Code of Ukraine and other laws, as well as the owner of the property (authorized by him body).

Thus, the general procedure for the realization by the owner of the powers allows to make any actions that do not contradict the law (in the broadest sense) and do not violate the rights and interests of other persons as regards property.

Instead, the limited procedure (within the permitted limits) of realization by a person of the right of economic management or the right of operational control limits the property independence of a person to a certain extent, although it also implements (exercises) its right due to the same powers of possession, use and disposal.

With the expiration of the Law of Ukraine "On Property" in connection with the adoption by the Verkhovna Rada of Ukraine of the Law of Ukraine dated April 27, 2007 No. 997-V "On Amendments and Recognition as Expired of Certain Legislative Acts of Ukraine in Connection with the adoption of the Civil of the Code of Ukraine"[1], a certain legislative vacuum emerged in the state in determining the right in rem on which the property is established by the institutions and organizations financed mainly from the state or local budget, since the right of operational

[1] Про внесення змін та визнання такими, що втратили чинність, деяких законодавчих актів України у зв’язку з прийняттям Цивільного кодексу України: Закон України від 27 квітня 2007 р. № 997-V. URL: https://zakon.rada.gov.ua/laws/show/997–16 (дата звернення: 15.05.2018).

control, established by the Economical Code of Ukraine, applies only to the legal regime of property, enshrined to business entities-state-owned enterprises (part of Article 76 of the Economical Code of Ukraine), communal non-profit enterprises (Part 3 of Article 78 of the Economical Code of Ukraine), and property transferred to the association by its participants (Part 2 of Article 123 of the Economical Code of Ukraine), and does not extend to other subjects of economic and civil relations.

Since the Economical Code of Ukraine regulates relations in the sphere of economic activity, its provisions, which determine the content of the right of economic management and the right of operational control, and establish restrictions on the exercise of the powers of ownership, use and disposal by state and communal and state enterprises, can not be automatically applied to such subjects, as state and communal institutions and organizations that are non-profit legal entities, which, although they can provide paid services in cases and in accordance with lists prescribed by the law, but do not take in connection with it the status of business subject.

It should be noted that a number of laws regulating the legal status of certain institutions and organizations, the main source of financing of which are the funds of the state or local budget, and determine the legal regime of their property, to indicate the legal title in which public or communal property is fixed by such subjects it is used as the term "right of economic management" and the term "right of operational control". In this situation, it is difficult to understand the logic of the legislator in some cases.

So, according to Part 2 of Art. 70 of the Law of Ukraine "On Higher Education"[1] the property is fixed by the state or communal institution of higher education on the right of economic management, while the similar law of January 17, 2002, which expired, provided that the property was assigned to a higher educational institution of the state or communal ownership, as well as income from the use of this property, belong to the higher educational institution on the rights of operational control (Part 2, Article 63).

The Law of Ukraine dated June 8, 2017 "On the Energy Efficiency Fund"[2] establishes that the Fund is a state institution – a legal entity of public law (Part 2 of Article 1), but at the same time in paragraphs 1 and 2 of Part 3 of Art. 10 provides:

< … > fixed assets which are state property and provided to the Fund for use or assigned to it on the right of *economic management and operational control* [emphasis added] are included in the assets of the Fund, but can not be alienated in any way without the consent of the founder.

All immovable property, transferred to the authorized capital of the Fund or acquired by the Fund on legal grounds, is its property. State property transferred to the Fund for use or entrusted to it on the right of economic management and operational control is not included to

[1] Про вищу освіту: Закон України від 1 липня 2014 р. № 1556-VII. URL: http://zakon5.rada.gov.ua/laws/show/1556–18 (дата звернення: 15.05.2018).

[2] Про Фонд енергоефективності: Закон України від 8 червня 2017 р. № 2095-VIII. URL: http://zakon3.rada.gov.ua/laws/show/2095–19 (дата звернення: 15.05.2018).

the authorized capital of the Fund and is used in accordance with the procedure provided by this Law.[1]

Paragraph 2 of Part 4 of Art. 7 of the Law of Ukraine "On scientific and scientific-technical activities"[2] provides: In accordance with the legislation and taking into account the organizational and legal form of a scientific institution (in Ukraine, there are scientific institutions of state, communal and private property – V. Sch.), in order to ensure the conduct of its statutory activities by the founder, shall be established by it on the basis of the right of operational control or economic management or transferring to its property buildings, structures, property complexes, communications, equipment, vehicles and other property.

Taking into account the fact that communal scientific institutions are formed in the form of communal enterprises (Paragraph 2 of Article 7, Article 7), it is evident that property for them is established on the right of economic management.

It is also possible to assume that, since according to parts 12, 13 of Art. 16 Fundamentals of Ukrainian Legislation on Health Care Organizational and Legal Formation Public Health Care Establishments may be formed and function as state-owned enterprises or state institutions, and communal health care[3] institutions may be formed and function as communal non-profit enterprises or communal institutions, then, respectively, state or communal property is assigned to them on the right of operational control. In the act itself there are no such rules.

According to Part 2 of Art. 1 of the Law of Ukraine "On the Ukrainian Cultural Fund"[4], the Ukrainian Cultural Fund is a legal entity of public law, has separate property that is the subject of the right of state ownership and is under the operational control of the Ukrainian Cultural Fund. In accordance with Part 2 of Art. 13 the property of the Ukrainian Cultural Fund is formed from movable and immovable property, which is entrusted to the Ukrainian Cultural Fund according to the right of operational control.

In many cases, the legislator does not define at all the rights in which the property belongs to one or other subjects. Thus, the Law of Ukraine "On Education"[5] stipulates that the property of educational institutions, organizations, enterprises of the educational system belongs to them on the rights established by the legislation (Paragraph 2 of Part 1, Article 80).

Sometimes there is an uncertainty in the law, on which the property is fixed to a legal entity, is offset by the definition of the right in the by-law norma-

[1] Про Фонд енергоефективності (н 16).

[2] Про наукову і науково-технічну діяльність: Закон України від 26 листопада 2015 р. № 848-VIII. URL: http://zakon2.rada.gov.ua/laws/show/848–19 (дата звернення: 15.05.2018).

[3] Основи законодавства України про охорону здоров'я від 19 лютого 1992 р. № 2801-XII. URL: http://zakon2.rada.gov.ua/laws/show/2801–12 (дата звернення: 15.05.2018).

[4] Про Український культурний фонд: Закон України від 23 березня 2017 р. № 1976-VIII. URL: http://zakon2.rada.gov.ua/laws/show/1976–19 (дата звернення: 15.05.2018).

[5] Про освіту: Закон України від 5 вересня 2017 р. № 2145-VIII. URL: http://zakon3.rada.gov.ua/laws/show/2145–19 (дата звернення: 15.05.2018).

tive-legal acts. For example, the order of the Cabinet of Ministers of Ukraine "On consolidation of state property to the Supreme Court"[1] provides:

To secure to the Supreme Court of Ukraine according to the right of operational control the property of the High Specialized Court of Ukraine for consideration of civil and criminal cases, the Supreme Economic Court of Ukraine, the High Administrative Court of Ukraine, which are being liquidated.

At the same time, the fundamental in defining of the legal regime of state property Laws of Ukraine "On the Management of State Property Objects"[2] and "On Central Executive Bodies"[3] do not mention in any way either the right of economic management or the right of operational control. The same can be said about the lack of similar norms regarding communal property in the Law of Ukraine "On Local Self-Government in Ukraine"[4].

Thus, today in Ukraine there is a situation in which, under the conditions of the absence of the Civil Code of Ukraine the general norms regarding to the legal regime of property of state and communal institutions and organizations, and taking into account that special laws and other legal acts, establishing property for certain legal entities on the right of economic management or the right of operational control, do not disclose neither the content of these rights nor the scope of powers of the respective legal entities, reference to the norms of the Economical Code of Ukraine regarding the right of economic management and the right to Peruvian management is possible, in our opinion, only by using the analogy of the law.

The absence of general rules on the right of economic management and operational control rights, similar to those enshrined in Articles 37 and 39 of the Law of Ukraine "On Property", in the current legislation raises a number of problems, first of all, for state enterprises and institutions, in particular, when attempts are made to levy their property for the obligations of the state.

The overwhelming majority of foreign courts and arbitrations do not understand the notion of the right of economic management and operational control that are unknown to the legislation and the law of their states, and references to the content of the right of economic management and the right of operational control, enshrined in the relevant articles of the Economical Code of Ukraine, in some cases are not perceived, since not always the subjects whose property is levied is state-owned enterprises. Often, these are institutions and organizations created by Ukraine beyond its borders.

Unfortunately, they do not contribute to the understanding of these rights

[1] Про закріплення державного майна за Верховним Судом: Розпорядження Кабінету Міністрів України від 1 грудня 2017 р. № 841-р. URL: http://zakon3.rada.gov.ua/laws/show/ru/841–2017-р (дата звернення: 15.05.2018).

[2] Про управління об’єктами державної власності: Закон України від 21 вересня 2006 р. № 185-V. URL: http://zakon5.rada.gov.ua/laws/show/185–16 (дата звернення: 15.05.2018).

[3] Про центральні органи виконавчої влади: Закон України від 17 березня 2011 р. № 3166-VI. URL:http://zakon2.rada.gov.ua/laws/show/3166–17 (дата звернення: 15.05.2018).

[4] Про місцеве самоврядування в Україні: Закон України від 21 травня 1997 р. №280/97-ВР. URL: http://zakon2.rada.gov.ua/laws/show/280/97-вр (дата звернення: 15.05.2018).

and the conclusions of some domestic lawyers, which in our opinion deliberately mislead foreign colleagues, arguing that the property of a state-owned enterprise, which is enshrined in it on the right of economic management, but remains to be state property of the state, may be levied on the obligations of the state. Similarly, they try to prove the possibility of foreclosing the property transferred by the state to the operational control of third parties, according the obligations of the state.

At the same time, such lawyers ignore the imperative provisions of Art. 176 of the Civil Code of Ukraine regarding the delineation of responsibility for obligations of the state, the Autonomous Republic of Crimea, territorial communities and legal entities established by them, according to which, in particular, legal entities established by the state, the Autonomous Republic of Crimea, territorial communities, are not responsible for obligations of the state, the Autonomous Republic of Crimea, territorial communities.

Similar rules on the delineation of the responsibility of the state and its legal entities established, for example, in Part 3 of Art. 52 of the Civil Code of the Republic of Belarus, paragraph 2 of Art. 44 of the Civil Code of the Republic of Kazakhstan and so on, regardless of the law in which the state property belongs to a legal entity (right of ownership, economic management or operational control), and what powers in respect of such property are, respectively, legal entity, owner (state) or authorized body.

With regard to the responsibility of the founders of legal entities, business entities, then in accordance with the general rule established in Part 2 of Art. 219 of the Economical Code of Ukraine, they are not responsible for the obligations of this entity, except in cases provided by the law or constituent documents on the creation of this entity. For example, participants in a partnership with an additional liability in case of insufficiency of the company's property carry additional joint and several liability in the determined constituent equally to the contribution of each of the participants (Part 4 of Article 80 of the Economical Code of Ukraine); the members of the full partnership bear additional joint and several liability for the obligations of the partnership with all their property (Part 5 of Article 80 of the Economical Code of Ukraine); the full members of a command partnership are responsible in the same way (Part 6 of Art. 80 Economical Code of Ukraine)[1]. Another example: an association of enterprises is not responsible for the obligations of its participants, and the participating enterprises are not responsible for the obligations of the association, unless otherwise provided by the constituent agreement or the charter of the association (Part 4 of Article 123 of the Economical Code of Ukraine)[2].

Without a clear answer in the Ukrainian legislation, the question remains about the rights in rem of economic entities to property that was not included in their authorized capital in the privatization process, but is on their balance sheet.

As an option, the possible possession of property in economic entities under the terms of the contract of storage of property with the state body of privatization (Section 3.2 of the Regu-

[1] Господарський кодекс України (н 4).
[2] Там само.

lations on the management of state property, which was not included in the statutory capital of economic partnerships in the privatization process, but is on their balance).[1]

Staying of property on the balance sheet of a particular person only records the implementation of a particular economic transaction to transfer property from one person to another or the actual finding of state property, which was assigned to the state enterprise before its corporatization, but in determining the "privatization mass" did not enter into the authorized capital of the economic entities.

The management of the said property by the state privatization bodies consists in choosing and providing by the authorized body the method and conditions for the further use of property within the framework of the current legislation.

Such methods may be: privatization in accordance with the legislation of Ukraine on privatization; transfer of property to the lease in accordance with the Law of Ukraine "On the lease of state and communal property"[2]; transfer of property to communal property in the manner prescribed by the Law of Ukraine "On the transfer of the objects of the right of state and communal property"[3]; transfer of property to the sphere of management of bodies authorized to manage state property, or self-governing organizations; transfer of property to economic associations, including in case of liquidation of the balance holder, under the terms of the relevant agreement of free storage in accordance with the requirements of the legislation; write-off of state property objects in accordance with the established procedure; transfer of lease, use of protective structures for civil protection to meet economic, cultural and domestic needs, with the preservation of the functional purpose of such structures or their cancellation in accordance with the procedure provided by the legislation in the field of civil protection.

Since, as it is seen from the above management methods, the property in question is not a property of a company, but remains an object of state ownership, therefore, in our opinion, it can not be levied on the obligations of a company that does not exclude possibility of recourse to the said property for the obligations of the state.

In order to distinguish the legal regime of this property from the legal regime of property belonging to a business entity on the right of ownership, economic management or operational control, it is obviously appropriate to introduce a new derivative right in rem.

Taking into account that the presence of the said property on the balance sheet of an economic entity implies not

[1] Положення про управління державним майном, яке не увійшло до статутних капіталів господарських товариств у процесі приватизації, але перебуває на їх балансі: затверджено наказом Фонду державного майна України та Міністерством економіки України від 19 травня 1999 р. № 908/68. URL: http://zakon2.rada.gov.ua/laws/show/z0414–99 (дата звернення: 15.05.2018).

[2] Про оренду державного та комунального майна: Закон України від 10 квітня 1992 р. № 2269-XII. URL: http://zakon.rada.gov.ua/laws/show/2269–12 (дата звернення: 15.05.2018).

[3] Про передачу об’єктів права державної та комунальної власності: Закон України від 3 березня 1998 р. № 147/98-ВР. URL: http://zakon.rada.gov.ua/laws/show/147/98-вр (дата звернення: 15.05.2018).

only its preservation but also its effective use (Section 3.1 of the State Property Management Regulations, which was not included in the authorized capital of the economic companies during the privatization process, but is on their balance sheet[1]) , such a derivative right may be *the right to operational use of property*, such as that which was enshrined in Art. 138 of the Economical Code of Ukraine until February 4, 2005, concerning the property of a separate unit (structural unit) of a business organization, and which, in our opinion, it is advisable to restore, based, in particular, on such general principles as economic diversity and freedom of entrepreneurship.

Conclusions. Summarizing the above, we can state that under today's conditions the laws of Ukraine are widely used in practice and such derivative (limited) rights in rem as the right of economic management and the right of operational control of property are characterized, in contrast to property rights, the existence of certain restrictions both by law and by the owner (authorized by him body) in the implementation of individual powers.

If the content of these derivative rights and their implementation by economic entities have been consolidated in the Economical Code of Ukraine, then this can not be said about the similar rights of other persons, in particular, budgetary institutions and organizations, even if the legislator grants some of them these rights in the relevant normative legal acts defining the legal status of these institutions and organizations. Art. 329 of the Civil Code of Ukraine, which establishes that a legal person of public law acquires ownership of property, transferred to it property, and property acquired by it on the grounds not prohibited by law[2], does not correspond to the realities and should be excluded.

In the normative legal acts of Ukraine there is no single clear approach to the definition of the circle of subjects, according to which the property can be fixed: a) on the right of economic management; b) on the right of operational control.

In connection with the above it *seems expedient:*

– to make changes to the Civil Code of Ukraine, consolidating in it the provisions on the right of economic management and the right of operational control, for which to supplement it with the following articles:

"*Article ... The legal regime of the property of the state (communal) enterprise*"

1. Property which is a state property and is secured by a state commercial enterprise or acquired on the grounds not prohibited by the law, belongs to it on the right of economic management, except in cases stipulated by the law.

The state commercial enterprise, the property of which belongs to the right of economic management, owns, uses, and disposes of them with the limitation of the authority of the order regarding certain types of property with the consent of the owner (authorized body) in cases provided for by the law.

[1] Положення про управління державним майном, яке не увійшло до статутних капіталів господарських товариств у процесі приватизації, але перебуває на їх балансі (н 28).

[2] Цивільний кодекс України (н 3).

2. A property which is a state property and is secured by a state public enterprise or acquired on a basis not prohibited by the law, belongs to it on the right of operational control, except in cases stipulated by the law.

A state-owned enterprise, whose property belongs according to the right of operational control, owns, uses and disposes of it for the purpose of carrying out non-commercial economic activities, within the limits established by the law, as well as the owner of the property (or by the authorized body).

3. Property owned by the territorial community of a village, settlement, city and assigned to a communal commercial enterprise or acquired on a basis not prohibited by law, belongs to him on the right of economic management, except in cases stipulated by law.

The communal commercial enterprise, the property of which belongs according to the right of economic management, owns, uses, and disposes of them with a limitation of the authority of the order regarding certain types of property with the consent of the owner (authorized body) in cases provided for by the law.

4. Property which is the property of a territorial community of a village, settlement, city, and secured by a communal non-profit enterprise or acquired on a basis not prohibited by the law, belongs to him on the right of operational control, except in cases provided for by the law.

A municipal non-profit enterprise, which owns property under the right of operational control, owns, uses and disposes of it for non-commercial economic activity, within the limits established by law, and also the owner of the property (authorized by it). “

"*Article ... The legal regime of the state (communal) institution*".

1. Property which is a state property and is secured by a public institution (organization), which is financed from the state budget or acquired by it on the grounds not prohibited by law, belongs to it on the right of operational control.

The state institution (organization), the property of which belongs to the right of operational control, owns, uses and disposes of the said property in accordance with the aims of its activities and the assignment of property within the limits established by law, as well as the owner of the property (authorized body).

2. Property owned by the territorial community of a village, settlement, city, and secured by a communal institution (organization) or acquired by it on grounds not prohibited by the law, belongs to it under the right of operational control.

The communal institution (organization), whose property belongs to the right of operational control, possesses, uses, and disposes of it in accordance with the objectives of its activities and the assignment of property within the limits established by the law, as well as the owner of the property (or by the authorized body).";

– exclude from par. 2 part. 2 Art. 77 of the Economical Code of Ukraine the word "commercial", since state unitary enterprises act as state commercial enterprises or state-owned enterprises (Part 9 of Article 73 of the Civil Code of Ukraine). If the former are the subjects of entrepreneurial activity (Part 1 of Article 74 of the Civil Code of Ukraine),

then the latter are not recognized as such entities, since they carry out economic activities in accordance with the production tasks of the body to which management they are part (Part 1 of Art. 77 of the Civil Code of Ukraine);

– to return Article 138 to the Economical Code of Ukraine and to supplement the Code with Article 138–1 with the following contents: "Property which is not included in the authorized capital of an economic entity in the process of privatization, but is on its balance sheet, is fixed by the economic entity on the right of operational use of the property or on terms storage agreement with the state body of privatization";

– in normative legal acts defining the legal status of central bodies of executive power, local self-government bodies and institutions financed from state and local budgets, when establishing the legal regime of their property, indicate that such subjects are subject to property exclusively on the right of operational control.

We believe that the implementation of the proposed changes to the legislation will streamline the legal regulation of such property rights as the right of economic management, the right of operational control and the right to operational use of property.

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LEGAL BASES OF THE STATE ENVIRONMENTAL POLICY OF UKRAINE: MODERN PROBLEMS

Abstract. *The article is devoted to the actual problems of legislative support of the state ecological policy of Ukraine, as a kind of state policy, the distinction of its main features, principles on which it is based, a number of problems of its normative-legal and organizational-functional provision.*

Key words: *state ecological policy, principles of realization of state ecological policy, normative-legal support of ecological policy, organizational and legal support of ecological policy.*

Ukraine is experiencing difficult times… The greatest dream of its people today is the issue of establishing peace, at the achievement of which is concentrated the efforts of the authorities. Turning to our realities, we must once again state with bitterness: for Ukrainians today, unfortunately, the problems of survival, but not intellect, remain the hottest [1].

Logically, the question arises: should the attention by society, authorities, scientists and practitioners to ecological, including environmental and legal problems, be paid on time? Having overcome many doubts, we note: life is continuing, and therefore ecological problems do not lose their relevance today. The Ukrainian people want to live in peace and harmony, in a single congregation state, in which honor and dignity, personal and property security of citizens, their rights and freedoms are guaranteed. In particular, it is about the constitutional ensuring of environmental rights of citizens.

As predicted by scientists, the coming years for Ukraine will be the years of various kinds of catastrophes and ecological cataclysms. Ukraine, by the way, as many other countries, has entered a period of permanent crisis, connected with the presence of a limited number of natural resources, environmental degradation, climate change and many other issues of both objective and subjective nature.

To solve these and many other problems and their causes and to form a system of effective legal regulation in the field of rational use of natural resources and protection of the natural environment, as well as ensuring the environ-

mental safety is the aim of the sphere of ecological law of Ukraine.

The subject of this article is "provoked" by draft law "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030", proposed recently by the Ministry of Natural Resources of Ukraine. Familiarization with the contents of the draft gives reasons for making the conclusion: the strategic goals and tasks for which the national environmental policy is being pursued and conducted in accordance with the norms of the current Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2020" dated December 21, 2010, remain inaccessible or rather the state environmental policy which is conducted in Ukraine for a long time has not yet reached its defined goals.

What is the reason (or is it more expedient to use a plurality – the reasons) in such a situation? Unfortunately, we do not find an official answer to the question. Why? Because there is no detailed analysis of the effectiveness of the seven years of implementation of those goals and tasks that are envisaged by the Law dated December 21, 2010.

Putting in a deadlock the norms of the Explanatory Note to the draft Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030", in which, on the one hand, is noted that, "grounding on the conclusions of the attainment of the aims and the tasks of the current strategy, including financial possibility, proposed to prolong the Strategy until 2030," and on the other hand, the aim of the draft is "to review the main strategic tasks of environmental policy, which are based primarily on the root causes of Ukrainian ecological problems and the financial capacity of the country for solving them."

However, neither the norms of the current law nor the norms of the draft, in our opinion, are, insufficient for achieving the aims and tasks which are stated in them.

Evaluating the norms of the draft, we can conclude that the proposed supposedly way forward is actually stagnating.

The current stage can be called "simple reapproval", which does not solve anything and does not oblige anyone. In our opinion, we do not believe in the illusion of the country's financial opportunity for solving the main strategic tasks of the state environmental policy. Today, we believe that the new version of the Strategy is not so necessary, as it is necessary to create the conditions under which the implementation of its norms would be effective and have positive consequences.

In our opinion, the strategic aims and tasks envisaged by both the current law and the draft law can only be achieved by combining simultaneously with the solution of economic, social and environmental problems. Such a task in modern, first of all, economic realities of Ukraine is extremely difficult. It's solution should be preceded by the constitutional enshrinement of the economic system of the state as the basis of legislative support not only of Ukraine's economic policy, but also of its social and environmental policies. The need for this is determined by the fact the current norms of the Basic Law were not enough for achieving the goal

of the formation of a social legal state as proclaimed therein. In fact, the state which has been formed for today can not be called either social or legal. In such a state, environmental problems are classified as "marginal". Thus, it is necessary to provide such legislative support of socio-economic policy that would really ensure the achievement of the aims and tasks of environmental policy.

Ecological policy of a state is a special kind of state policy, its independent direction. Emphasizing on such a basic characteristic of state ecological policy as its state-volitional nature, it is necessary to emphasize a number of its specific features, namely: it is built on the law and is connected with the law (and not only with the ecological); at the same time, environmental law is the object of state environmental policy and at the same time is one of the most important ways of its realization; has different levels (national, regional, municipal, local); is carried out by legal methods; relies on coercion; is public, official.

It should be emphasized that state environmental policy is a state policy, and therefore the state is the most active its subject. However, the state environmental policy should be considered as a product of the activity of not only the state, but also the structures of the emerging civil society. In our opinion, it is very important for the state environmental policy to be permeated with the interests of the subjects which implement it. It is extremely important that the state ecological policy should be in line with the interests of the owner of sovereignty and the only source of power – the Ukrainian people. It is still these interests that should influence on the formation and development of such ways of realization of the state environmental policy as environmental law and legislation.

However, in our opinion, at the state level, there is no deep analysis and prediction, public opinion and a qualified valuation of the possible consequences (risks) of the taken decisions.

Importance for the implementation of state environmental policy is given to the principles on which it is based. In this regard, we note that among the principles on which the draft proposes for realization of the state environmental policy, unfortunately, there are no such as: scientific substantiation, legality, predictability, justice, combination of interests of the individual, society and the state, priority of environmental human rights, compliance with international legal standards.

We believe that all these principles should be legally established. Without decreasing the importance of each of them, we place special emphasis on such a principle as justice. Let us turn to the opinion of the world's authoritative American (and for us America has become the main reference point in recent years) Zbigniew Bzezhinsky, who emphasizes that justice is the fundamental basis of the stability of the state.

It should be noted that the development of the system of normative legal acts aimed at the realization of state environmental policy is to some extent unsystematic, and sometimes chaotic in nature. In our opinion, this is confirmed by the proposed draft. Insufficient professional level of subjects of the legislative process, ignoring the scientific processing of drafts of legal normative acts, reducing the role of science or le-

gal doctrine in the law-making process – these are the realities of the present. In addition, attention should be paid to the fact that there are unfortunate cases when the rulemaking process is lagging behind the needs of society, which can have catastrophic consequences for it. For example, let us turn to Article 13 of the Constitution of Ukraine, which declares that "the land, its subsoil, atmospheric air, water and other natural resources located within the territory of Ukraine, its continental shelf, the exclusive (maritime) economic zone are the objects of property rights of the Ukrainian people". This norm demonstrates that in Ukraine it is impossible to sell or buy land and other natural resources – objects of property rights of the Ukrainian people. This conclusion is strengthened by another important norm of the article, which declares: "Every citizen has the right to use natural objects of property rights of the people in accordance with the law". Despite the fact that more than 20 years have passed since the adoption of the Constitution of Ukraine, there is no such law by this time. However, in our opinion, it is still this norm: only the use of natural objects, and not owning or disposing of them is the key one. So where from does the widespread, the blossoming of the agitation for free sale in Ukraine of agricultural land?

It is worth referring also to foreign experience, in particular to the Constitution of Germany, where Part 2 of Art. 14 proclaims: "Ownership obliges, and the use of it must also serve for the public good." This norm was established by the Weimar Constitution.

In the Basic Law of Ukraine, the first part of the aforementioned norm is similar – "Ownership obliges". However, the second part is worded differently: "Ownership should not be used for damaging of man and society." Such a construction of the norm permits the possibility of such an interpretation, as if the Constitution of Ukraine does not require the consideration of the public interests by the owner [2].

At the time, creation of a stable and at the same time dynamic, optimal and controlled by institutions of civil society mechanism of state administration and state regulation in the sphere of ecology, that is, in the sphere of environmental protection, rational use of natural resources and ensuring environmental safety.

As you know, the term "mechanism" is borrowed from the technological sphere, where it means a set of transmitting devices which transform the action (movement) of one body to the action (movement) of another one, as well as the method of their combination [3]. In relation to social phenomena and processes, the concept of "mechanism" was introduced by Auguste Conthem foe explaining the integrity and life of society as a "social body." In his opinion, every society has its own social mechanism, which ensures its survival and development [4].

As our life shows, the creation of such a mechanism is controversial, not always consistently, and it requires a generalization and analysis of the reasons for such a situation and the creation of proposals based on them on how to remove them.

It is known that the realization of national environmental policy, ensuring the execution of environmental legislation contributes to proper management

in the sphere of ecology, in particular its organizational and functional support.

One of the most important managerial functions, the implementation of which relies both on the state and on the territorial communities, is ecological prediction, programming, planning. The legal basis of the execution of the certain administrative functions is the Laws of Ukraine "On State Prediction and Development of Programs of Economic and Social Development of Ukraine" (2000), "On State Target Programs" (2004), "On Environmental Protection" (1991). These laws establish the legal, economic and organizational foundations for the formation of an holistic system of prediction and program documents of economic and social development of Ukraine, of separate branches of the economy and of separate administrative-territorial units as an integral part of the general system of state regulation of economic and social development of the state. These laws establish a general procedure of the development, approval and execution of these prediction and program documents of economic and social development, as well as the rights and responsibility of participants of state prediction and the development of state target programs.

It should be noted that the issue of environmental protection has not been adequately reflected in the Law of Ukraine "On State Prediction and Development of Programs of Economic and Social Development of Ukraine". Only in Articles 10 and 11, are devoted to the prediction of the economic and social development of the Autonomous Republic of Crimea, the region, the district, the city for the medium term, and the program of economic and social development of the Autonomous Republic of Crimea, the region, district, city of Kyiv and Sevastopol for the short-term period, it is stated that such documents should reflect the ecological situation. Of course, this is not enough. This Law lacks an integrated approach, orientation to the principles of sustainable development, which in particular requires a balance between environmental, economic and social factors of development, the mandatory consideration of ecological tools and programs in the process of economic and social programming, and the coherence of sectoral policies. A more comprehensive approach in this regard is mentioned in the Law of Ukraine "On State Target Programs" (2004). So, classifying in Art 3 relevant with the direction programs, the Law separately allocates ecological, the purpose of which is the implementation of national environmental protection measures, prevention of environmental disasters and the elimination of their consequences.

The aim of creating of ecological programs (carrying out of effective and purposeful activity of organization and coordination of appropriate measures), their scale (state target, interstate, local programs) are determined by Art. 6 of the Law of Ukraine "On Protection of the Environment". It is noted that the procedure of the development of state target ecological programs is determined by the Cabinet of Ministers of Ukraine.

The analyzed management function in the sphere of environmental protection is executed by the adoption and realization of prediction, programmatic and strategic documents. Among the

most state targeted programs that are adopted for solving certain environmental programs and have a long-term nature, one can distinguish the following:

– The Program for the Prospective Development of the Reserve Activity in Ukraine, approved by the Verkhovna Rada of Ukraine Resolution dated September 22, 1994;

– National Program on Toxic Waste Handling, approved by the Law of Ukraine of September 14, 2000;

– National Program of the Protection and Renewal of the Environment of the Azov and Black Seas, approved by the Law of Ukraine of March 22, 2001;

– National target program of the development of water management and ecological improvement of the Dnipro river basin for the period up to 2021, approved by the Law of Ukraine dated May 24, 2012.

In our opinion, these programs are often the examples of populism for acute problems and another way of "burying" public funds and investors' money. In particular, what is the effectiveness of realization these and other programs?

Let's take for example one such program – the National target program of water managment development and ecological improvement of the Dnipro river basin for the period up to 2021. Unfortunately, the country's largest river gradually turns into a sewage ditch. As a result of mismanagement, and sometimes and as a result of ignoring of any environmental norms, Ukraine's symbol is agrounding, blossoming, overgrowing and rotting. That means that the Dnipro loses the ability of self-cleaning.

Or another State Program – "Forests of Ukraine" for 2010–2015 dated April 29, 2002. Was the program contributing, in particular, to reduce the losses incurred to the forestry sector by illegal logging? The answer will be negative. In particular, in 2015, according to official data, 25 thousand cubic meters of forest were illegally cut off. Losses is almost 85 million of hryvnias. However, the given data are far from the real one. In fact, illegal logging in Ukraine is more extensive.

Today the program "Forests of Ukraine" for 2017–2021 is being created. What are the expectations associated with this program? It includes, in particular, improving the forestry information system, forest management, keeping state records of forests, inventory and monitoring of forests on the basis of geo-information technologies, forest control systems of origin to protect the market from illegally obtained raw materials, etc. But what result will be obtained at the output?

The situation is difficult not only with forests, but also with sea. Especially with the Azov Sea, which is actually occupied by financial and industrial companies. The unique Sea of Azov turns into a dirty puddle and becomes a source of diseases, instead of being an opportunity for getting healthy there. After all, the seaside should play it's the role of a recreational environment.

Ukraine today needs balanced development, in which production and consumption will be economical and careful for natural resources, will enable natural ecosystems to renewal, be safe for people, and support the livelihoods of future generations. Balanced development involves many compo-

nents, but it is not possible without changing the environmental outlook of all citizens, without environmental education, consciousness, and culture of society. It is still people who depend on whether the emissions that pollute the atmosphere will decrease, whether the waste of production and life of people will damage the environment, etc. These directions should become a priority for the authorities.

An important role in solving environmental problems, of course, belongs to legal regulation. However, modern environmental problems and the search for their solutions are prerequisites for the introduction of a new model of the educational system of the XXI century. Such a system is aimed to combine all the positive from the past and the present, and also must be oriented towards the formation of a qualitatively new person – an ecological person, since the origins of environmental problems, as it was mentioned for many times, should be searched for, above all, in the person himself, in particular in "human qualities". Therefore, it is quite clear that in order to solve environmental problems it is necessary to change the person, his or her consciousness, culture, outlook, etc. The crucial role in this transformation is played by the evolution of consciousness, which can be achieved, in particular, by ecologizing the consciousness of the individual, including in way of ecologizing the legal consciousness of a person.

Understanding the essence and the role of education in the process of ecologizing consciousness as an individual and society as a whole, the transition of society to sustainable development gave grounds to make the following methodological and social findings: what system of education, such a society and the state are, and vice versa, which state, such an education is. It means that the transition to sustainable development of society should be through the formation of a regular education. Regarding to Ukraine, it is an enough salient feature: an unstable society – unstable education – unstable reforms.

In the concept of sustainable development, the ideal of educational systems should be the formation of a person who is ready to build his or her relationship with the environment, based on an understanding of its integrity and archiveness for the existence of the person his- or herself. Such personality traits can be founded by educational systems. And in this case, it is necessary to unite the efforts of practically all sciences: philosophy, sociology, political science and, of course, legal, and especially – ecological legal science.

The conceptual framework for reorganizing of the educational process in Ukraine, including both environmental education and the greening of educational activitiy in general, taking into account the requirements of sustainable development, can be considered the UNECE strategy for education for sustainable development, adopted by the High-level Meeting of the Representatives of Environmental Protection environment and education (Vilnius, March 17–18, 2005). The mandate for the preparation of this strategy was fixed in the Ministerial Statement, made at the 5th conference "Environment for Europe" (Kyiv, May 2003). The aim of the Strategy is to encourage UNECE member states to develop and incorporate

education for sustainable development into their formal education systems within the framework of the relevant educational disciplines as well as non-formal education.

Unfortunately, in Ukraine, the consistent inclusion to the system of domestic education the Concept of sustainable development is too slow. Such situation may be explained by legislative reasons. According to Art. 7 ("Education and upbringing in the sphere of the environment") of the Law of Ukraine "On Environmental Protection", increasing the ecological culture of society and professional training of specialists are provided by the general obligatory complex education and education in the sphere of environmental protection, including, in pre-school children's institutions, in the system of general secondary, professional and higher education, advanced training and retraining.

Ecological knowledge in accordance with current domestic legislation is a mandatory qualification requirement for all officials whose activities are related to the use of natural resources and which has an influence on the state of the environment.

It is not difficult to notice that the content of Art. 7 of the above-mentioned law is declarative.

Despite the fact that the legal basis of environmental education in Ukraine is the Constitution of Ukraine, the Laws of Ukraine "On Environmental Protection", "On Education", "On Higher Education", but there are no special laws which would regulate state policy in the field of ecological education, as well as education of ecological consciousness and culture, which would contain provisions on sustainable development.

The creation and adoption of these laws would make it possible to implement the educational process on a systematic basis, taking into account the Concept of Sustainable Development, including environmental education, as well as environmental education activities in general.

Ecological education and, first of all, ecological-legal one, should be an integral part of education. After all, with the help of ecological-legal education the solution of general task is provided – ecologization of legal education, formation of ecological-legal consciousness and ecological-legal culture, as well as active civilian ecological position, which is impossible without a sufficient level of ecological-legal knowledge. Ecological-legal knowledge is needed for solving environmental problems in legal ways, which requires training of highly qualified lawyers who have a deep knowledge in ecological, legal sphere and in the sphere of sustainable development.

The main parameters for the implementation of the norms of sustainable development in the domestic education are put into the Law of Ukraine dated December 21, 2010 "On the main principles (strategy) of the state ecological policy of Ukraine for the period up to 2020", which among the number of causes of ecological problems of Ukraine mentioned insufficient understanding in the society of the priorities of environment preservation and benefits of sustainable development, insufficient formation of civil society institutions and non-compliance with the environmental legislation. Analyzing the aforementioned norms of the Strategy of State Ecological Policy, in our opin-

ion, it can be stated that it identified the main task in the sphere of environmental education, which aims at increasing of ecological consciousness, ecological culture of the population, educational level and professional skills in the sphere of ecology. It requires: creation of state and non-state systems of continuous ecological education; inclusion ecological, rational use of nature, environmental protection and sustainable development of Ukraine issues into the educational plans at all levels of the educational process (it is necessary to include training courses on sustainable development in higher education and postgraduate professional education programs) with the strengthening of the role of social and humanitarian aspects of ecological education and ecological-educational activities; training and retraining of teaching staff in the sphere of ecology for all levels of obligatory and additional education, including the issues of sustainable development of the country; inclusion the issues of formation of ecological consciousness, ecological culture in state target, regional and local programs of development of territories; state support of the activity of educational institutions which carry out ecological education; development of educational standards aimed at clarifying issues of sustainable development of Ukraine; development of a system of training of management staff in the field of ecology in various spheres of production, economics and management, as well as professional development of environmental protection services, law enforcement and judicial authorities, raising awareness of legislation in the sphere of environmental protection, rational use of nature, sustainable development of Ukraine, as well as teaching them management methods taking into account the environmental factor; support and publication of materials on environmental issues in the media.

The above-mentioned provisions should also be taken into account while the creation of the regulatory framework and conditions for educational activities in the context of sustainable development.

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DIRECTIONS OF IMPROVEMENTS OF LEGAL REGULATIONS OF LAND RELATIONS IN UKRAINE UNDER THE CONDITIONS OF POWER'S DECENTRALIZATION

Decentralization of power bodies "of authority in the sphere of regulation of land relations as an important stage of transformation of soviet type land legislation, which served to needs of administrative economy, into market oriented land legislation which serves to needs of democratic society is analyzed. Both notion and principles of decentralization of land authority of power bodies as factors of development of legal regulation of land relations in Ukraine is researched. It is proved that in the land law of Ukraine there is reason to consider decentralization of land authority of power bodies in two aspects: 1) as decentralization of public ownership to land with passing of significant part of state owned land into communal ownership of cumulated territorial communities and 2) as decentralization of land management authorities of state bodies with passing of significant part of it to local self-government bodies of cumulated territorial communities. The main directions of improvement of land legislation of Ukraine are defined in the view of decentralization of land management authorities of power bodies in the sphere of land relations.

Key words: *land, territorial communities, power bodies, law, land authority, decentralization.*

The modern system of management of land relations in Ukraine is, in fact, a partly modernized Soviet system, which was built on the principles of full domination of the state in regulating all land relations and the priority of land authorities of "higher" state authorities over land authorities of subordinated local government bodies. Undoubtedly, such a system of land resources state goverment clearly "lagged behind" the achievements of land reform in our country, which is ineffective and needs a radical improvement, as has been repeatedly noted in the literature [1, p. 55–66; 2, p. 246–249; 3, p. 246–249; 4]. Some improvements of this system occurred in the 90's of the twentieth century. Thus, by the adoption of the Land Code of Ukraine in the version of March 13, 1992 and the Land Code of Ukraine of October 25, 2001, this system was artificially implemented by local self-government bodies, which re-

ceived real powers to regulate only a part of land relations within settlements. Such a system of power authorities not only did not contribute to the realization of the potential of local communities in solving land issues of local importance, but also became a "moving force" for the corruption’s development in the land sector. That is why at the beginning of the XXI century, the urgent need for reforming the administrative-territorial structure of the country and decentralization of power of the authorities, in particular, in the field of land relations regulation.

The term "decentralization of power" is not a domestic invention. It was formed in the process of transforming the system of power in democratic countries in the twentieth century. In its modern sense, the term "decentralization of power" means the transfer of a significant amount of power from state authorities to local bodies of self-government. At the same time, this term is not sufficiently clear and understandable without specifying the amount, scope and destination of the transfer of power. In our opinion, such a transfer will have the proper quantitative and qualitative parameters by the observance of the two conditions. Firstly, the amount of transferred powers of state authorities in the field of of land relations regulation to local self-government bodies must correspond the requirements of the principle of subsidiarity, according to which governing decisions in the state should be taken at the lowest possible level, and the upper levels of management do any administrative actions only in the event that these actions are more effective than the corresponding actions of the lower links [5]. In other words, the main requirement of the principle of subsidiarity is the concentration in the lowest management level of all managerial authority in a particular field, except which can not be implemented by such a level and the solution of which, therefore, relies on the authorities of a higher level. Secondly, the powers of state authorities in the field of land relations regulation should be transferred to local self-government bodies not at all levels, and mainly to local self-government bodies at the basic level, which are councils of united territorial communities established in accordance with the Law of Ukraine "On Voluntary association of territorial communities “.

At the same time, the realities and results of the land reform in Ukraine give grounds to assume that in the field of land relations decentralization of powers is not limited to improving managerial relations. It has a wider appearance. In our opinion, the decentralization of power of the authorities in the field of land relations in Ukraine should be considered in at least two aspects: as the decentralization of the power of the authorities in exercising the right to public (state and communal) ownership of land and decentralization of the power of the authorities regarding to the implementation of a public (state) management of the use and protection of land.

The aforementioned aspects of decentralization of power of the authorities in the field of land relations show fundamentally different directions of development of land legislation of Ukraine. The first of them is related to the development of legislation on the delimitation of lands of state and com-

munal ownership and the establishment of the institution of the right to communal ownership of land. As it is known, by the adoption on June 28, 1996 of the Constitution of Ukraine, which for the first time in the land-law history of our state introduced the right of communal land ownership as a separate institute of public property rights to land resources, different from the state ownership of land. However, since at the time of the adoption of the Basic Law of the country the public ownership of land was submitted exclusively by state-owned land, then, in accordance with the Land Code of Ukraine, adopted on October 25, 2001, the necessity of demarcation of the state-owned lands on the land which remained in the state's property and lands which were transferred to the ownership of territorial communities of villages, towns and cities.

However, the basis of the delimitation of lands of state and communal property was the understanding of the territorial community in the narrow sense – as a totality of residents of a certain village, town or city. According to this understanding of the territorial community, its territory is reduced to the territory of a certain settlement. Accordingly, the Ukrainian legislation on delimitation of land developed in a way that effectively limited the land of communities as the material basis of their local self-government exclusively by lands within settlements. Undeniably, under such conditions, the following principles of local self-government are ignored in the development of local self-government in Ukraine: principles of universality, subsidiarity and capacity.

In order to ensure the decentralization of power of the authorities as part of their powers in the field of realization of the right to ownership of land, it seems necessary to introduce in the legislation of Ukraine legal norms that would contain clear criteria for assigning land to objects of communal property rights of united (empowered) territorial communities, including land both within and outside settlements. In particular, land legislation should ensure the priority of the right of communal ownership of land within the territory of the community by: a) transferring the majority of state-owned land located on the territory of the community to the communal property of a territorial community; b) establishment of the presumption of owning by a territorial community on the right of ownership of land whose owner has not been established. In addition, in the legislation it is expedient to determine the powers of exercising the right of communal ownership of land by united territorial communities in the person of their councils and in the person of executive committees of these councils. Unfortunately, this problem is still being unresolved. Several draft laws have been registered in the Verkhovna Rada of Ukraine, which stipulate recognition of the priority of the right of communal property to land of united territorial communities [6, p. 4–9]. However, none of them was accepted.

A more complex scientific and practical problem is the insurance of the development of land legislation in terms of ensuring the decentralization of power of the authorities in the field of land use management and protection. In general, Ukrainian law scientists share the point of view that the implementation of the principle of subsidiarity in the le-

gal status of local self-government dictates the need of expanding the land power of local self-government bodies of territorial communities. Came from Latin word "subsidiarity" in Ukrainian translation means additionality, secondary, residual. Thus, subsidiarity of power means that the higher levels of government must be additionary or secondary in solving problems that arise at lower levels [7], that is at the local level. However, the national land law science has not yet proposed a unified approach to the possible ways of such an expansion, as was evidenced by the course of scientific discussion on September 22, 2017 in the Institute of State and Law named after V. M. Koretsky of National Academy of Sciences of Ukraine held a roundtable on decentralization of power in the areas of agrarian, ecological, land and other natural resource spheres of law [8].

In our opinion, the main directions of such enlarging should be: 1) providing to the local self-government body of the territorial community – the council of the territorial community – the power to exercise the planning of the use and protection of all lands of the community, including state and private property; 2) the consolidation of agricultural lands; 3) counting the land tax from all the lands of the territorial community to the budget of the territorial community, as well as the provision to the council of the territorial community the right to establish privileges for the payment of land tax and renting for the land of communal property; 4) providing to the council of the territorial community the right to monitor lands and control the compliance of owners and users of land plots located on the territory of a territorial community, the requirements of the current land, urban development and environmental legislation. Thus, the decentralization of power with the transfer of a significant amount of power in the field of land relations regulation to territorial communities as the main level of local self-government determines the need for a substantive renewal of the institution of land ownership.

However, by improving the land legislation of Ukraine on the basis of decentralization of power, the legislator should proceed from the assumption that due to the high value and scarcity of such a resource as land, the exercise of power on the disposal of land resources is potentially corrupt governing function. According to domestic practice in the sphere of land relations the level of corruption deviations from the requirements of legal norms is the highest in our country. Recently all the loud corruption scandals were connected with the mandatory disposal of the land. Therefore, in the course of decentralization of power in the sphere of land relations there is a risk of "moving" land corruption from the center to the local level. Indeed, decentralization of land power itself contains certain signs of its monopolization. So, before such decentralization the disposal of land outside the settlements were carried out by seven bodies of state power and bodies of local self-government, then after its implementation, most of the land authority will be concentrated at the level of councils of the united territorial communities. Therefore, we believe that the transfer of power in the field of relations from the state authorities to the councils of the united territorial communities

should be accompanied by the formation of a system of effective legal anti-corruption fuses.

Firstly, legal norms which would minimize the possible negative impact of the human factor on the process of land disposal should be introduced into the legislation. One of the ways of reducing such influence is the introduction of contactless provision of administrative land services, which excludes direct contact between the applicant and an official of the land authority which is providing information certificates or deciding on the application filed by the applicant. As it is known, the State Service of Ukraine on geodesy, cartography and cadastre is the manager of a large amount of information in the sphere of land relations. For example, a large number of deeds can be made by citizens using the information provided by this authority. These include information from the State Land Cadastre, land valuation data, etc. In general, the State Geocadaster provides 16 administrative services in land matters. Therefore, one of the important directions of reforming the legal status of the State Geocadaster shall be to ensure that all administrative land services are available in electronic format using the Internet and can be obtained by stakeholders.

There is also a need of enlarging the sphere of legal regulation of electronic land tendering, which minimizes the use of human factor. After all, in order to participate in a land auction, legislation requires its potential participants to fill a large number of forms and physical presence during the land trades. Connected with these actions contacts of land auctions participants with government officials and their representatives are often used to impose corruption conditions for their future "winners." Therefore, in order to prevent the corruption land allocation schemes at land auctions, it seems necessary to improve the legal mechanism for their exercising with the use of electronic services, which makes it possible to conduct land auctions on the basis of remoteness and ex-territoriality. In addition, it seems expedient to increase the level of transparency of the organization of land auctions with the timely publication of information on land plots of state and communal ownership, as well as land plots of private property, exhibited on land auctions by the decision of the authorities or courts. Finally, after the final of the land auction, the information about their winners and the amount of funds for which the land plots on such trades were disassembled must be published obligatory.

Secondly, the process of decentralization of powers in the field of land relations should not, in our opinion, provide for the total transfer of powers of state authorities to the councils of the united territorial communities. Indeed, local communities are generally better than local and national authorities at solving issues at local and regional levels. However, quite often they do not fully respect national interests. As stated in paragraph 10 of the Vancouver Declaration on Human Settlements of 1976, land is a fundamental element of human settlements. Each state has the right to take measures for having public control over the use, possession, disposal and protection of land. Each state has the right to plan and regulate land use as one of its most important re-

sources in such a way that the growth of urban and rural settlements is based on a comprehensive land use plan [9]. Undoubtedly, the object of such control by the state should be the land located outside the settlements. Therefore, the process of power's decentralization should not cover control functions of state authorities in the field of land relations. We believe that the function of exercising control over the use and protection of land should remain the key public function and should be carried out by state authorities. Moreover, such bodies should be given sufficiently strong control powers, in particular, the right to pause the decisions of the councils of the united territorial communities in the field of land relations, which contradict to the norms of the national legislation, and to apply to the court with the claim for canceling them. Undoubtedly, local communities should have the right to exercise self-governing (communal) control over the use of land within their territories, which, however, can not substitute the control of the state in the development of land relations.

Thirdly, on the eve of the overdue and expected canceling of the land moratorium and the opening of agricultural land market, measures should be taken to strengthen the protection of land rights and legitimating of interests of Ukrainian citizens and small producers, in particular, family and other farms, in particular as participants of the land market. In this regard, it seems advisable to introduce the institution of the state land ombudsman as a specialized defender of land rights and legal interests of the most vulnerable segments of the population, primarily rural ones.

Fourthly, among the measures of decentralization of the powers of state authorities it is expedient to include the transformation of the right of permanent use of land by state and communal enterprises into the right which is the object of market circulation. Such right may be the right of economic management of land or other right, within which part of the power of the authority as a representative of the owner of a particular plot will be given to the subject of this right. Undoubtedly, the object of such a transfer may not be all the powers of disposing the land, but only a part of them, namely, the power of disposing the land that will not result the alienating a land plot with its retirement from the state or territorial community. At the same time, state or communal legal entity will have the opportunity of limited disposal of the land plot for solving a number of economic issues of its activity, which will require cooperation with other legal entities on the basis of common activity, public-private partnership, etc. Consequently, the transformation of the right of permanent use of land by state and communal enterprises into the right which is the object of market circulation will contribute to decentralization of exercising of this right by its subjects – the corresponding entities – without the participation of the authorities.

Thus, the improvement of the legal regulation of land relations on the basis of decentralization of power will create the prerequisites for a new stage of the development of land legislation of Ukraine – the making its new codification. However, starting codification work on the drafting of a new Land Code of Ukraine will be

possible only after the final of the formation of united territorial communities throughout the territory of Ukraine.

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ISSUES OF LEGISLATIVE SUPPORT OF LEGAL USE OF FARMING LANDS IN COLLECTIVE OWNERSHIP IN UKRAINE

Abstract*. The article is devoted to the analysis of theoretical and practical problems of the current state of using agricultural lands of collective ownership with uncertain legal regime, as well as prospects of legislative provision of legal forms for the use of such lands in market conditions. The main periods of formation of the legal regime of collective-ownership land of agricultural enterprises, as well as the legislative documents that ensured this process, were identified and characterized. The main problems and contradictions in the legislation of Ukraine regarding the legal regime of collective ownership land were identified during the study. Practical recommendations for amending the current Land Code of Ukraine, aimed at eliminate these contradictions and regulate the legal regime of collective ownership land, are developed.*

Key words: *agricultural land, land parcels, land parcel (share), Land Code of Ukraine.*

INTRODUCTION

At the beginning of the 1990s farming lands were free transferred into collective ownership to agricultural enterprises, agricultural cooperatives, farming corporations, including those established on the basis of state farms. Part of them was divided in land parcels and transferred into private ownership, the other part of agricultural and nonagricultural lands remained in collective ownership of agricultural enterprises till adoption of the current Land Code (LC) of Ukraine in October 2001, which came into effect on January 01, 2002 [1]. Land and agrarian reforms cannot be considered as completed without solution of set of issues regarding legislative definition of the legal regime of such lands [2;3;4;5].

Adoption of the Land Code resulted in such a legal situation when de jure collective ownership remains in respect of the part of the shared and unclaimed lands of the former collective agricultural enterprises (CAE), although LC of Ukraine does not provide this. General use lands of the former CAE are not transferred into state ownership, the law does not determine legal succession of these lands, legal regime of the land plots under buildings, structures, property complexes divided into property shares between members of the former CAE is not determined.

If you take a look at the theory of Ukrainian land and agrarian law, it may be concluded that conducted research of the issues regarding legal regime of the collective ownership lands mainly concerns disclosure of a legal nature of col-

lective land ownership as part the Law of Ukraine (LU) "About the property" [6] and LC of Ukraine dated March 13, 1992 [7] (legal issues of a right of private property to the shared agricultural lands, legal regulation of lease land relations, exercise of other rights to land plots [8]). At the same time, upon adoption of the current LC of Ukraine in October 2001 right of collective ownership was not legally expressed and became lawless. Hence, legal, economic, social and other issues which occurred in the practice of using collective ownership lands have not become the subject of a comprehensive scientific research in the land, agrarian, civil law doctrines [9]. Except for certain published works, practical issues of use of agricultural land plots with uncertain legal regime remain unexamined [10]. Draft laws registered in Verkhovna Rada (VR) of Ukraine, which offer to settle issue of the collective ownership lands with uncertain legal regime, have not yet been adopted [11; 12].

1. MATERIALS AND METHODS

This article reviews the current state, problems, trends and prospects of legislative support of legal use of agricultural lands with uncertain legal regime, which were transferred into collective ownership of collective agricultural enterprises and then were shared between members of such farms; whereby theoretical conclusions and practical recommendations were formulated. In particular, look back analysis of origin, exercise and termination of a right of collective ownership to such lands was performed, which makes it possible to: provide critical scientific assessment of actual problems; formalize in legislation optimal statutory concepts of efficient use of agricultural lands of the former collective ownership; provide legal and other terms for attracting investments to development of agricultural lands of the former collective ownership.

To conduct research, firstly four basic periods of formation of a legal regime of collective ownership lands of the agricultural enterprises were defined, each having its unique features regarding exercise of rights of collective land ownership:

1. First period, January 1992 – January 2002:

1.1. establishment of collective land ownership;

1.2. growth of possibility to exercise a legal right of collective land ownership;

1.3. sharing of the agricultural lands of CAE;

1.4. reclamation of the land parcels shares in the land plots with their free transfer into private ownership for conduction of the commercial farming or private farm holding (PFH);

1.5. reforming of CAE and their reorganization in private agricultural enterprises of various types of business.

2. Second period, January 2002 – March 2009:

2.1. adoption of LC of Ukraine which did not strengthen collective form of land ownership;

2.2. adoption of the law "On the procedure for the allocation of land plots to owners of land parcels (shares) in kind (on the ground)" dated June 05, 2003 [13].

3. Third period, March 2009 – January 2013: adoption of the law which cancelled issue of the State acts for the right of land ownership [14].

4. Fourth period – since January 01, 2013, that is upon entry of the law on demarcation of the boundaries between state-owned and communally-owned land into force and legislative consolidation of a right of communal ownership of land [15].

Legislative documents emphasizing each of these periods became main subjects and materials of the study.

2. RESULTS AND DISCUSSION

Right of collective ownership of land obtained its legislative form in the law of Ukraine "About the forms of ownership of land" dated January 30, 1992, according to which three forms of land ownership were established – state, collective and private, all forms were recognized as equal [16]. The law of Ukraine "About collective agricultural enterprise" dated February 14, 1992 has formalized a provision according to which the land was recognized as object of a right of collective ownership, and collective agricultural enterprises as legal entities, which could own, use and dispose of the property items at own discretion, were recognized as a subject of such right [17].

With adoption of LC of Ukraine dated March 13, 1992 legal regime of collective ownership lands was determined, as well as legal regime of lands of the state and private ownership. According to article 60 of LC of Ukraine, subjects of right of collective ownership were: collective agricultural enterprises; co-operative farms; farming corporations (including those set up as a successor to the state farms and other state agricultural enterprises).

Objects of right of collective ownership were lands which total area was calculated as a difference between area of the lands of state and private ownership. According to article 60 of LC of Ukraine, lands of collective ownership were divided into two types: lands for agricultural use (provided to collective agricultural enterprises and other subjects for conduction of commercial farming); lands for nonagricultural use.

In addition to the above, LC of Ukraine, as well as Law of Ukraine "About the collective agricultural enterprise" did not regulate issues of free dispose of collective ownership lands, as well as mechanisms for exercise of rights to the collective ownership lands by members of collective agricultural enterprises. Therefore, in 1994–1998 a range of Decrees of the President of Ukraine was issued according to which agricultural lands of collective agricultural enterprises were divided into conventional cadastral hectares between members of such enterprises with a possibility of reclamation of the land parcels (shares) into separate land plots and registration of private ownership of land plots for conduction of commercial farming and private farm holding [18].

According to the conducted sharing of agricultural lands, 6,8 millions of CAE members gained a right to a land parcel (share) and right of ownership of land plots with average area of land plots equal to 4,6 ha per one CAE member as at the start of year 2000 in Ukraine [9].

According to the Decree of the President of Ukraine "On urgent measures to accelerate the reform of the agrarian sector of the economy" dated December 03, 1999 [19], during the period from 1999 to 2000 reforming of the collective agricultural enterprises based on

private ownership of land and property was conducted in Ukraine. Each CAE member had a right of free withdrawal from such enterprises with land and property shares, had a possibility to establish private (private and lease) enterprises based on CAE, peasant (farm) enterprises, business entities, co-operative farms, other economic entities based on private property (hereinafter the private formations). This Decree also obliged enterprises using lands for agricultural needs to conclude lease agreements with owners of the land or property shares with lease payment in cash or in kind.

As a result of such reforming over 11 thousands of CAE ceased their activities as of April 01, 2000, as they were reorganized as entities of various types of business. These entities were not recognized as legal successors of CAE regarding lands of collective ownership, which:

– first, were shared and not distributed among the owners of Certificates of right to a land parcel (share);

– second, were distributed among the owners of Certificates, but for whatever reason they did not receive State acts for right of private land ownership and therefore did not gain a right of private ownership of land plots.

Consequently, since April 01, 2000 significant changes have begun to occur in the legal regime of collective ownership lands regarding subjects, objects and content of right of collective ownership of land:

1. CAE as subjects of right of collective ownership upon reorganization de jure ceased to exist, although some of them still remain in the register of legal entities.

2. Most of agricultural lands of such enterprises were transferred free of charge to private ownership of the CAE members, which resulted in certain changes in the land structure as an object of right of collective ownership. De jure agricultural lands subject to sharing remained in collective ownership, however they were not distributed among CAE members and remained as lands of public use (for example, grasslands, hay-fields), as well as undistributed land parcels (shares), unclaimed land plots.

3. Right to dispose of such collective ownership lands was provided to the owners of Certificates of right to a land parcel (share), although it was not consistent with LC of Ukraine of 1992.

4. De jure and de facto lands of nonagricultural or general use (intra-organizational roads, forest shelter belts and other soil protective plantings, water development facilities etc.), which according to part 12 article 5 of LC of Ukraine of 1992 had to be transferred to maintenance of local councils upon CAE liquidation, were not transferred and remained in collective ownership of CAE.

Therefore, till January 01, 2002, that is prior to the entry of LC of Ukraine as of 25.10.2001 into force, the following situation has arisen in Ukraine:

1. De jure and de facto lands of those CAE, regarding which a decision on sharing was not made and which were not reformed and preserved their legal regime of CAE, remained in collective ownership.

2. Certificates of right to a land parcel (share) were not issued.

3. De jure lands were shared between members of the former reformed

CAE, which received Certificates of right to a land parcel (share) and did not perform distribution of the land plots according to the Certificates.

4. Lands of the former CAE divided according to Certificates of right to a land parcel (share) into land plots remained unclaimed (that is they were not transferred into private ownership), as for whatever reason State acts for right of land ownership were not issued. Upon reforming of CAE, transfer of a part of the shared lands into private ownership State acts for right of collective ownership were not amended, therefore such acts are still valid.

For these reasons till January 01, 2002 part of the shared lands of CAE remained in collective ownership, right to which was confirmed by the State act for right of collective ownership issued to a particular CAE which ceased to exist upon reforming. Undistributed shares and unclaimed land plots were leased out in the form of land masses to the owners of Certificates of right to a land parcel (share).

Adoption of LC of Ukraine in October 2001 did not solve a problem with definition of a legal regime of collective ownership lands, as it:

– did not formalize form of collective ownership of land at all;

– did not cancel earlier State acts for right of collective ownership of land;

– did not provide a mechanism for transfer of lands of the former CAE to the lands of state or communal ownership;

– did not mention anything of common lands of the former CAE [10].

To finish the process of sharing of the agricultural lands of CAE with their transfer to private ownership to the former members of reformed CAE initiated by the Decrees of the President of Ukraine, the law "On the procedure for the allocation of land plots to owners of land parcels (shares) in kind (on the ground)" was adopted in Ukraine on June 05, 2003 [13]. According to this law, the owners of Certificates of right to a land parcel (share) obtained land plots distributed according to this law into private ownership for conduction of commercial farming or private farm holding (PFH). This law also determined legal regime of undistributed (unclaimed) land plots of reformed and liquidated CAE in the course of sharing, right to dispose of which was provided to village, township and city councils or state administrations.

According to article 13 of this law, undistributed (unclaimed) land plots by the decision of corresponding village, township, city council or district state administration (DSA) can be leased out for use according to the intended purpose up to the date when their owners receive State acts for right to a land plot, which is stated in the lease agreement for a land plot. Owners of the land parcels (shares) or their successors, who did not participate in distribution of the land plots, shall be informed on the results of conducted distribution in writing (if their location is known).

Legal analysis of the content of this norm of law suggests that it does not directly provide for abolition of a right of collective land ownership. At the same time analysis of separate provisions of this and other laws shows that their norms are aimed at cessation of existence of collective ownership of land. In particular, according to the law on

the procedure for allocation of land plots right to dispose of the part of lands in collective ownership is provided to the local government authorities or DSA by means of the ir lend lease for use according to the intended purpose up to the date when the owners of the Certificates or their successors receive the state acts for right of ownership to the land plots. Herewith, the law does not define maximum terms during which a land parcel (share) must be claimed as a separate land plot, and the owners of the Certificates must receive State acts for the right of land ownership. Besides, upon amendments introduced to LC of Ukraine in March 2009, to article 125, such people cannot receive State acts for the right of land ownership, as their issue is not provided by this Code.

Moreover, upon adoption of LU "On amendments to certain legislative acts of Ukraine regarding the delimitation of state and communal land" dated September 06, 2012, implementation of the above norms became practically impossible, as since January 01, 2013 state and communal lands have been deemed delimitated [15]. Main criterion to define the land as a state or communal is its location – within or outside inhabited localities. In other words, if unclaimed land plots leased out to corresponding councils or DSA are located outside inhabited localities, legal regime of the state ownership lands is applied to them, within inhabited localities – communal ownership. At the same time, designating these lands as the state or communal ownership does not mean that the owners of Certificates of right of a land parcel (share) or their successors are deprived of a right to claim a land plot in kind (on the ground) into private ownership, as it is guaranteed by article 22 of the Constitution of Ukraine. It is also subject to jurisdictional protection, if a person did not default a term of limitation equal to three years provided by the Civil Code (CC) of Ukraine [20].

Taking into account that LC of Ukraine does not formalize norm of definition of a legal regime of the former collective ownership lands, the author considers it expedient to develop a draft law on amendments to LC of Ukraine, law "On the procedure for the allocation of land plots to owners of land parcels (shares) in kind (on the ground)" in terms of definition of a legal regime of the former collective ownership lands, and set a term for reclamation of the land plots upon termination of which people forfeit a right to claim allocation of the land plots into private ownership.

In this draft law a legal regime of the lands for nonagricultural use of the former CAE, which were not subject to sharing between the members of collective agricultural enterprises, should be also defined. From January 01, 2013 legal regime of these lands should be defined taking into account their location (within or outside inhabited localities), as well as taking into account legal regime of buildings, structures and other real property facilities located on such lands, reclamative afforestations, waterworks, water, recreation, health-related, medical and other facilities of natural, property, production and social character.

As real property facilities on the land plots are subject to division into property shares, upon reforming of

CAE and their termination real property was transferred on the basis of care and custody to certain individuals, and ownership of such facilities was not registered in accordance with the procedure established by law [21]. Under these circumstances article 120 of LC of Ukraine and article 377 of CC of Ukraine, according to which property right to land or land leasehold is transferred alongside with transfer of property right to buildings or structures, cannot be applied. This means that from January 01, 2013 land plots, where buildings, structures and other real property facilities, utilities yards, property complexes, etc. are located, shall be regarded as state or communal ownership lands.

Regarding land plots under forest shelter belts and other protective plantings, legal regime of these lands remains uncertain regarding both forms of ownership and forms of use. Due to the fact that land plots under forest shelter belts and other protective plantings were not subject to sharing, during the process of sharing of agricultural lands such lands were transferred to reserve fund or belonged to the reserve lands as a part of communal ownership lands. From January 01, 2013 legal regime of such lands is defined depending on their location – within or outside inhabited localities, therefore, the law qualifies them as communal or state ownership. Besides, these lands are not leased out to agricultural goods producers, therefore, according to LC of Ukraine, they are in reserve as agricultural lands not classified as agriculturally used areas. Moreover, legal regime of the land plots under forest shelter belts and other protective plantings is complicated by a clash of norms of the Land and Forest Codes of Ukraine. Lands under forest shelter belts are qualified as agricultural lands, and the plantings with area over 10 ha are qualified as forest lands, as a result of which the owners of the land plots and land users cannot protect, look after and reproduce forest shelter belts, and specialized forestry enterprises cannot acquire agricultural lands on a permanent basis. In addition to the above, local government authorities have no funds to finance measures for protection and reproduction of forest shelter belts. Complexity in definition of a legal regime of the lands under forest shelter belts is also evident in the fact that no inventory of forest shelter belts on the agricultural lands was taken in Ukraine, no one is engaged in shelterbelt establishment, current forest belts are being destroyed and become unfit for protection of soils from erosion by water and wind.

CONCLUSIONS

Summarizing performed scientific and theoretical analysis of practical issues regarding definition of a legal regime of the collective ownership lands, we can make a general conclusion of necessity for development of a separate law regarding introduction of amendments to LC of Ukraine and other laws regarding exercise of legal rights to collective ownership lands, ensuring their efficient use and protection in the market economy conditions. In particular, it is reasonable to establish the following provisions in the law:

1. Agriculturally used areas, which after January 01, 2013 were not divided into land parcels (shares) or were shared but not divided into land plots and were not claimed in kind (on the ground) as

land plots according to the Certificates of right to a land parcel (share) by the members of reorganized collective agricultural enterprises, co-operative farms, farming corporations or their successors according to the law or court decision, are classified as state ownership lands (in case of their location outside inhabited localities) or communal ownership lands (in case of their location outside inhabited localities).

2. Agricultural lands of reorganized collective agricultural enterprises, co-operative farms, farming corporations, including those established on the basis of state farms, which were not subject to sharing after January 01, 2013, are classified as state ownership lands (in case of their location outside inhabited localities) or communal ownership lands (in case of their location outside inhabited localities).

3. Agricultural lands of production-agricultural cooperatives, farming corporations, including those established on the basis of state farms, which were not reorganized after January 01, 2013 and shared agriculturally used areas between the members of such enterprises and privatized the land plots according to the Certificates of right to a land parcel (share), are classified as private lands.

4. To allow members of the former collective agricultural enterprises to acquire land plots under buildings and structures in joint ownership according to the property certificates.

5. To establish that the lands under forest shelter belts and other protective plantings on agricultural lands outside inhabited localities are classified as agricultural lands of state ownership and transferred for permanent use to specialized enterprises of the Ministry of Agrarian Policy of Ukraine for maintenance of forest shelter belts and other protective plantings.

6. To provide that the members of the former agricultural enterprises and their successors are entitled to claim the land plots in kind (on the ground) according to the Certificates of right to a land parcel (share) during three years upon entry of this law into force.

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LEGAL PROVISION OF RURAL TOURISM AS A TREND OF RURAL AREAS DIVERSIFICATION

Abstract. *The paper analyzes the legal provision of rural tourism. It is determined that it is one of the main areas of diversification of rural areas, aimed at increasing employment, employment of rural inhabitants and providing services in this area. It was clarified that the absence of a special legislative act in the field of study leads to contradictions in the legal provision and regulation of rural tourism.*

It is proved that the structure of legal relations in terms of provision of services in the field of rural tourism, characterized by the presence of a special subjective and objective composition and content of such legal relationships. It is alleged that due to the lack of coordinated state agricultural policy, the opportunities of rural tourism for the development of rural areas are not used to this day. The authors proposed the introduction of specific measures to improve the organizational and legal provision of rural tourism.

Key words*: sustainable development of rural territories; diversification of rural areas; rural tourism; types of rural tourism; state agrarian policy.*

The agrarian sector of the economy demonstrates positive growth dynamics, forming in recent years about 14% of gross value added in the country and about 40% of foreign currency earnings on exports [1]. However, an increase in the volume of agricultural production did not contribute to solving socio-economic problems in rural areas, the main ones being: unemployment of rural residents, increasing the number of migrants of rural population, the decline of social infrastructure and the disappearance of villages from the administrative map of our country.

In connection with this, the vector of state agricultural policy has been changed, the main components of which today are a set of legal, organizational and economic measures aimed at increasing the efficiency of the agricultural sector of the economy functioning, solving social problems of the rural population and ensuring the integrated and sustainable development of rural areas [2].

Sustainable development of rural areas is a complex of social relations that arise in connection with the sustainable development of communities living in rural areas, as well as provides growth and increases the efficiency of the agrarian sector, the level and quality of life, and improves the ecological situation in rural areas [3; 50]. Such development involves the integrated development of the economic, social and environmental spheres of the village, which should be in interaction and interconnection in order to use the natural resources of the rural areas to meet the needs of the present generation and to be carried out without compromising the ability of future generations to meet their own needs [4; 21].

The Decree of the President of Ukraine dated January 12, 2015, "On the Strategy for Sustainable Development" Ukraine-2020 "defines the purpose, the direction, the roadmap, the main priorities and the indicators of adequate defense, as well as socio-economic, organizational, political and legal conditions for the establishment and development of Ukraine. In particular, the vector of development involves the reform of agriculture.

In order to implement the Strategy, the Cabinet of Ministers of Ukraine adopted an Order dated September 23, 2015, No. 995-p. "On Approval of the Rural Development Concept “, which outlines the main priorities of rural development and the mechanism of preparation of the state agrarian and rural sector for functioning in free trade area with the EU.

The purpose of the Concept is to create the necessary organizational, legal and financial prerequisites for rural development through: diversification of economic activity; increasing the level of real incomes from agricultural and non-agricultural activities in the countryside; achievement of guaranteed social standards and improvement of living conditions of rural population; environmental protection, conservation and restoration of natural resources in rural areas; preserving the rural population as a holder of Ukrainian identity, culture and spirituality; creation of conditions for the expansion of the territorial rural communities opportunities to solve the existing problems they have; bringing rural development legislation in line with EU standards [5].

It is believed that these measures are relevant and necessary for achieving the goals of sustainable development of rural areas. However, the emphasis today needs to focus on the diversification of rural areas, which, taking into account all aspects (environmental, economic and social), can solve urgent problems in rural areas [6; 121].

Diversification of rural areas is an activity of agricultural products producers, which consists of diversifying agricultural (industrial) and / or non-agricultural (industrial) activities, as well as provision of services in the field of rural tourism in order to achieve economic, social and environmental goals.

The concept of rural development in Ukraine proposes to diversify and develop the rural economy by: creating conditions for the development of various types of economic activity and forms of management; development of tourism and recreation activities in rural areas; assistance to the formation of solid biofuel sales markets; improvement of the tax and budget system to fill

the budgets of territorial rural communities; providing support for the development of agricultural servicing cooperation by stimulating the creation of supply, procurement and distribution infrastructure on the basis of cooperation; introduction of economic incentives for the implementation of land protection measures; facilitating the access of rural population to financial resources, including lending and the development of an alternative lending mechanism, involving of socially responsible businesses and banks [5].

It is believed that one of the promising directions of diversification of rural areas in Ukraine is the development of rural tourism, the legal regulation of which due to the lack of a special law in this area, is carried out by a large number of normative legal acts, among which are: the Constitution of Ukraine, the Law of Ukraine of 15.05.2003 "On personal peasant farming", Law of Ukraine of 15.09.1995 "On Tourism", Resolution of the Cabinet of Ministers of Ukraine No. 297 of 15.03.2006 "On Approval of the Procedure for the Provision of Services for Temporary Accommodation (Residence)".

Order of the Ministry of Agrarian Policy and Food of Ukraine No. 24 of January 18, 2013 "On Approval of the Plan of Measures of the Ministry of Agrarian Policy of Ukraine on the Development of Rural Green Tourism for the Period until 2015", the Resolution of the Cabinet of Ministers of Ukraine dated 07/19/2017 No. 489-p. "On Approval of the Plan of Measures for Implementation of the Concept of Development of Rural Territories", etc.

However, these documents regulate the relations in the field of rural tourism only on a general basis, without reflecting their specifics. Therefore, there is a need to clarify the peculiarities of legal provision of rural tourism as a direction of diversification of rural areas. The definition of rural tourism is not formed at the legislative level, and the analysis of scientific works in this area gives grounds for asserting differentiated approaches to understanding categorical apparatus.

Thus, O. V. Gafurova, pointing out the problem of the absence of a special law that would determine the general legal organizational and socio-economic principles of the state policy implementation in this area equates the concept of "rural" and "agrarian tourism" [7; 286]. I. Galtsova considers rural green tourism a unifying category and defines three of its varieties – agrotourism, recreational tourism and ecotourism [8; 107].

O. M. Tuyiva, identifying the categories "rural green tourism" and "rural tourism", defines it as rural tourism, which covers almost all forms of recreation, possible in such territories, the characteristic feature of which is the spread in areas remote from industrial and other man-made objects, which provides its naturalness and environmental friendliness. This is precisely the definition of rural tourism as a "green" and the consolidation of this category in Article 1 of the Law of Ukraine of May 15, 2003 "On Personal Peasant Economy", as well as in Article 4 of the Law of Ukraine of June 17, 2004 "On Agricultural Advisory Activities" [9; 100].

Currently, two bills are under consideration in the Verkhovna Rada aimed at regulating relations in this area: 1) the

draft law "On rural and rural green tourism", which was adopted as a basis on November 16, 2004; 2) the draft law on amendments to the Law of Ukraine "On private peasant farming" concerning the development of rural green tourism, adopted in the first reading on May 23, 2017

Thus, the bill "On rural and rural green tourism" distinguishes the following concepts: 1) rural tourism is a recreational type of tourism, which involves the temporary stay of tourists in the countryside (village); 2) rural green tourism – recreation from rural tourism, connected with the stay of tourists in their own house of a farm owner, a separate (guest) house or on the territory of a personal peasant (farmer's) farm; 3) ecotourism – a type of rural tourism, which involves visiting tourists with natural, cultural, ethnographic value.

However, the text of the draft does not provide for legal regulation depending on the type of rural tourism, therefore their relationship is unclear. In addition, it is believed that the title of the bill is incorrect, since it covers only two of the foreseen three of its forms.

In the explanatory note to the draft law amending the Law of Ukraine "On private peasant farming" concerning the development of rural green tourism noted that the purpose of legislative initiative is the legal definition of the concept of rural green tourism, and thus a clear distinction between entrepreneurial and non-entrepreneurial activities in the field of tourism activities carried out in rural areas, as well as provision of state support to this type of activity of rural residents by organizing professional training and retraining on rural green tourism.

However, the analysis of the proposed changes suggests that the purpose of the bill is unlikely to be achieved, because: firstly, the initiators, while differentiating between rural and green (ecological) tourism in accordance with the Law of Ukraine "On Tourism", however, propose to provide a general definition "Services in the field of rural and ecological (green) tourism", without differentiating and not providing for specific legal forms of their implementation, which in fact leads to the declarative and conventionality of such a distinction; secondly, measures to clearly distinguish between entrepreneurial and non-entrepreneurial activity in the sphere of tourist activity carried out in rural areas, as well as state support in general, are not provided, which calls into question their implementation. It is believed that amendments to the Law of Ukraine "On Personal Peasant Economy" can not solve the problem of legal regulation of rural tourism, since the specified normative act determines the legal, organizational, economic and social principles of conducting individual farming.

The absence of a special legislative act in the area under study leads to contradictions in the regulatory legal regulation of rural tourism. Thus, the Law of Ukraine "On Tourism", dated September 15, 1995, separately allocates rural and green tourism, the latter is considered as a synonym for environmental tourism. In this case their definition is not given. Among the types of activities that individual farms can deal with, the Law of Ukraine "On Individual Farming", dated May 15, 2003, considers

provision of services in the field of rural green tourism.

Thus, the legislator identifies concepts of "green" and "rural" tourism. This tendency can be traced also in the analysis of other normative legal acts. In particular, in the Law of Ukraine "On Agricultural Advisory Activities", dated June 17, 2004, among the main tasks of advisory activity is the promotion of non-agricultural entrepreneurship development in rural areas, including rural green tourism" (Article 4).

In the Decree of the President of Ukraine "On the main directions of tourist development in Ukraine until 2010" the main factors that form the basis of state policy in the field of tourism include the involvement of the private sector, especially in the countryside, to recreation and tourism business and auxiliary activities in the field of tourism (rural green tourism). The Resolution of the Cabinet of Ministers of Ukraine "On Approval of the State Program for the Development of Tourism for 2002–2010" dated April 29, 2002 provided for the development of the national rural green tourism program promotion in 2002–2003.

Investigation of rural tourism legal regulation, gives grounds for formulating the conclusion of a large number of general legal acts that do not reflect the specifics of these relations, resulting in only its fragmentary legal regulation, which is accompanied by the absence of a unified categorical apparatus in the field of study and automatic replacement of the concepts that contradict both the requirements of the legislative technique and the established international experience.

Since, according to the definition of Organization for Economic Co-operation and Development, rural tourism should be considered as a universal category for the definition of tourism in rural areas. Meanwhile, it is noted that this concept is not simple but multifaceted, because its essence stems from the category of "rural territories", which by its nature is not simple, but includes certain characteristic features, namely: 1) population and its density; 2) attachment to land, domination of agriculture and forestry; 3) "traditional" social structures and issues of community identity and cultural heritage (OCDE / GD (94) 49) [10].

Thus, the analysis of scientific, literary and legal sources makes it possible to determine rural tourism as a type of tourism, which is to rest in rural areas with the involvement of holidaymakers into rural life and to meet their recreational needs associated with the use of the potential of the region and / or property of producers of agricultural products [4; 132].

In addition, the structure of legal relations linked to the provision of services in the field of rural tourism, characterized by the presence of a special subjective and objective composition and content of such relationships.

The Law of Ukraine "On Tourism" defines the subject structure of relations that arise in the implementation of tourism activity (including in the field of rural tourism), which includes: legal entities and individuals who create a tourist product, provide tourist services (transportation, temporary accommodation, food, excursion, resort, sporting, entertainment and other services) or provide mediation services for the pro-

vision of characteristic and related services, as well as citizens of Ukraine, foreigners and stateless persons (tourists, visitors and others), in whose interests tourist activities are carried out.

The peculiarity of the rural tourism subjects is that the producers of agricultural products themselves have the opportunity to provide services in this area. According to the Law of Ukraine "On Agricultural Census", dated September 23, 2008, such agricultural producers are legal entities of all organizational and legal forms of management and their separate subdivisions, natural persons (individual entrepreneurs, households) engaged in agricultural activity provided for classification of economic activity, owning, using or disposing of agricultural land or agricultural animals.

Since rural tourism is a type of recreation that is accompanied by familiarization with customs, traditions, culture, and the everyday life of local people, it seems that among the producers of agricultural products such services can be provided as farms (as entrepreneurs who can provide services on a temporary basis catering, sightseeing, entertainment and other tourist services), as well as private farms and households, as individuals who are not subjects of business activity and provide services for temporary accommodation (residence), food, etc.

Substantial expansion of the farming activities, in addition to the production, processing and marketing of commodity agricultural products, follows from the provisions of the Law of Ukraine "On Farmers", dated June 19, 2003. In particular, the content of paragraph 2 of Art. 24 although in the first place it is aimed at creating a legal mechanism for ensuring the independence of the farmer in determining the directions of his activity, specialization, organization of production, processing and marketing of agricultural products, at the same time, is a methodological basis for engaging in other types of activities.

At the same time, the farmer has the right: to construct residential buildings, economic buildings and structures on the land owned by him, his members on the right of ownership in accordance with the approved documentation on land management and town-planning documentation in accordance with the procedure established by law (Article 16); use of the common minerals (sand, clay, gravel, peat, etc.) for the needs of the economy, forest lands, water bodies and fresh groundwater located on the land, in accordance with the legislation of Ukraine (Article 18); carry out alienation and acquisition of property on the basis of civil law agreements. Such a procedure for the possession, use and disposal of property of a farm is carried out in accordance with its Statute, unless otherwise provided for in an agreement between members of the farm and the law (Article 20).

The right to render services in the field of rural tourism by private farmers is expressly provided for in the Law of Ukraine "On Personal Peasant Economy", dated May 15, 2003 in Art. 1, which states that the latter, in order to meet personal needs through the production, processing and consumption of agricultural products, the sale of its surpluses, may provide services for the use of property, including in the field of rural green tourism. At the same time, members of a pri-

vate farm have the right to conclude in person or through an authorized person any agreements that do not contradict the law (Article 7).

Rural tourist services may also be provided by households that, in accordance with the Law of Ukraine "On Agricultural Census", are defined as a set of persons who live together in one residential building or a part thereof, provide themselves with all necessary for their livelihoods, conduct a joint economy, fully or partially combine and spend money. These persons may be in family relationships or not. The household can consist of one person.

The object of relations in rendering services in the field of rural tourism is a specific touristic product, that is the reason why relationships exist in the field of rural tourism. When developing a tourism product, an entity that provides services in the field of rural tourism, must necessarily take into account the characteristics of resource potential of rural areas, target audience and duration of tourists' stay. These components are key to the development of travel programs.

Therefore, depending on the tourist product in rural tourism, it is possible to distinguish between the following areas: agritourism, ecological or green (in case it is carried out in rural areas), ethno-tourism, recreation and others.

The content of relations in the field of rural tourism is the rights and obligations of the parties, which acquire their legal form by concluding an agreement on rendering services in the field of rural tourism. Such an agreement is made in accordance with the requirements of the Civil Law of Ukraine, its form can be both oral and written.

Thus, the analysis of the legal provision of rural tourism gives grounds to assert that it is one of the main directions of diversification of rural areas, which is aimed at increasing employment, employment of rural inhabitants and providing services in this area. However, due to the lack of coordinated state agricultural policy, opportunities for rural tourist development are not sufficiently utilized today.

Therefore, in order to solve these problems, it seems appropriate to the Ministry of Agrarian Policy and Food of Ukraine within the framework of the Action Plan for the realization of the Concept of Rural Development implementation, to develop and adopt the National Program for the Sustainable Development of Rural Tourism as an Integral part of the State Agrarian Policy. In addition, it is necessary to initiate work on the elaboration of the draft law "On Sustainable Rural Tourism Development in Ukraine", in which it is necessary to determine the legal, economic and organizational principles, the main categories of rural tourism, the principles of sustainable development of rural tourism, its directions, rights and obligations of subjects in these relationships.

In addition, it is advisable to consider features of state support for rural tourism, including promoting the development of rural tourism clusters, the benefits of which are the combination of different subjects (agricultural producers, owners of farmsteads, service providers, local craftsmen), state bodies and local self-government bodies and the public, which, through coordination of joint efforts, can effectively create and implement a specific product of ru-

ral tourism, the result of which will be the comprehensive development of rural areas through the efficient use of resources [11; 3].

Thus, proper legal provision of rural tourism is a prerequisite for the sustainable development of rural areas in Ukraine through diversification of activities of agricultural producers, creation of additional jobs, increase of rural residents' incomes, reduction of the migration rate, restructuring of social infrastructure objects, restoration of customs and cultural identity of local residents, protection and preservation of the environment and expansion of opportunities for the territorial communities' development.

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ON THE STATE OF LEGAL SUPPORT OF CRYPTOCURRENCIES IN UKRAINE: THROUGH THE PRISM OF FOREIGN EXPERIENCE

The development of information technologies is accelerated in the modern world. The digitization of socio-economic relations is carried out on the basis of peer-to-peer blockchain technology. Bitcoin is a cryptographic protocol. The article shows that, to date, there is no common understanding of Cryptocurrency, in some sources they are treated as currency and other goods or raw materials in other. At this moment, cryptocurrency in Ukraine is not regulated at all. This article discusses the potential legal classification of Bitcoin and the consequences thereto. Bitcoin has been, and continues to be, used by some for the purchase of illegal substances and in furtherance of crimes. Nonetheless, Bitcoin possesses significant economic upside over traditional currencies and methods of transaction online. The National Bank of Ukraine (NBU) has not yet recognized bitcoin or other encrypted currencies. Several bills to regulate encrypted money have been submitted, but none has yet been passed. The Ukrainian parliament has been actively trying to find a solution for creating a legislative and regulatory framework specific to the cryptocurrency industry. Ukrainian draft laws give their own definition of crypto-currency, mining and other specific terms; stipulate those who have the right to engage in mining, how the activities of exchanges are regulated, and the attendant moments, such as legal responsibility and specific taxation. Yet, the proposed legislation has not yet been passed into the law. Ukraine should monitor world trends and not miss a chance to use new technologies and innovations in the financial sector. On the basis of the analysis of domestic and foreign practices, a number of non-regulated by Ukrainian law of the creation and circulation of cryptocurrencies have been identified by the law of Ukraine, proposed ways of resolving issues of determining their legal nature and legal regulation. The situation regarding the definition of legal status of cryptographic goods in foreign countries and

Ukraine is analyzed. The main points to be solved in the course of approval of the right regulation of cryptocurrencies in Ukraine are determined.

Key words: *bitcoin, financial assets, cryptocurrency, electronic money, digital currency, virtual currency.*

In the modern world, the development of information technology is accelerating. Based on the analysis of domestic and foreign practice, the article discovers several relations unregulated by Ukrainian legislation related to the creation and circulation of cryptocurrencies, suggesting ways of resolving the issues of determining their legal nature and providing legal regulation. The situation regarding the definition of the legal status of cryptocurrencies in Ukraine and other countries is analyzed. The paper determines the main points to be elaborated in the process of development of adequate legal regulation of cryptocurrencies in Ukraine.

Introduction. The last decade is characterized by rapid development of digital technologies and their diffusion to practically all branches of economy and all spheres of functioning of our civilization. The scientific circulation and economic relations are increasingly influenced by digital capital, which is embodied in corresponding technologies, databases, computing powers, calculation algorithms, human skills etc. Relationships between people, especially in developed countries, are getting increasingly "digitized". A promising trend in the development of digital technologies is the transition from centralized database administration to distributed, decentralized administration, known better as the blockchain technology. Its establishment was influenced by the global crisis of 2008, which led to a crisis of confidence in mutual settlements. Blockchain technology involves a consensus of payment participants according to certain rules and cryptographic protection. The introduction of the blockchain protocol is associated with the creation of the Bitcoin cryptocurrency [1, p. 42].

To date, Bitcoin and other cryptocurrencies gain more and more popularity as a means of settlement in many industries, while global market capitalization of crypto assets exceeds 400 billion dollars. USA. The most capitalized cryptocurrencies as of the beginning of 2018 are Bitcoin (more than USD 200 billion), Ethereum (more than USD 100 billion), Ripple (more than USD 90 billion). Cryptocurrency market increased 34-fold in 2017 [2]. However, the normative definition and regulation of the relations of creation, circulation and status of cryptocurrencies is extremely limited abroad and is practically absent in Ukraine, although this element of market relations is quite common in our country.

Ukraine is among the top 5 countries in terms of the number of bitcoin-purse users; Kuna, one of the biggest bitcoin agencies in the CIS region has its offices in our country as well. On September 25, 2017, a financial transaction was successfully conducted during which an apartment in Kiev was sold for the Ethereum cryptocurrency. Legally, the deal was formalized as an exchange agreement, since cryptocurrencies are not considered as a means of payment in Ukraine. Thus, this increas-

es the relevance of the need to study foreign experience, theoretical understanding of the phenomenon and the development of domestic approaches to the normalization of relations associated with cryptocurrencies.

Analysis of recent research and publications. Some aspects of the circulation and mining of cryptocurrencies in Ukraine were addressed (in terms of economic science) in the work of V. I. Liashenko and O. S. Vishnevsky – "Digital Modernization of the Ukrainian Economy as an Opportunity for Breakthrough Development". The advantages and possible threats of the prospective introduction of cryptocurrencies in our country were studied in the article by economists S. Arzhevitin and M. Savluk "Gold fever of the virtual world".

At the end of 2017 V. Hetman Kiev National Economic University held a scientific conference aimed at developing approaches to the definition of the essence of cryptocurrency, its importance for the Ukrainian economy, but participants did not reach a mutual consensus on the issues.

The legal status of cryptocurrencies is currently being actively explored abroad, with one of the most interesting papers is the article by M. Ponsfor "Comparative analysis of Bitcoin and other centralized virtual currencies: legal regulation in the People's Republic of China, Canada and the United States" [3], in which the author explores legal regulation of cryptocurrencies in different countries and outlines possible threats and prospects for using such currencies. The study includes reports of security commissions, social and political comments from secondary sources, as well as relevant comments from legislators from different countries. The results of such studies help determine the current understanding of Bitcoin on a global scale and assess how its legal regulation varies across countries.

The University of Cambridge issued the Global Cryptocurrency Benchmarking Study, which provides a thorough analysis of the economic nature of cryptocurrencies and explores the possibilities for their usage, describes alternative payment systems and various digital assets that can affect the economy.

The aim of the article is to analyze foreign experience in the regulation of relations related to cryptocurrencies, its essence, the domestic experience of the circulation of cryptocurrencies and the formation of author's approaches to the prospects and ways of legitimizing such currencies.

Research results. Bitcoin (Eng. Bit – bit and Coin – coin) is a decentralized payment system based on cryptographic algorithms, which allows you to make payments without intermediaries (banks, payment systems). Bitcoin appeared in 2009 in the form of an electronic document / memorandum signed by Satoshi Nakamoto, whose identity is still not defined [4].

The advantages of cryptocurrencies are: 1) the owners (individuals and legal entities) can fully control their digital assets, 2) there is no emission center, control and restriction of issue, 3) the ability to generate currency using the technology of "mining".

Many countries have different approaches to this issue. Of course, most countries are still studying this means of payment, since the market of cryptocurrencies is quite young compared to

the stock one, so the question of what cryptocurrency essentially is – a commodity, money, an intangible asset, a way of payment and exchange or something else – remains open. In different countries the attitude to the legal regulation of such currencies is significantly different, since it will depend on the principles of taxation, registration of transactions and property rights, mechanisms for protection against unlawful actions, etc.

The most progressive country in this area is Japan, where in 2016 a Law was passed regulating the activities of the exchanges: they became subject to registration at the Financial Services Agency, which received the right to inspect such businesses. According to this Law, cryptocurrency is an asset similar to a financial asset (asset-like values). In April 2017, Japan recognized Bitcoin as a legal means of payment. The legislator has foreseen the possibility of paying for certain services, general and digital goods. The law provides that Bitcoin acts as a currency as a means of exchange, and the official monetary unit is still only yen. Taxation of cryptocurrencies in Japan is carried out according to standard rules defined in the current tax legislation. Thus, the income received by an individual in the form of cryptocurrency is taxed on income (Income Tax), income of a legal entity in a digital currency – by corporate tax (Corporate Tax). Sales of cryptocurrencies are subject to the Japanese counterpart of value added tax [5].

The US Constitution consolidates the federal structure of the state, thus, legal regulation of cryptocurrencies is carried out not only by federal law, but also by the laws of individual states. In August 2015, the New York State Department of Financial Services introduced BitLicense, a Virtual Currency Business Activity License. In Washington state, in accordance with the provisions of the Uniform Money Services Act, cybercurrency is the subject of remittance, which means that companies can only transfer cryptocurrencies to a resident of Washington state only after obtaining the Washington money transfer operator license (Washington Money Transmitter License [6].

In September 2015, the American State Commission responsible for commodity futures (Commodity Futures Trading Commission), for the first time equated Bitcoin to property and commodities for taxation purposes. Accordingly, agreements on the purchase of goods for cryptocurrency are considered barter transactions. This led to ambiguity in the legislation on cryptocurrencies [7].

The EU also has regulatory documents governing the relations being addressed, such as the EU Directive 2009/110 / EC [8], as well as the Court of Justice judgment of 22.10.2015. In accordance with this decision, the court equalized the transactions in bitcoins to payment transactions with currencies, coins and banknotes, decided that they were not subject to VAT, and also recommended that all EU member states exempt cryptocurrency operations from VAT taxation. In general, the EU legislation classifies Bitcoin as a "digital representation of value not confirmed by a central bank or government body and is not tied to legally established exchange rates, which can be used as a means of exchange for the purchase of goods and services, their transfer and

storage, and can be acquired in electronic form" [9]. The term "cryptocurrency" was replaced by the European regulators with the term "virtual currency" and made a means of payment.

On December 21, 2017 the President of the Republic of Belarus, issued the Decree "On the Development of the Digital Economy" No. 8, which legalized mining of cryptocurrencies and the relevant transactions. According to the Decree, all transactions with cryptocurrencies in Belarus will not be taxed until January 1 of 2023. In the Decree, the concept of "cryptocurrency" is identified with the general notion of "digital mark". The Decree states that each individual has the right to "mine", buy, exchange and transfer cryptocurrency to other persons for fiat currency, or they can be gifted or left to inherit [10].

In Ukraine, there are still a few obstacles to the use of cryptocurrencies, according to the latest Decree of the National Bank of Ukraine (NBU), cryptocurrency does not fall under the legal definition of electronic money, means of payment, currency values, securities, etc. Such position of the NBU on the possibility of using cryptocurrencies cannot be described as conducive to the development of the relevant relations and consistent with world practice in general, since it creates obstacles in protecting the rights to this currency in courts, as well as complicates the fixing of cryptocurrency in companies' assets, putting into circulation, declaration, execution of fiscal obligations, etc.

Ukrainian legislation does not in any way regulate the issue of circulation, storage, possession, use and conduct of operations using cryptocurrencies, which results in the vulnerability of crypto-holders and their property rights. However, although there is no certainty as to the choice of a legal model for ensuring the circulation of cryptocurrencies in Ukraine, this does not mean that their circulation is outlawed. However, not uncommon are the cases of criminal prosecution of cryptocurrency owners, or those who directly use the technology of cryptocurrency "mining". According to the media, 200 "miners" were operating without any legal grounds in the premises of a scientific institution [11]. After a few weeks, the criminal prosecution of the owners of "mining" stations was stopped by a court decision. Also, in Ukraine, in early February 2018, a cryptocurrency "mining" center was discovered, whose owners allegedly transferred funds to finance terrorist groups in the occupied regions of the Donetsk and Luhansk regions [12]. Therefore, the issue of responsibility for offenses in this area is also relevant and they are caused by the lack of an integrated system of legal support for the circulation of cryptocurrencies on the territory of Ukraine.

At the same time, certain steps towards the introduction of cryptocurrency are still being made. Recently, two bills aimed at regulating activities related to cryptocurrencies were introduced. On October 10, 2017, the Verkhovna Rada of Ukraine registered the draft Law of Ukraine "On Cryptocurrency Circulation in Ukraine" No. 7183, which was designed to regulate the legal status of cryptocurrencies and operations with them. In this bill, the authors tend to the widespread world practice of comparing cryptocurrencies to property (commodity), more precisely, the bill determines that cryptocurrency is

a "code that can act as a means of exchange", and cryptocurrency operations are equated with barter ones. The said bill also provides for all types of liability for violating the legislation in the sphere of cryptocurrency circulation. Regarding the procedure for paying taxes, it is noted that cryptocurrency is the property of a "miner" (any individual or legal entity that, with the help of specialized equipment, ensures the efficiency of the system of blocks and cryptocurrency transactions) and will be the subject of taxation [13].

Another draft bill dated October 10, 2017 "On Stimulating the Market for Cryptocurrencies and Their Derivatives in Ukraine" suggests that cryptocurrency will be a new type of financial asset and will be defined as a decentralized digital value measure that can be expressed in digital form and functions as a means of value exchange, preservation or unit of accounting, is based on mathematical calculations, acts as their result and features cryptographic protection of accounting. The bill also provides for the creation of a crypto-auction. Any financial institution with a charter capital of not less than UAH 5 million can act as a crypto-auction. In order to manage the market, it is proposed to create a separate state authority that will issue licenses for crypto-auctions and cryptocurrency exchangers, as well as regulate their work [14].

Both draft bills are important for the legalization of cryptocurrencies. Ukraine will be able to open up new opportunities using the latest technologies and explore in which industry such currencies will be used as best as possible. Yet it should be noted that each of them is not perfect, since the very concept of cryptocurrency is not completely solved from the legal point of view, and the wording of both is rather controversial. For example, in the first of the drafts cryptocurrency is defined as program code acting as an object of intellectual property. As a result, the bill puts it in one line with a picture or a verse, even obligating with the payment of royalties. The second bill does not fully disclose the legal nature of such currencies, and it contains mainly technical concepts, not legal constructions. For example, "cryptography is a unit of exchange". Today, in the absence of a clear concept of further legal regulation of cryptocurrencies in Ukraine, it is difficult to clearly identify or compare this instrument with the concepts of existing economic, civil or tax legislation.

Conclusions. Currently, despite the proliferation of operations with cryptocurrencies in Ukraine, there is no legal regulation of the relevant set of public relations. The conceptual uncertainty of this issue will require further developments and discussions in the scientific expert environment and at the level between "society and the state regulator". The state's lack of attention to this issue is unlikely to be consistent with the sustainable development of the Ukrainian economy, the non-use of this modern instrument reduces the competitive advantages of our country in the modern world. Attempts to legitimize cryptocurrencies proposed in the draft bills submitted for consideration by the Verkhovna Rada of Ukraine require more attention and rework in the following areas:

• determination of the legal nature of cryptocurrency as a whole, not only

the technical basis for its "existence" and circulation;

• establishment of clear conditions and requirements for the transparency of the issuance of cryptocurrencies;

• outlining the requirements for financial monitoring of transactions using virtual currencies, which will increase liquidity and stop volatility, provide security guarantees for investors who want to invest in cryptocurrency, minimize the use of such currencies for criminal purposes, including for the financing of terrorist entities or organizations;

• recognize cryptocurrency as a financial asset for the purpose of legal regulation.

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FEATURES OF THE LEGAL REGIMES OF THE CATEGORIES OF LAND EXCEPT AGRICULTURAL LAND

Abstract. *The article deals with the issues of the legal regimes of different categories of land except agricultural land. The approaches which are contained in the science of land law concerning the concept of "legal regime of lands" are analyzed. The author focuses attention on the specifics of the legal regime of: a) land of residential and public buildings; b) lands of natural reserve and other nature conservation purposes; c) land of sanitary purpose; d) recreational land; e) land of historical and cultural destination; e) forestry land; e) the land of the water fund; e) land of industry, transport, communication, energy, defense and other purposes.*

Key words: *intended purpose of the land; category of land; legal regime of lands, land of residential and public buildings, land of water fund, forestry land.*

INTRODUCTION

The Land Code of Ukraine (Article 18), defining the composition of lands of Ukraine, refers to these lands all lands within its territory, including islands and land occupied by water objects. The given norm also provides for the possibility to find land plots of state property outside the territory of Ukraine, the legal regime of which is determined by the legislation of the respective country. Land within the territory of Ukraine according to the main intended purpose is divided into categories.

Category of land is a legal concept that allows to group the land in the basis of similar legal features. As follows, for example, from the contents of Art. 1 of the Code of the Republic of Belarus on land, the category of land – these are land, which are distinguished by the main intended purpose and have a legal regime of use and protection established by the legislation [1, p. 43].

The division of land under this criterion includes: a) agricultural land; b) the land of residential and public buildings; c) the land of natural reserve and other nature conservation purposes; d) land of sanitary purpose; e) lands for recreational purposes; e) land of historical and cultural destination; e) forest land; e) the land of the water fund; g) land of industry, transport, communications, energy, defense and other purposes.

Article 18 of the Land Code of Ukraine emphasizes that the categories of land in Ukraine have a "special legal regime", but at the same time does not

provide a definition of this phrase. It should be noted that for a long time at all stages of the development of Soviet legislation and branches of legal science on the use and protection of natural resources, the terms "legal regime of lands", "legal regime of waters", "legal regime of subsoil", "legal regime of forests", etc. ., but the content of these concepts in the literature was not disclosed. The first textbooks on Soviet land law used the term "legal regime", but did not use it consistently. The legal regime in them was called the legal characteristic of only certain categories of urban land and lands of the state forest fund.

1. LITERATURE REVIEW

In the modern special land-legal literature there are definitions of the legal regime of lands, which differ in their content. At the same time, on the basis of the generalization of these proposals, the authors of the scientific and practical commentary to the Land Code of Ukraine consider it appropriate to understand the legal regime of land as established by the law rules of conduct in relation to them [2, p. 104].

The given approach appears essentially correct and corresponds to the realities of the present. The proposed definition of the legal regime of land is universal for the legal characterization of all lands of Ukraine and their separate categories.

In the modern period, among the domestic scientists who studied at the doctrinal level the problems of the legal regime of land of different categories or its components, should be called P. Kulynych, O. Chopyk, M. Sklyar, O. Donets, M. Romanyuk, I. Karakash, T. Sytnyk, A. Droval, N. Halchinska, A. Bordenyuk and others.

There is a general for all lands of Ukraine and the specific (special) legal regimes of certain categories of land. For example, if the Land Code of Ukraine (Article 206) provides that the use of land in Ukraine is paid, then this is the general norm of the legal regime of land, which applies to all categories of land within Ukraine as a whole and in any part thereof. The same general rules include the provisions on control over the use and protection of land (Article 187 of the Land Code of Ukraine), etc.

The processes of reforming modern land relations directly or indirectly influence the legal regime of lands that are part of one or another category of land in Ukraine. Usually this causes the specificity of a particular group of land relations, which are formed in accordance to the land plots of different categories of land. Thus, the transition in the agrarian sector to the modern production of organic products, in particular organic farming, led to the need to identify land intended for the production of such products. It is obvious that, taking into account the requirements of the current legislation, the question of the peculiarities of the legal regime of land plots used for organic farming is actualized. In fact, this applies to other categories and types of land. This circumstance has not been left out of the attention of the scientists. Thus, in the textbook on land law of Ukraine, edited by A. Ripenko and O. Pashchenko, attention is focused not only on the general legal regimes of the lands of each category, but also on their specificity [3, p. 57].

2. RESULTS AND DISCUSSIONS

The legal regime of land used as an operational spatial basis is significantly

different from the legal regime of land used as a means of production. These differences are primarily manifested in the fact that the legal regime of land used as an operational basis includes a smaller number of legal norms governing land use. These are, in particular, the norms that establish the rules for using the land in the process of carrying out the activity for which the land is provided. This situation is explained by the fact that the land in this case does not function as a means of production, an element of the production process or another process of land use. To some extent, this approach determines the scope of legal regulation of relations that are formed, for example, with respect to land for residential and public buildings.

It should be noted that land used as an operational basis does not constitute a single category of land. Within the framework of this general function, they can, and sometimes actually, have a more specific purpose. The foregoing determines the differences in their legal regime. From this point of view, there are lands of residential and public buildings, lands of water resources, land of industry, transport, communication, energy, defense and other purposes, etc. In this case, within each of the categories of land it is necessary to distinguish between certain types of land, and among the types – varieties. For example, in the subcategory of land transport the land of rail, sea and other modes of transport are distinguished. Thus, the legal regime of land used as an operational basis is a complex system of types and varieties of the legal regime of land, depending on the specific purpose of use.

As is known, agricultural lands occupy the dominant place among the categories of land in Ukraine. Land legislation sets the priority of these lands in comparison with all other categories of land. From this point of view, all other categories of land could be attributed to non-agricultural land. But the term of "non-agricultural land" in the land legislation is used in a more narrow sense. This is, in particular, about the Chapter 13 of the Land Code of Ukraine, which entitled "Land of industry, transport, communications, energy, defense and other purposes". Logically, all lands that are used for any non-agricultural needs should be included here. But the land of residential and public buildings, although they have non-agricultural purpose, constitute an independent category of land and do not relate to the land of industry, transport, communications, energy, defense and other purposes. Therefore, today it would be advisable to identify the criterion for distinguishing between broad and narrow content in the law of the phrase "non-agricultural needs".

The current Land Code of Ukraine in the Ukrainian lands is distinguishes as an independent category of land – lands of residential and public buildings (Article 19). Today, the land of residential and public buildings, as an independent category of land within the settlements, actually forms the legal regime of all lands within the settlements. Unfortunately, the Land Code of Ukraine devotes only five articles to the legal regime of land for housing and public buildings, which is clearly not enough. Moreover, these articles almost do not contain regulatory provisions. In this regard, the main requirements for the

use and protection of these lands are determined by urban planning and land management documentation.

As emphasized by A. Ripenko and O. Pashchenko, the main legal difference between the land of residential and public buildings from other lands is their "land and town-planning" legal regime [3, p. 134]. In this case it is said that, for example, the use of these lands is carried out in accordance with the norms of urban development and land legislation, as well as on the basis of urban planning and zoning.

Among the specially protected lands, the lands of the natural reserve fund are considered to be the dominant category of land, which are land and water areas with natural complexes and objects of the nature reserve fund, which have been granted the appropriate legal regime. Thus, natural complexes and objects have a special environmental, ecological, scientific, aesthetic, recreational and other value. The legal regime of the land plot, within which the object of the nature reserve fund is located, directly depends on the legal regime of this object of the nature reserve fund, to which according to the established procedure is given the corresponding status.

The law prohibits on the lands of the nature reserve fund any activity that contradicts their intended purpose or poses a threat to the negative impact of man on the objects of the nature reserve fund.

It should be noted that the lands of the natural reserve fund may simultaneously belong to the lands of historical and cultural (Part 2 of Article 7 of the Law of Ukraine "On the nature reserve fund of Ukraine"), forestry (Article 70, 85, 100 of the Forest Code of Ukraine), the water fund (Articles 5, 8, 9, 94 of the Water Code of Ukraine), sanitary and recreational purposes (Article 9 of the Law of Ukraine "On the Nature Reserve Fund of Ukraine"), etc. That is, the lands of the natural reserve fund, as a rule, can have a double or even a triple "residence".

In addition to the lands of the nature reserve fund, the lands of another nature protection purpose are also included in the category of land, the characteristics of which legal regime is analyzed. The latter include land plots, within which there are natural objects of special scientific value. Such lands include, for example, land of valued natural territories, reserved for the next will (Article 55 of the Law of Ukraine "On the nature reserve fund of Ukraine").

The specificity of the legal regime of land plots with a special scientific value is as follows: a) use of land or part of it may have restrictions (encumbrances) to the extent provided by law or contract, subject to obligatory state registration according to the Law of Ukraine "On state registration of rights to immovable property and their burdens"; b) such lands are recognized as objects of complex protection. The law prohibits the commission of any activity that adversely affects or can affect the condition of natural complexes and objects or prevents their use for their intended purpose (Article 6 of the Law of Ukraine "On the Nature Reserve Fund of Ukraine"); c) in order to preserve the unique natural objects of special scientific value and exceptional importance for Ukrainian and world science, a state register of scientific objects that make up the national property is created [4].

Consequently, the features of legal regime of land plots, within which there are natural objects of special scientific value, are conditioned by the need to preserve unique natural objects.

In addition to the lands of the nature reserve fund in the composition of lands that are allocated in separate categories and are especially protected, also the lands of sanitary, recreation, and historical and cultural destination are also included. As follows from the contents of Article 162 of the Land Code of Ukraine regarding the provision of a special regime for the use of all these lands, these lands are subject to special protection, since its task is to ensure the conservation and reproduction of land resources, environmental values of natural and acquired land qualities.

The legal regime of land for sanitary purposes is determined primarily by natural resource law (Chapter 8 of the Land Code of Ukraine, Chapter 13 of the Forest Code of Ukraine), as well as by special laws (Fundamentals of Ukrainian Legislation on Health Care, Laws "On Resorts", "On Provision of Sanitary and epidemiological well-being of the population “," On environmental protection “, etc.). The peculiarities of the legal regime of these lands are predetermined primarily by the announcement, in the established manner, of the natural territory located within the given land, as a resort (Article 7 of the Law of Ukraine "On Resorts").

A characteristic feature of the legal regime of land for sanitary purposes is the restrictive mode of use. Thus, on these lands activities that contravene their intended purpose or may negatively affect their natural therapeutic properties are prohibited (Part 1 of Article 48 of the Criminal Code of Ukraine). The Land Code of Ukraine and the Law of Ukraine "On Resorts" considerably limits the possibility of privatization of these lands.

An independent place in the lands of Ukraine occupies land of recreational purpose, which according to Article 50 of Ukraine is used for recreation of the population, tourism and sports events. The above-mentioned legislative definition of the concept of these lands in the literature is considered imperfect, since for the rest of the population, tourism and conducting sports activities can be used land of any category [5, p. 369].

Within the lands of recreational purpose Article 52 of the Land Code of Ukraine prohibits activities that hinder or may hinder the use of such lands according to intended purpose. This is, in particular, about the change of the natural landscape; discharge of return water; unauthorized disposal of waste; noise pollution; other activities that may affect the natural state of these lands.

Lands for recreational purposes can be used both free of charge and on a fee basis. In the first case we are talking about the implementation of general land use, in the second – a special. Land of general use (beaches, squares, parks, etc.) cannot be transferred from communal to private property (Part 3 of Article 83 of the Land Code of Ukraine). In addition to the general legal regime of land for recreational purposes, the special legal regime of these lands is distinguished. M. Sklyar, investigating the legal regime of lands for recreational purposes, substantiated the conclusion "on the impracticability of conversations regarding special legal regimes of lands for recreational purposes". In

her opinion, the general legal regime of these lands defines the special requirements for owners and users of such lands, the order of their protection, management of these lands. She believes that there is not enough ground for the so-called legal regimes of these lands [6, p. 5].

This conclusion seems to be controversial. System analysis of current environmental legislation suggests that it operates with the notion of "recreational zones", to which Article 63 of the Law of Ukraine "On Environmental Protection" includes land and water areas, which are intended for recreation of the population, tourism and for sporting events. These zones are created not only within the boundaries of recreational lands, but also on other lands (water fund, forestry, etc.). This necessitates the existence of special legal regimes of land for recreational purposes.

The legal regime of land of historical and cultural purpose is determined by the land legislation, as well as legislation on the protection of cultural heritage. In particular, it has the following features:

– these lands are subject to the legal regime of especially valuable lands (Article 150 of the Criminal Code of Ukraine);

– holders of land rights (land owners and land users) are obliged to provide free access to cultural monuments with a view to their excursion (Article 12 of the Law of Ukraine "On the Protection of the Cultural Heritage");

– landowners and land users are obliged to ensure the preservation of the cultural heritage site located on the lands that they use and conclude safeguard agreements with the cultural heritage protection authorities in accordance with the procedure approved by the Resolution of the Cabinet of Ministers of Ukraine dated 28.12.2001 No. 1768. Such an agreement establishes a mode of use and protection of a particular land plot of historical and cultural purpose.

It should be noted that the specially protected lands are characterized by a restrictive regime of use. This in fact indicates that the legislator gives priority to the protection of these lands, by imposing certain restrictions on their use.

The legal regime of the lands of forestry is determined by the provisions of Chapter 11 of the Land Code of Ukraine, the Forest Code of Ukraine and the Law of Ukraine "On the moratorium on continuous cutting on mountain slopes in fir-beech forests of the Carpathian region".

Its features are as follows: a) lands of this category may be in the state, communal and private property (Part 1 of Article 56 of the Land Code of Ukraine); b) foreign legal entities, citizens, as well as stateless persons, cannot have privately owned land for forestry purposes. If they have received forests in their inheritance, then such forests are subject to alienation within 1 year (Part 2 of Article 13 of the Forest Code of Ukraine); c) owners and users of forest land plots are required to implement a set of measures for the protection, rational use and extended reproduction of forests (Article 19–21 of the Forest Code of Ukraine); d) in the event of a change in the intended use of forest land plots in order to use them for non-forestry purposes, the authorities that make such decisions simultaneous-

ly decide on the conservation or decommissioning of trees and shrubs and on the use of the wood produced (Part 1 of Article 58 of the Forest Code of Ukraine); e) private ownership of forests is terminated in the event of termination of ownership of forest land plots (Article 15 of the Forest Code of Ukraine).

The legal regime of the lands of the water fund is determined by Chapter 12 of the Land Code of Ukraine and the Water Code of Ukraine. The specificity of the legal regime of this category of land is determined mainly by the land-water nature of the legal regulation of the relevant relations and the main purpose of land, which is the use, maintenance and protection of water objects and water facilities (devices). The environmental function of these lands is manifested in ensuring the protection of water bodies from pollution, contamination and preservation of their water content.

Features of the legal regime of these lands are as follows: a) the land of the water fund may be in the state, communal and private property (Part 1 of Article 59 of the Land Code of Ukraine); b) – work related to the construction of hydrotechnical, linear and hydrometric structures, deepening of the bottom for navigation, mining of minerals (except sand, pebbles and gravel in the channels of small and mountain rivers), clearing the channels of rivers, channels and bottom of reservoirs, laying cables, pipelines, other communications, as well as drilling and exploration works can be carried out on the lands of the water fund (Part 1 of Article 86 of the Water Code of Ukraine); c) the right of private ownership on water bodies is terminated in case of termination of rights to the land plot of water fund.

In order to ensure the protection and rational use of a water object in or around it, protected land areas with a special regime of land use may be allocated: coastal protective strips; coastal strips of waterways; zones of sanitary protection.

In determining the land of industry, transport, communications, energy, defense and other purposes as an independent category, the legislator accepted the fact of providing land for certain needs. In addition, the assignment of land to this category also takes into account the specific status of the entity to which the relevant land plot has been provided. So, according to Article 77 of the Land Code of Ukraine, lands of defense, as a type of category of land under consideration, the law recognizes land provided for placement and permanent activity of military units, institutions, military educational institutions, enterprises and organizations of the Armed Forces of Ukraine, other military formations formed in accordance with the legislation of Ukraine.

This category of land unites a number of types of land, depending on the purpose of their provision. In the process of using these lands various goals are met, the list of which is open, that is, is not exhaustive. A characteristic feature of the legal regime of such lands in this category is that all types of lands that are part of it are used for special non-agricultural purposes.

The legal regime of this category of land is determined by Articles 66, 67 of the Land Code of Ukraine and other normative-legal acts (the Air Code of Ukraine, the Code of Merchant Ship-

ping, the Laws of Ukraine "On transport", "On rail transport", "On pipeline transport", "On road transport", "On use of land of defense “," On electric power “," On telecommunications “," On industrial parks “, etc.).

Among the common features of the legal regime of these lands are usually distinguished by the following: a) these lands have a special non-agricultural purpose; b) determination of the size of the relevant land plots; c) internal and external zoning is carried out in relation to them. It means establishing around certain objects of sanitary-protective, security and other zones; d) in some cases, territories designated for other non-agricultural needs may not be allocated as separate plots of land. Thus, for underground pipelines, separate land plots are not diverted, but the regime of the territory itself undergoes substantial changes: security or sanitary protection zones are established or the possibility of establishing land servitude is implemented [2, p.195–196].

The legal regime of special non-agricultural land is characterized by certain features: a) they serve as a space-operational basis for the placement of objects and facilities of various economic purposes; b) they are usually unsuitable for farming or forestry or are of poor quality; c) for the most part, special non-agricultural activities on these lands are engaged in legal entities (enterprises, institutions and organizations); d) they are used for the purpose caused by the activity of objects located on them; e) mainly harmful nature of the production activity of enterprises located on them, which in many cases requires the creation of special protective zones; e) the development of scientific and technological progress leads to the emergence of new forms of targeted use of these lands (nuclear power plants, telecenters, airports, etc.).

The legal regime of all types of land in this category has certain characteristics. Thus, the land of defense can be only state-owned and provided to the relevant subjects on a permanent basis. The legislator calls as the lands of defense those land plots, which are used not only by the Ministry of Defense of Ukraine, but also other law enforcement agencies, the circle of which is unclear (Part 1 of Article 77 of the Land Code of Ukraine). So, the legal regime of land of defense is characterized by a special subjective composition of permanent land users. Finally, the composition of the land of defense is rather heterogeneous. At the same time, the legal regime of certain types of land of defense remains insufficiently defined.

CONCLUSION

Considering the concept of legal regime, it should be noted that it can apply to all lands of Ukraine as a national wealth, and in relation to the lands of certain categories or types of land. While analyzing the legal regime of certain categories of lands, we should understand that the specific legal status of a particular category depends on the main purpose of land transferred into ownership or provided for use. It should be borne in mind that the land provided for use or transferred to the property at the same time serves as the object of property rights, land use rights, management, legal protection, etc. In turn, the main provisions of special legal regimes are enshrined in the relevant chapters of the Land Code of Ukraine.

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THE PROMOTION OF SUSTAINABLE DEVELOPMENT THROUGH TRADE INSTRUMENTS IN THE EU: CASE STUDY FOR UKRAINE

Ukraine is lacking a systematic and comprehensive approach to achieving the goals of sustainable development in trade, since these goals are not integrated into the public policy-making process. The aim of this article is to analyze the European Union (EU) experience of using the trade instruments to implement sustainable development. The authors give special consideration to the use of the 'new generation' free trade agreements, which include the chapters devoted to sustainable development, in the EU. The Opinion of the European Court of Justice on the EU-Singapore free trade agreement in terms of sustainable development provisions is highlighted; since it may change the future EU trade policy and affect the EU's "soft" approach to the means ensuring the implementation of trade agreements, making the provisions of sustainable development agreements more effective. In this paper, we also explore the chapters of trade agreements on sustainable development, to which Ukraine is a party. Based on analysis of the EU trade policy, it is proposed to change the conceptual basis of implementing Ukraine's trade policy in order to achieve the sustainable development goals.

Introduction. The 2015 UN Summit approved new benchmarks of the global development, namely 17 Sustainable Development Goals[1]. Ukraine, like the other UN Member States, joined the global process of ensuring the sustainable development. It requires conceptual changes in all aspects of life. The important role and impact on sustainable development is exercised by trade, particularly international trade in terms of globalization. While back in 1970 the trade accounted for less than 20% of the global GDP, currently it represents a half of the world's GDP[2]. Ac-

[1] United Nations (2015). *Sustainable development goals*. Available at: https://www.un.org/sustainabledevelopment/sustainable-development-goals/ (accessed 17 April 2018).

[2] European Commission (2017). *Reflection paper on harnessing globalization*. COM(2017) 240. Available at: https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation_en.pdf (accessed 9 April 2018).

cording to 17 Goals, trade should contribute to sustainable development. Although it is not indicated as a separate sustainable development goal, it is mentioned as a target within individual goals. For example, Goal 17 (Partnership) defines trade as a tool to achieve the sustainable development goals and calls for promotion of universal, rule-based, open, non-discriminatory and equitable multilateral trading system, and a significant increase in exports from developing countries. Despite all the positive aspects of globalization, which resulted in an active trade liberalization, it features some challenges. In May, 2017, the European Commission presented an analytical report on 'harnessing' globalization, which stresses not only the positive effects of globalization, but also challenges, including for employment rate and environment[1].

Trade liberalization may lead to lower standards of labour and environmental protection to reduce costs, for example by outsourcing to developing countries which raises the issue of fair working condition and 'fair trade'[2]. Typically, the immediate economic effects of increasing access to markets are estimated, and the long-term costs are ignored, including the limitation of regulatory policy autonomy. Thus, the trade development target may come into conflict with a number of targets inherent in the other sustainable development goals, for example to reduce the greenhouse gas emissions in economy within Goal 13 'Climate Action', since trade provides for one of the main components, i.e. transportation, increased movement of goods and services. In turn, transport is responsible for a significant share in greenhouse gas emissions[3],[4]. Therefore, sustainable development in the conventional sense of the interdependence of environmental, social and economic components, should be an integral part of the trade policy.

Despite the fact that a half of Ukraine's gross domestic product is generated by exports, Ukraine has not considered the issues of trade in the context of sustainable development, unlike the EU, where sustainability is an important element of the trade policy. Sustainable development is not listed among the strategic goals of trade development in Ukraine's Export Strategy (a "roadmap" of strategic trade development for 2017–2021)[5], in which it is mentioned only in the context of the need to develop and use innovations reducing the production negative impact on the environment. Besides, this issue is not considered in the Sustainable Development Strategy "Ukraine-2020" as the core document defining the long-

[1] Ibid.

[2] Radin, T. J. and Calkins, M. (2006). The Struggle Against Sweatshops: Moving Toward Responsible Global Business. Journal of Business Ethics, 66 (2-3): 261–271.

[3] Sharma, R. K. and Kumar, S. (2012). Impact of Transportation System on Environment in Developing Countries "A Review". International Journal of Research Review in Engineering Science and Technology, 1(2): 61–66.

[4] Van Essen, H. (2008). The Environmental Impacts of Increased International Road and Rail Freight Transport. Available at: http://www.oecd.org/greengrowth/greening-transport/41380980.pdf (accessed 20 April 2018).

[5] The Cabinet of Ministers of Ukraine (2017). Export Strategy of Ukraine 2017–2021 (roadmap on strategic development of trade). *Official Bulletin of Ukraine*. 2018. № 11.

term strategic development directions of Ukraine[1]. The above confirms the relevance of studying the problem of integrating the sustainable development goals into Ukraine's trade policy, taking into account the analysis of the foreign states' experience of introducing the best practices in this field, which will serve as the goal of this article.

1. EU trade policy and the sustainable development. EU pursues one of the most active policies in sustainable development implementation through trade. Thus, the EU Strategy "Trade for All" was adopted almost immediately after approval of the UN Sustainable Development Goals 2030, indicating the EU's focus on responsible trade as a sustainable development tool[2]. The EU operates the Generalized System of Preferences (hereinafter – GSP) with respect to the import of goods originating from the least developed and developing countries and meeting certain criteria, including compliance with international standards in the field of environment and labor. The preferences can imply the exemption from customs duty or tariff reductions. Thus, a country willing to obtain these preferences must provide written evidence of the applying the legislation, e.g., in observance of labor rights, which embodies the standards stipulated by the relevant International Labor Organization (ILO) Conventions. Besides, certain incentives are provided when the country's legislation contains adequate environmental protection standards[3]. GSP provides for suspension of preferences in case of violation of obligations. For example, the preferences were suspended in Belarus, Burma (now Myanmar) and Sri Lanka because of the labor rights violations[4]. The purpose of these provisions is to help the GSP beneficiary countries to improve their environmental and social standards. These preferences are also considered as a compensation for additional costs of raising the countries' respective standards[5]. In 2014, a new GSP came into force[6], which also provides incentives, but now subject to compliance with sustainable development goals based on an integrated approach,

[1] The President of Ukraine (2015). Strategy on Sustainable Development "Ukraine 2020". *Official Bulletin of Ukraine*. 2015. №4.

[2] European Commission (2015). Trade for all. Towards a more responsible trade and investment policy. Available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf (accessed 9 April 2018).

[3] Council of the European Union (1998). Applying a multiannual scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001. Regulation №2820/98 of 21 December 1998. Official Journal of the European Union, 30.12.1998, L 357: 1.

[4] Lukas, K. and Steinkellner, A. (2010). Social standards in sustainability chapters of bilateral free trade agreements. Ludwig Bolzmann Institute of Human Rights. Available at: https://media.arbeiterkammer.at/wien/PDF/studien/Studie_Nachhaltigkeit_englisch.pdf (accessed 13 April 2018).

[5] Cuyvers, L. (2014). The sustainable development clauses in free trade agreements of the EU with Asian Countries: perspectives for ASEAN? *Journal of Contemporary European Studies*, 22(4). Available at: https://www.tandfonline.com/doi/abs/10.1080/14782804.2014.923752 (accessed 11 April 2018).

[6] The European Parliament and the Council of the EU (2012). Applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) №732/2008: Regulation №978/2012 of 25 October 2012. *Official Journal of the European Union*, 25 October 2012, L. 303: 1.

which is recognized in international conventions and specific instruments, such as the Rio de Janeiro Environment and Development Declaration 1992, Johannesburg Sustainable Development Declaration 2002, and others.

Besides, according to Part 5 of Article 3 of the EU Treaty, the Union in its relations with the world supports and promotes the planet sustainable development and free fair trade. It should be noted that the "fair and ethical" trade in the EU is seen as a sustainable development tool[1].

The EU introduced a special analytical and prognostic tool, Sustainability Impact Assessment, used by independent external experts during negotiations of trade agreements and for preliminary identification of their potential environmental, economic and social impact[2],[3]. From 1999 to March 2016, the EU has made more than 20 assessments of international trade impact on sustainable development[4], including the assessment during negotiations of a free trade area within the EU-Ukraine Association Agreement[5]. This assessment provides for a report on the potential economic, social and environmental agreement impact and development of recommendations to improve its provisions. The recommendations based on the results of assessing the international trade impact on sustainable development during negotiations of the free trade area within the EU-Ukraine Association Agreement provided for inclusion of a separate chapter into the Agreement, which is dedicated to sustainable development in the context of trade liberalization.

Ukraine does not conduct a separate assessment of the trade impact on sustainable development. Although paragraph 139 of the Preliminary Action Plan on the EU-Ukraine Association Agreement Implementation 2014[6] provided for submission of the methodology of assessing the trade impact on sustainable development in December 2017 and carrying out this assessment in December 2018 by the relevant min-

[1] CTA Brussels Office (2008). *Does Fair Trade contribute to sustainable development?* Available at: https://brusselsbriefings.files.wordpress.com/2012/10/br-5-reader-br-5-fair-trade-eng.pdf (accessed 1 February 2018).

[2] Korol, V. (2013). Legal determinants and barriers for implementation of export strategies of the parties of Ukraine's foreign economic activity within the free trade areas with the EU and CIS countries. Available at: https://drive.google.com/file/d/0BwuVse3YcpX9azlMaUw0WTR1TVE/view (accessed 15 November 2017).

[3] European Commission (2018). Sustainability Impact Assessment. Available at: http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/index_en.htm (accessed 10 November 2017).

[4] European Commission (2016). Handbook for trade sustainability impact assessment: second edition. Available at: http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154464.PDF (accessed 10 November 2017).

[5] European Commission (2009). Trade sustainability impact assessment of the negotiations on a free trade area between the EU and Ukraine: Position Paper. Available at: http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc_143165.pdf (accessed 10 November 2017).

[6] The Cabinet of Ministers of Ukraine (2014). On the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (expired). Official Bulletin of Ukraine. 2014. № 77.

istries, the said methodology has not been developed. Currently, a new Action Plan to Implement the EU-Ukraine Association Agreement[1] does not provide for development of such a methodology and assessment of the trade impact on sustainable development; it only indicates a need to develop and submit a bill on strategic environmental assessment (which is adopted already).

Another means of integrating the Sustainable Development Goals into the EU trade policy is inclusion of sustainable development commitments into the free trade agreements with the third countries. Making sustainable development one of the main goals of the EU trade policy, the European Commission has established an objective to include separate chapters on sustainable development in free trade agreements[2].

Although the free trade agreements containing the sustainable development principles date back to the 1990's, the search for a more systematic and coherent approach to sustainable development in EU trade agreements was started much later, in the late 2000's. The inclusion of the common trade policy into the goals and principles of the EU external action under the Lisbon Treaty has led to changes in this area by transition to a more value-oriented approach towards the trade policy[3]. The European Parliament takes a proactive stance to inclusion of sustainable development provisions in the EU common trade policy, including the trade agreements. In its Resolution 2010, it calls the European Commission to include a number of international social and environmental protection standards in all free trade agreements being negotiated in a consistent manner[4].

The first agreement, which included the sustainable development provisions, was a free trade agreement between the EU and the Republic of Korea. A separate sustainable development chapter is envisaged in the EU Association Agreement with the Central America. Recently, the EU and Japan finalized negotiations on Economic Partnership Agreement, where a separate chapter is devoted to sustainable development. On September 21, 2017, the Comprehensive and Economic Trade Agreement between the EU and Canada came into force, Chapter 22 of which is devoted to sustainable development problems based on an integrated approach of interdependence of the three sustainable development components. Besides, the EU signed free trade agreements con-

[1] The Cabinet of Ministers of Ukraine (2017). On the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand. *Official Bulletin of Ukraine*. 2018. №24.

[2] European Commission (2015). Trade for all. Towards a more responsible trade and investment policy. Available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf (accessed 9 April 2018).

[3] Bahar, G. (2018). EU competences on trade policy: Opinion 2/15 and prospects for future EU trade agreements. Available at: http://www.ikv.org.tr/images/files/EU%20Trade%20Policy%20Competences%20Jan-2018BaharGuclu(1).pdf (accessed 13 April 2018).

[4] The European Parliament (2010). Resolution of 25 November 2010 on human rights and social and environmental standards in international trade agreements. Available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010–434 (accessed 9 April 2018 p.).

taining the sustainable development commitments with Vietnam, Colombia, Peru and Ecuador.

Such agreements are called 'the new generation' agreements, i.e. trade agreements, which include, besides conventional agreement elements, such as the reduction or elimination of tariffs and non-tariff barriers, the other elements related to or even inseparable from trade. Most of these agreements provide for mutual commitments to develop and promote trade and economic relations so as to encourage sustainable development. The basic commitments require each party to create its own level of protecting the environment and labor rights and to adopt or modify its regulations or policies in line with the internationally recognized principles of environmental and labor standards or agreements to which the country is a party. These separate sections or chapters can also contain some commitments, for example, related to timber trade and fish products. Usually, these provisions do not provide for substantially new commitments in the field of environmental protection and labor rights, but usually confirm certain existing international commitments. Their aim is to ensure the absence of adverse impact on trading and investments conditions because of different protection levels. In these agreements, the EU places equal importance on the labor and environment protection[1].

An important role in confirming the relationship between sustainable development and common commercial policy is played by the Opinion 2/15 of the EU Court of Justice dated 16 May 2017[2]. In connection with the EU's negotiations of a free trade agreement with Singapore, the European Commission requested the Court to issue an opinion on the EU competence in conclusion of this agreement. The Court notes that the EU Treaty and the Treaty on the Functioning of the EU (TFEU), which came into force on December 1, 2009, are very different from the previous EU Treaties in the context of the common commercial policy, and include new aspects of modern international trade. According to the Court, one of the most important innovations is the TFEU provision enshrined in Part 1 of Article 207, according to which the common trade policy shall be implemented in the context of principles and objectives of the Union external activities. These principles and objectives are enshrined in Article 21 of the EU Treaty, including the promotion of sustainable development of the economy, society and environment in developing countries in view of the main goal, to eradicate poverty and to promote the development of international measures to preserve and improve the environment and reasonable management of the world's natural resources to ensure sustainable development. EU's commitments to integrate these principles and goals in the implementation of the common commercial policy are obvi-

[1] European Commission (2017). Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs). URL: http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf (accessed 13 April 2018).

[2] Court of Justice (2017). Opinion 2/15 of the Court (full Court) of 16 May 2017. Available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=190727&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=882092 (accessed 12 April 2018).

ous. Thus, according to Part 3 of Article 21 of the EU Treaty, the Union adheres to the principles and relentlessly follows the objectives set out in Parts 1 and 2 during the development and implementation of various directions of its external activities covered by this chapter and Part 5 of the TFEU. In its turn Part 5 of the TFEU discusses the issues of a common commercial policy. The same is confirmed by Article 205 of the TFEU, according to which the Union activities on the international scene are guided by the principles, pursue the goals and are implemented according to the terms set out in Chapter I of Section V of the EU Treaty. Chapter 1 of the said section includes Article 21, establishing the principles and objectives of the Union external activities. It is also important to pay attention to Articles 9 and 11 of the TFEU, which describe an important role of environmental protection requirements, promoting a high level of employment, and availability of adequate social protection safeguards in the implementation of the Union policies and actions. Therefore, the Court concluded that sustainable development is an integral part of the common commercial policy, thereby confirming a new EU's value-oriented approach to the trade policy.

However, a dissenting opinion was expressed by Advocate General, who considers that these provisions fail the test to "be determined as measures which are not purely economic by nature, but still fall within the scope of the common trade policy"[1]. The Advocate argues that some provisions related to the sustainable development activities do not promote, do not facilitate or do not govern trade and have no direct and immediate effect thereon. That is, they do not regulate the use of the trade policy tools to implement the sustainable development. The free trade agreement provisions establish the minimum standards of environmental protection and labor rights in isolation from their possible effects on trade, so they are not covered by the EU common commercial policy.

Still, supporting the position of the Court, such sustainable development provisions have an impact on trade, because they reduce the risks of significant differences between production costs in the countries, which are the parties to the free trade agreement. This will facilitate the participation of undertakings in free trade on equal terms. Besides, environmental standards are often used as an indirect means of protecting markets and trade barriers. Indeed, the contradictions in the level of environment and labor rights protection between countries can have a direct impact on international trade. Lower protection standards of one party can increase trade and investment in its territory. As Canada often notes in trade agreements, the countries may provide that a dispute can be raised only if the party is able to prove that a violation, e.g. of the labor standards, is related to trade. A fine for violation would be

[1] Advocate general Sharpston (2016). Opinion of on 21 December 2016. Request for an Opinion pursuant to Article 218(11) TFEU – Conclusion of the Free Trade Agreement between the European Union and the Republic of Singapore – Allocation of competences between the European Union and the Member States. Available at:: http://curia.europa.eu/juris/document/document.jsf?text=&docid=186494&pageIndex=0&doclang=EN#Footref370 (accessed 12 April 2018).

equivalent to the negative trade effects, i.e. the fine calculation requires quantification of the impact on trade.

Currently, the EU keeps discussing a ’soft’ approach and a rather declarative nature of sustainable development provisions in the EU free trade agreements because of the lack of effective mechanisms to ensure their implementation, in contrast to the mechanisms provided for the trade liberalization commitments[1],[2]. The problem of such agreements is considered a lack of responsibility and focus mainly on the mutually agreed solutions to the problems, which arise, while they typically provide for a two-tier (1 – consultations, 2 – creation of an expert group that would help find a solution) procedure to settle disputes between states. However, this procedure is separated from the general mechanism to settle the disputes under the agreement, which provides for a compensation for its breach. Although the development of a new separate dispute resolution procedure adds importance to the sustainable development provisions in agreements, the system still remains ’soft’ and not legally binding. However, in 2017 the European Commission started discussions to improve the implementation and fulfillment of sustainable development commitments contained in the free trade agreements[3]. Some authors suggest making the trade liberalization dependent on the state of compliance with sustainable development requirements and introducing specific sanctions for non-compliance[4]. Besides, an important role in this regard should be played by the above Opinion, in which Court of Justice refers to Part 1 of Article 60 of the 1 Vienna Convention on the Law of Treaties, according to which, in the event of breach of the social and environmental protection commitments provided for in a Free Trade Agreement with Singapore, the parties shall be entitled to terminate or stop trade liberalization. Such a position of the Court can subsequently enhance the implementation of sustainable development provisions and create incentives for compliance with sustainable development provisions provided for in trade agreements.

2. Ukrainian trade policy and the sustainable development. The most recent free trade agreements with Ukraine also contain specific provisions on sustainable development, although to varying degrees. The Free Trade Agreement with the European Free

[1] Harrison, J., Barbu, M., Campling, L., Richardson, B., Smith, A. (2018). Governing Labour Standards through Free Trade Agreements: Limits of the European Union’s Trade and Sustainable Development Chapters. *Journal of Common Market Studies*. Available at: https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12715?af=R (accessed 5 April 2018).

[2] Transport&Environment (2017). Trade and Sustainable Development: a chance for innovative thinking. Available at: https://www.transportenvironment.org/sites/te/files/publications/2017_10_Trade_sustainable_development_final.pdf (accessed 5 April 2018).

[3] European Commission (2017). Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs). URL: http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf (accessed 13 April 2018).

[4] Harrison, J., Barbu, M., Campling, L., Richardson, B., Smith, A. (2018). Governing Labour Standards through Free Trade Agreements: Limits of the European Union’s Trade and Sustainable Development Chapters. *Journal of Common Market Studies*. Available at: https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12715?af=R (accessed 5 April 2018).

Trade Association countries, signed in 2010, in its final provisions provides for a commitment to revise the agreement by the Joint Committee three years after its entry into force in the background of changes in trade and sustainable development. The Agreement entered into force in 2012, though the data on its revision in connection with sustainable development are missing. Thus, in the context of sustainable development, this Agreement is declarative in nature, consolidating its intentions and commitment to social and economic development, health and safety, ensuring the fundamental rights of workers, including the principles established by the relevant Conventions of the ILO; a decision to perform the agreement for environment conservation and protection in the Preamble only. That means that the Agreement does not provide for specific commitments and measures to protect the environment and labor rights.

The EU-Ukraine Association Agreement contains Chapter 13 devoted to issues of trade and sustainable development and indicates a commitment to the effective implementation of fundamental ILO Conventions and multilateral agreements on environmental protection. Some provisions are defined on the timber trade and fish products. This chapter identifies institutional mechanism for implementing these provisions. In May 2017, the first meeting of Ukraine-EU Subcommittee on Trade and Sustainable Development created pursuant to Article 300 of Chapter 13 was held, which discussed the issues related to fulfillment of commitments contained in this chapter of the Agreement. However, based on analysis of the Agreement provisions related to trade and sustainable development it is impossible to determine the consequences of their non-implementation or violation. For example, Article 301 provides for the right to convene the group of experts to examine the matter, which was not satisfactory addressed through governmental consultations. This group shall submit a report to the agreement parties, and the parties shall endeavor to accommodate advice or recommendations of the group, however, the Agreement does not provide for anything in the case where the parties fail to fulfill these recommendations.

The Free Trade Agreement between Canada and Ukraine, despite the fact that the concept of ’sustainable development’ is not explicitly mentioned in the text, contains separate chapters providing for certain commitments in the field of environmental protection and labor (Chapters 12 and 13). It should be noted that Chapter 13, including Annex 13-C, devoted to the labour issues, provide for financial penalties, which may not exceed USD 15 million annually. Establishment of a specific liability is an effective means, addressing the issue of the largely declarative nature of sustainable development provisions in free trade agreements. However, no specific sanction is provided for breach of environmental regulations. Although the Agreement establishes a dispute settlement procedure, however, with a focus on solving the problems through consultations at different levels, first at the level of the Environment Committee, composed of the parties; representatives, and then at the ministerial level. In the event of failure to settle the issue, a review panel shall be established, which shall develop a final report, ac-

cording to which the parties have to agree on a mutually acceptable action plan to address the problem. This plan should be communicated to the public. However, the consequences of the action plan failure are not established.

Importantly, the provisions on sustainable development in these trade agreements are the result of requirements and practices of the countries with which the agreement was signed, and not of Ukraine[1]. Based on the analysis of provisions on the protection of labor rights and environment, we can conclude that the states, which are parties to the Agreement, dictate their conditions. For example, Canada in its trade agreements with the other countries uses sanctions in the form of a fine. If we compare the provisions of the Free Trade Agreement between Canada and South Korea, we can conclude an almost the same structure and content of the chapter on protection of labor rights, as provided for in the Free Trade Agreement with Ukraine, with the exception of certain provisions on liability for breach of commitments. The same is true for the EU trade agreements, e.g. the provisions of the Free Trade Agreement with South Korea are almost identical to the provisions contained in the Association Agreement with Ukraine. It means that Ukraine does not consider sustainability as an integral part of the national trade policies and does not have its own approach to the integration of sustainable development in trade. The lack of own position can lead to significant regulatory restrictions in the future due to assumed commitments. Therefore, one should note the position of some authors who believe that bilateral free trade agreements, even more than the multilateral international regulations, may restrict the ability of the governments to take steps to enhance the social policies or improve the environmental protection[2] (Orbie et al., 2016). Thus, Ukraine, having the priorities enshrined in strategic documents and a systematic approach to integrating the sustainable development goals into its trade policy can defend its own interests, and not only take the position of its trading partner.

Conclusions.

1. It is required to change the conceptual basis of the trade policy implementation to achieve the sustainable development goals. Trade policy should be implemented so as to focus not only on reducing costs and obtaining immediate benefits, but also to support the long-term objectives of the state.

2. Ukraine is lacking a systematic and comprehensive approach to achieving the sustainable development goals in trade, because the sustainable development goals are not integrated into the public policy-making process. The strategic documents of Ukraine, including the Sustainable Development Strategy of Ukraine 2020 and Ukraine’s Export Strategy should clearly stipulate the provision on sustainable development

[1] Resource and Analytical Center ’Society and Environment (2017). Environmental issues in trade policy of the EU and Ukraine: the path to sustainable development. Available at: http://www.rac.org.ua/uploads/content/405/files/webenvironmentalissuessocietyandenvironment2017ua.pdf (accessed 19 April 2018).

[2] Orbie, J., Martens, D., Oehri, M., Putte, L. (2016). Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements. *Third World Thematics: A TWQ Journal*, 1(4): 526–546.

as an integral part of trade and trade as a means of achieving the sustainable development.

3. Sustainable development issues should be an integral part of negotiations to conclude the further trade agreements. Value-oriented approach should be the basis of decisions to conclude the new trade agreements. However, Ukraine should develop its approach to the relationship between sustainable development and trade, in order to include the issues relevant for our country, not just for the other party, in free trade agreements. That means it is important not to join the existing provisions on sustainable development of the trading partner, but to propose one's own provisions based on the features of the national economic, environmental and social policies. During the negotiations, Ukraine should proceed from its strategic socio-economic development goals, an integral part of which should be the sustainable development goals. The future trade agreements should provide for specific measures and liability for their failure in order to shift from declaratory to effective mechanism.

4. Ukraine does not conduct a separate assessment of the trade impact on sustainable development, which requires the development of a methodology to assess the sustainable development impact on trade, and performance of such an assessment during negotiations to conclude trade agreements. Besides, this methodology should provide for mandatory tracking of the agreement deliverables (ex-post assessment) with a view to making appropriate changes by enshrining the provision on the potential agreement revision in view of development of sustainable development and trade relations.

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CRIMINAL–LEGAL SCIENCES

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FUNDAMENTAL PROBLEMS OF CRIMINAL LIABILITY

1. Proposing "Fundamental problems of criminal liability" (for convenience purposes referred to hereafter as CL) as the subject of discussion, I proceeded from the fact that Ukraine's status of a legal, democratic state (as stated in Article 1 of the Constitution of Ukraine) implies that CL is one of the main criminal law means of state response to criminality. Along with the Criminal Code, the current Criminal Code of Ukraine, 2001 (hereinafter – the CC) also provides for other steps of criminal law nature (criminal law measures), among which CL takes a special place. But both CL and other criminal-law measures are to be carried out within the limits of the state policy of combating crime.

It is also important for the public to find out the effectiveness of the implementation of CL, which is determined by the ratio of goals to the CL, and the actual results that are achieved by its implementation. It also deserves attention to the substantiation of proposals for improving the relevant criminal law on CL and the practice of their application.

2. Taking into consideration the above-mentioned facts, the author suggests discussing the following fundamental problems of the CL:

1) criminal law policy as a part of the state policy of combating crime and criminal prosecution as a measure of criminal law response to crime;

2) CL as a form of legal responsibility in the system of criminal-law measures;

3) criminal law relations, within the framework of which CL is implemented;

4) the essence, content of the CL and its forms;

5) the concept and types of CL;

6) the basis of the CL and the circumstances that exclude it;

7) the goals of CL and the effectiveness of their implementation;

8) exemption from CL;

9) ways to improve the Criminal Code of Ukraine regarding CL and the practice of applying criminal law that regulates CL and exemption from it.

3. Examining the problems of CL mentioned above, I proceed from my own understanding of criminal law as a branch of law and its relationship with the CC, the subject of criminal law and its methods, the mechanism of criminal law regulation and other issues of criminal law. The views on these issues do not always coincide with the views of other criminologists, and therefore the

individual positions and conclusions mentioned in the report may serve as the basis for consideration when discussing the fundamental issues of CL.

4. The policy of the state (or state policy) in the field of combating crime, along with economic, political, social and other measures to prevent crime, includes such elements as criminal law (criminal), criminal procedure, criminal-executive and criminological policy.

Under this approach, criminal law (criminal) policy is the state's activities in combating crime by criminal law means. [1, p. 23; 2, p. 183]. Such means include, in particular, criminal law norms, criminal law relations, the committing of a crime as a legal ground for evolvement of criminal law relations, subjects of such relations, their rights and obligations, the realization of these rights and obligations , CL and other measures of criminal law, etc.

5. CL is a form of legal responsibility. I adhere to the position that legal liability can only be retrospective, one of the main means of responding to a state or a proper private entity for committing an offense. Hence, the CL as a liability in the public sphere is a means of responding to the fact of committing a crime within the framework of criminal law relations that arise between the state and the offender.

6. The CC provides, along with the CL, other measures of a criminal law nature, namely measures of state coercion provided for by the CC, which are subject to application to a natural or legal person in connection with committing a crime or a socially dangerous act. Such measures on individuals include compulsory measures of a medical nature, compulsory treatment, special confiscation, some coercive measures of educational nature (Part 2–5 of Article 105 of the CC), restrictive measures (Article 91^1CC); to criminal legal measures against legal entities, i.e., a fine, confiscation of property and liquidation (Art. 96^6–96^9CC).

It is important that the place of CL among criminal law measures should be determined. If one agrees that **m**easures of a criminal law nature are the means for influencing a person provided by the law in connection with the commission of a crime, and the criminal law consequences of a crime are their application to a person or the release of a person from the application of these measures [3, p.192–195], then CL is a major criminal law measure in the system of measures envisaged by the CC. In other words, if the criminal law measures are an integer (system), then CL is part of this whole, one of its subsystems. The essence of the CC as a measure of a criminal nature is the restriction of the rights and freedoms of persons found guilty of crimes committed as a measure of reparation (punishment) for the crimes committed by them (Yu. A. Ponomarenko). Such restrictions exist in the CC as the following structural elements (forms) of the CC: 1) the release of a person by a court judgment from the imposition of punishment on the individual (Ch. 4, 5, Article 74 of the CC); 2) punishment (Article 52 of the Criminal Code); 3) measures provided for in Art. 76 of the CC, in case of release of the convicted person from serving a sentence with a probation (Article 75 of the CC); 4) conviction (Article 88 of the CC). Each of the above mentioned forms of CL has

the content of the restriction of certain rights and freedoms of the offender, but unites all these structural elements of the conviction of a person by a conviction for a crime committed by them, which V. K. Hryshchuk draws attention to [4, p. 372–373].

7. In the scientific literature, along with the negative (retrospective), positive (perspective) CL is also distinguished. The most consistent and reasoned position in regards to such a form of CL in Ukrainian criminal law is defended by V. K. Hryshchuk. In his opinion, CL is a type of legal responsibility, which is a process of implementing the requirements of the rules of the criminal law, which manifests itself: 1) in the conscious observance of the subject of a criminal prohibition or execution of his criminal legal duty or the implementation of his own subjective legal right; or 2) in the forced persistence of the subject of coercive measures as a consequence of his criminal law behavior. Hence, the positive (prospective) CL is a type of CL, implemented in the framework of regulatory criminal social relations, and represents a form of implementation of the provisions of the criminal law, which manifests itself in the conscious observance by the subject of a criminal law prohibition or execution of his criminal law obligation or his implementation of his subjective right, provided by the current criminal law. These three types of behavior of the subject are defined as forms (methods) of the implementation of positive CL. The emergence of such liability is associated with the presence of two factors: 1) the entry into force of a criminal law that imposes a prohibition or imposes a certain obligation on the subject or gives her/him certain subjective rights; 2) the beginning of compliance by a subject with the prohibition established by a criminal law or execution of a criminal law duty entrusted to her/him, or the use of a subjective right established by a criminal law.

The stage of the implementation of a positive CL is the entire period of compliance by the subject with a criminal prohibition or execution of the duty a criminal law entrusted to the subject, or use of the subjective right. The termination of a positive CL is associated with the presence of at least one of the following factors: 1) the termination of a criminal law that charges a prohibition, imposes a certain obligation on a subject or gives her/him a certain right; 2) non-compliance by the subject of a criminal-legal prohibition or an imposed duty; 3) non-use of the subject's subjective right provided by a criminal law; 4) the death of the subject [4, p. 371–373].

8. My disagreement with the proposed concept of a CL and its type (positive CL) roots from a different understanding of such issues as the notion and subject of criminal law and its subjects; criminal law prohibition, criminal liability and subjective law, stipulated by the norms of the current CC; regulating and guarding criminal law relations; the ratio of the norms of criminal law and the provisions of the criminal law, etc.

My view pertaining these issues can be summarized as follows. Rules of law, that is, rules of lawful conduct, govern those social relations, which are of a legal nature, i.e., are subject to legal regulation. In its turn, legal regulation is the ordering of a certain type of social

relations (relatively massive, non-personified) only and exclusively by legal means. [5, p. 74] These relations are divided into two different parts. The largest part belongs to the social relations between legally equal subjects of a civil society, that is, private social relations. Legal norms **regulate the degree of freedom** of the subjects of these social relations through the dispositive method of legal regulation. The second part is the public social relations between the state and other subjects of public law (for example, financial, tax, administrative, etc.). Legal norms establish **the procedure** for the implementation of these subjects of lawful conduct, which is introduced by the state using the imperative method of legal regulation.

Legal regulation in these groups of social relations is carried out by endowing their subjects with subjective rights, assigning to them legal responsibilities, establishing prohibitions, and defining the powers of state authorities. At the same time, the legal norms of private and public law also provide for certain sanctions for the release of entities beyond the scope of subjective law, non-fulfillment or improper fulfillment of a legal obligation, violation of prohibitions, non-fulfillment or improper fulfillment of state authority powers, that is, for certain offense. And only in cases where violations in the private or public sphere cause or are likely to cause significant (notable) damage to the normal functioning of private or public social relations, the legislator recognizes such offenses as crimes (criminal offenses). These offenses are defined in an exhaustive manner in the CC along with the establishment of CL application in cases of committing offenses and as well as taking other criminal law measures (observance of the principle of legal certainty as the rule of law component). Thus, the CC establishes criminal law rules that regulate the lawful conduct of the state with respect to persons who commit (or defined as capable of committing) crimes. Thus, criminal law as a material branch of public law in the system of law of Ukraine is a system of criminal law regulating the legitimate conduct of the state in relation to persons potentially capable of committing crime and commit crime, i.e. regulates two types of relations: criminal social relations and criminal law relations.

Hence, the criminal law regulation is carried out on the levels: 1) of legislation and 2) of law enforcement. At the first level, the parliament establishes criminal law rules for a list of crimes, socially dangerous acts (hypothesis), as well as CL, other criminal law measures as measures of response of the state to these crimes or socially dangerous acts (disposition of criminal law). However, the settlement of the CC of a certain type of social relations (in this case, criminal social relations) does not imply the emergence of any legal relationship between the state and the specifically indefinite circle of persons covered by the jurisdiction of the CC (functioning of the CC). And therefore, since the criminal law entry into force, no criminal law relations arise, as there are no criminal law prohibitions.

Are the provisions of the CC affecting the behavior of people who refrain from committing crimes? It must be stated that the CC incorporating a list of crimes by types and penalties corresponding them, the activities of the

criminal justice system in relation to disclosure, pre-trial investigation, judicial review of the facts of the commission of crimes, indictments of the court and the practice of execution / serving of punishment, media activity on informing the population regarding the punishment of certain types of crimes, the work of other state and non-governmental organizations regarding clarifications of the provisions of the CC and the practice of its application do affect the law-abiding behavior of a certain number of crime subjects the law. Thus, these factors also organize (affect) the behavior of these entities. But to name such an arrangement of criminal law regulation of social relations is hardly possible, since legal regulation is carried out only by legal means. At the same time, the above-mentioned items (factors) as well as factors of similar kind are not legal means. They can be called informative, psychological, emotional or any other influence on the law-abiding behavior of certain subjects of law.

Prohibitions not to make certain actions or inactivity are stipulated in the so-called guarding rules of regulative private and public law, just like the subjective rights, legal obligations and state power of certain subjects of law, provided by the regulatory norms of private and public law.

According to Part 1 of 11 CC, a crime is a socially dangerous guilty act (action or inaction) committed by the subject of the crime **recognized** by the CC (not forbidden by the CC!). Thus, the CC does not prohibit anything, that is, it does not establish criminal law prohibitions, but only contains a description of an exhaustive list of types of socially dangerous behavior, which are recognized by the state as crimes (constituent elements of crime). And if a certain person who meets the requirements relating to a particular type of crime commits such a crime, then he/she shows his/her free will, chooses to practice or not to practice a certain kind of human behavior, including socially dangerous. Therefore, the commission of the envisaged CC of a socially dangerous act or retention (refusal) from its commission on the part of the subject is a manifestation of freedom of choice in his/her behavior (in the absence of irresistible coercion, etc.).

Precisely, I cannot agree with the fact that the criminal law foresees the subjective rights of certain subjects (including the right to necessary defense, to extreme necessity, to detain a criminal, etc.) or impose legal obligations (for example, the obligation to execute a lawful order or order). I proceed from the fact that **the CC is a comprehensive legal act**, which provides not only criminal law norms, but also legal norms of other branches of law (for example, for civilian, it is necessary defense, extreme necessity, detention of the offender, justified risk; for administrative, it is execution order or ordinance, compulsory measures of a medical nature, etc.).

Thus, at the first (legislative) level, the criminal law rules regulate criminal social relations between the state and those who are capable of committing crimes by defining in the CC an exhaustive list of types of crimes (stating the characteristics of the corresponding crimes) and establishing criminal law measures in respective cases. In other

words, the CC envisages criminal law norms-models of lawful conduct of the state in relation to those who commit crimes.

On the second (law enforcement) level in case of committing a certain type of crime, criminal law regulates specific criminal law relations that arise between the state and an individually defined entity. The subject of these regulatory-security relationships is the CL, and the authority of the state is that it is competent or put on the guilty person CL or release from it in accordance with the provisions of the CC, and the person who committed the crime must obey the lawful restrictions on the side of the state, and has the right to demand that the state apply only such restrictions to the exercise of its rights and freedoms as provided for by the CC.

9. According to Part 1 of the Art. 50, CC ("The Notion of Punishment and its Purpose"), "punishment is a coercive measure applied on behalf of the state by a court judgment to a person convicted of a crime, and consists of limiting the rights and freedoms of the convicted person provided for by law. "And in accordance with Part 1, Article 65 ("General Principles of Appointing Punishment")," the court shall impose **punishment: 1) within the limits established in the sanction of the article** (sanctions of part of the article) of the Special Part of this Code, which **provides for liability** for the committed crime, except for cases provided for in part two Article 53 of this Code; 2) in accordance with the provisions of the General Part of this Code; 3) taking into account the gravity of the crime, the personality of the accused, and the softening or aggravating circumstances".

The correlation of Ch.1, Art.50, CC with the provisions of Ch.1, Art.65, CC gives grounds to state that the law determines the punishment as one of the forms of CL, since in P.1, Art. 65 CC directly indicates **that the sanction of the article of the Special Part of the CC**, that is, the type and extent punishment, **implies responsibility for the crime committed**. The punishment, in its turn, consists of limiting the rights and freedoms of the convicted person by the law and thus reflects the essence of the CL. After all, the essence of CL, as noted, is the restriction of the rights and freedoms of the sentenced person as a kind of reparation (punishment) for the crime committed, namely, limitation of her/his right to liberty and immunity; property rights; the right to occupy a certain position or the right to engage in certain activities; the right to receive full remuneration for her/his work; the right to have a military, special degree, rank, grade or qualification class, etc.

However, the court, when determining a restriction on the exercise of her/his rights and freedoms to the convicted as envisaged in the sanctions of the article of the CC, is authorized to do this only upon taking into account the provisions of the General Part of the CC (P.2, Ch.1, Art.65). These provisions apply to each type of punishment provided for in the sanctions of the Article of the Special Part of the CC, as well as regulate general and special rules for the appointment of these penalties by the court. Restrictions on the implementation of these rights and freedoms of the convicted person are carried out in the course of serving a sentence imposed by a court. The procedure for the execu-

tion of punishment by the executive authorities of the state, as well as the procedure for serving by a convicted person, is determined by the Criminal-Executive Code of Ukraine. In addition, the provisions of the General Part of the CC regulate the preconditions, grounds and criminal law consequences of the release of the person who committed the crime as stated in the CL; release from serving (full or partial) punishment imposed by a court; the replacement of a part of a person's sentence imposed by a court with a more lenient form of punishment, as well as the conditions and grounds for expungement of record for a convicted person.

Thus, criminal liability is a measure of state coercion established by the Criminal Code of Ukraine, which is applied by the conviction of a court as retaliation (punishment) to a person who committed a crime and constitutes a restriction on the exercise of the rights and freedoms of such a person by the relevant authorities, institutions, and officials.

The proposed concept of CL combines the activities of three branches of state power: legislative, judicial and executive. They constitute state response to a criminal offense and outline the individual application of CL to a person that committed a crime.

10. The above-mentioned concept of CL gives grounds to allocate three types, of CL: a potential, specific (individualized) and real CL.

Potential CL is provided for in the sanctions of the articles of the Special Part of the CC (implying that the relevant provisions of the General Part of the CC were taken into account) and that the restriction of the rights and freedoms provided for in the CC extends to any subject liable for the type of crime defined in CL. In other words, potential CL is a threat to the restriction of the rights and freedoms of anyone and everyone who can be the subject of a particular crime. Potential CL is established by the Parliament in the form of a law on criminal liability (codified or stated separately), arises from the day of its entry into force, exists during the operation of this law and is terminated (as a general rule) on the date of expiry of the said law.

Specified (individualized) CL is a form and a measure of restrictions in the realization of the rights and freedoms determined by the conviction of a court in relation to a specific person found guilty of committing a particular crime. It arises once the convicted person has been sentenced (including the forms of capital punishment) from the moment of serving the sentence, or terminates (as a general rule) on the day the conviction is served/executed.

Real CL is a form and a measure of restrictions on the exercise of the rights and freedoms of a convicted person, carried out by the authorities and institutions authorized to execute the verdict of the court, as well as by the relevant authorities and officials regarding persons who are recognized as having a criminal record after serving the sentence. Real CL begins on the day the court verdict is served; it exists during the term of the guilty person's stay in the criminal law relations with the state and ceases from the day of the termination of these relations, according to the general rule, from the date of expungement of record for the convicted person.

11. According to Part1, Art.2, CC, the basis of CL is "the commission of a socially dangerous act that contains the crime, provided by this Code". From this definition one can conclude that the above grounds are characterized by three following features: 1) the act of committing by a person; 2) this act is socially dangerous and 3) such an act contains the crime provided for in the CC of Ukraine.

In turn, according to Part 1 of the CC of Ukraine, "a crime is a socially dangerous act (action or inaction) provided by this Code committed by the subject of a crime".

Thus, both the concept of a crime and the notion of criminal liability are characterized by two identical features (this is, a socially dangerous act committed by a proper subject) and does not coincide in the concept of a crime (it is an act provided for by the CC), and in the notion of criminal liability (it is an act that contains the crime provided for by the CC).

Is it possible to argue that in this case, the characteristic expressed by the words "an act envisaged by the CC" and "an act that contains the crime, provided by the CC", are identical? From the standpoint of the modern doctrine of criminal law and the current CC, one can give a positive answer to the question.

From this point of view, both the crime and the basis of criminal responsibility, as it is formulated in Part 1 of the Art. 2, CC of Ukraine, are defined by the same characteristics, namely, the commission of an act envisaged by the CC (or containing the offense envisaged by the CC) and as the one that is socially dangerous.

At the same time, in the first and the second concepts there is no indication of such a characteristic as the **unlawfulness** of a socially dangerous act. In this case, it is not about the so-called ’criminal unlawfulness’, which scientifically identified as the ’predictability’ of a socially dangerous act in the CC, or the unlawfulness of an act meaning a violation of the requirements of law and order, that is, the requirements provided by the norms of regulatory private and public law. Meanwhile, in the articles of the Special Part of the Criminal Code, expressions of such a pattern as the "illegality" of certain acts; "Illegal" act, violation of certain order, rules, requirements of legislation, rights or obligations, "abuse" by law, power, powers, "spontaneous", "unauthorized" acts, etc. occur for more than 100 times. In the doctrine, these provisions of the CC are usually analyzed in the framework of the objective side of the crime. At the same time, it is obvious that the socially dangerous act of the subject of a crime violates the requirements of regulatory private or public law, that is, such an act violates the freedom of the subject, provided by private law, or the procedure established by the rules of public law. Moreover, such a violation is carried out to the extent that the CC is recognized as socially dangerous and is foreseen as a crime. Hence, the basis of criminal liability is the commission of a crime that can be formulated in the CC as "a socially dangerous, **illegal** act, which contains the crime, provided by this Code".

12. From the above definition of a crime follows a classification of circumstances that exclude the basis of CL, and thus the very CL. It is logical to

distinguish three groups of such circumstances, namely:

1) **circumstances that exclude the wrongfulness of an act**, that is, such acts, which although outwardly coincide with the features of types of crime, but are to be recognized as lawful acts by regulatory norms of private or public law. The legal form of such acts is the **use by a person of her/his subjective right** (necessary defense, extreme necessity, detention of the offender, justified risk, etc.), **performance of legal obligations** (execution of a lawful order or ordinance, performance of professional or official duties, a collision of duty " etc.), **the exercise of state power** (the use of physical force, weapons, special means, the use of precautionary measures, etc.).

2) **circumstances excluding the social danger of an act**, that is, action or inaction, which, although formally contains features of any act provided for in the CC, but due to insignificance, does not constitute a public danger, that is, did not cause or could not cause significant harm to the physical or legal person, a society or a state (Part 2, Art. 11, CC).

3) **circumstances that exclude the elements of a crime** in a committed socially dangerous act, namely: a) circumstances excluding the object, subject or a proper victim; b) circumstances excluding the proper subject of a crime (failure to reach the age from which the person is subject to criminal liability; insanity; absence of signs of a special subject of a crime); c) circumstances excluding the objective side of the act (irresistible nature, irresistible physical coercion, lack of proper consequence of the act, absence of a causal connection between the act and its consequence(s), lack of proper place, time, situation, method or means of committing a crime), d) circumstances excluding guilt (incident, excuse error, etc.).

13. If it is accepted that CL has the above-mentioned forms, including penalties, then the CC provides only for the whole punishment, namely: punishment, correction of convicts, as well as prevention of new crimes by both convicted and other persons (P. 2, Art.50, CC). I adhere to the scientifically accepted position that the penalty is immanent for punishment as one of the forms of criminal law [6, p. 40]. At the same time, the purpose of the correction of the convicted person, as well as the special prevention (precaution) of new crimes, is inherent not only in punishment, but also in other forms of CL. Thus, the basis for the release from punishment of a person who committed a crime of small or medium severity, in addition to corruption crimes, is the recognition by the court that, taking into account faultless behavior and conscientious attitude to work, the person **cannot be considered socially dangerous** at the time of the trial (Ch.4 Article 74 of the CC). Precisely, the grounds for dismissing a person from serving a sentence with a trial is the conclusion of the court about **the possibility of correction of the convicted person** without serving a sentence (Ch.1, Art.75, CC), and the basis of parole from serving a sentence is **to bring the convicted of her/his correction** with diligent behavior and attitude to work (Part 2 of Article 81 of the CC). The replacement of the unpunished part of the sentence with a milder one can be applied if the convict **has entered the**

path of correction (P.3, Art.82, CC), and the removal of conviction until the expiration of the period for its repayment is possible; if the person after the sentence is served in the form of limitation of freedom or deprivation of exemplary behavior and a conscientious attitude to work, **proved her/his correction** (P.1, Art.91, CC). And at the same time, violation of the terms of the trial period by the said persons, including the commission of a new crime, entails negative criminal consequences for them. In addition, circumstances aggravating the punishment imposed on her/him, recognize the commission of a crime by a person repeatedly and relapse of the crime (Clause 1, Part 1 of Article 67, CC). These and other provisions of the CC give grounds for the conclusion that the objectives of the CL in its various forms in as a whole, coincide with the objectives of punishment: they all have a punishment, they pursue the goal of correction of convicts and special prevention of their committing new crimes. As for the purpose of general warning, it seems that it is the purpose of non-legal means of influencing the behavior of other persons.

14. The effectiveness of the implementation of various forms of CL is a correlation between their goals and the actual results achieved in the implementation of certain forms of CL. Obviously, the study of such effectiveness is a problem of criminal sociology and criminology. Experts have long awaited the results of the study of the effectiveness of various forms of CL as well as further research of behavioral factors within those parts of criminal law that help limit committing certain types of crimes.

15. One of the alternatives to CL as a form of state response to crime is a criminal law measure, which implies the release of a person who committed a crime from the CL. Section IX of the General Part of the CC "Exemption from Criminal Liability" is placed before Section X "Punishment and its Types". Thus, it is determined that, firstly, the release from CL is not possible after the imposition of a punishment, and, secondly, in the presence of the preconditions and grounds provided for in the CC, the possible or compulsory criminal law consequence of the commission of a certain crime is the person’s release from CL.

Recent changes in Section IX concerning the exclusion from the preconditions for the release of criminal offenses committed by corruption committees once again raised the long-standing issues of the constitutionality of both the amendments made to the CC and the institutionality of exemption from CL itself. The argument about the unconstitutionality of the exclusion of the preconditions for corruption crimes from CL relies on the statement that such amendments violate the requirements of Article 8 of the Constitution of Ukraine on justice as an element of the rule of law, and Article 24 of the Fundamental Law of Ukraine on equality of citizens.

The reason for doubts about the constitutionality of the institute of the exemption from the CL is the non-compliance of this institute with the requirements of Article 62 of the Constitution of Ukraine in terms of violation of the presumption of innocence of a person. As for the last element, I have already expressed my disagreement with the

above argument [7, p.277–278]. In addition, O. Dudorov's reasoning concerning his interpretation of Part 1 of Article 62 of the Constitution of Ukraine, which states that "the literal interpretation of Part 1 of Article 62 of the Constitution of Ukraine allows the following to be argued: the establishment of guilt of a person in committing a crime by a conviction of a court is required only if the person is due to punishment. The Constitution of Ukraine, in my opinion, does not give a clear answer to the question of which procedure should establish the guilt of a person in a crime, if this person is not punished". The author analyzing the practice of the ECHR and the requirements of international legal acts on human rights came to the conclusion that the provisions of the CC and the CPC of Ukraine comply with the requirements of the Fundamental Law of Ukraine [8, p.120–121].

Regarding the alterations of Section IX of the General Part of the CC that address the exclusion from the preconditions for the release of persons who committed corruption crimes, I cannot agree with the arguments regarding the unconstitutionality of these changes. At the same time, I do not proceed from the decision of the Constitutional Court of Ukraine of July 2, 2004 No. 15pr / 2004 in the case of the appointment of a court of a milder punishment (which I disagree with), but from the fact that the powers of the Parliament are to establish which categories of persons are subject to the law on the exemption of CL, and on which categories the exemption does not apply. In this context, we do not discuss the social danger or the consequences of corruption crimes in proportion to other crimes. The issue of exemption from CL is a matter of criminal law, within which the legislator is empowered to decide on which categories of criminals the institution of exemption from CL can be exercised, and which categories could not be exempted. And in this case, it is hardly possible to assert the inequality of citizens who committed corruption crimes.

16. The substantiation of proposals for improvement of criminal-law norms of the CL in the current CC is based, first of all, on sociological, criminological and comparative criminal law investigations. In particular, there is a long overdue need to expand the scope of such a form of CL, as the release of individuals by court sentence without imposing a punishment or exemption from punishment. According to p.3, Art.88, CC, these persons are recognized as not having a criminal record. It seems that in these cases, it would be possible to apply experience of the CC of Belarus where a deadline for expungement of convictions is established within one year from the entry of judgment into legal force.

In addition, modern tendencies to expand the possibilities of such a measure of combating crime as a mediation between the victim and the perpetrator, restorative justice, mediation, transaction, etc. have the potential as the subject for further scientific research.

This scope of issues applies to persons who have committed a crime of a certain degree of gravity and caused damage to a natural or legal person in case the public interest is in domain of reconciling sides of the criminal conflict and approving compensation for the damage.

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TIME AND DOCUMENTS

Time is a category of philosophy and scientific knowledge, a form of being. Time is a condition or the way of changing material phenomena. In fact, time is a form of matter existence associated with such properties as change and development of phenomena or objects, the change in their states, and the duration and sequence of processes. The state of our entire world depends on time. Albert Einstein believed that time and space are the universal and inalienable properties of movement, the forms of existence of matter. Arthur Schopenhauer pointed out that "only in time everything comes one after another, in space one thing is near the other"[1].

Time is a complex phenomenon for understanding. Time, as a concept, expresses the duration, order and direction of events, as well as a subjective attitude to changes and time perception. Usually the objective time is understood as the sequence of processes in a direction from the past to the future[2].

Time has some properties: eternity, duration, direction, sequence, continuity, specificity of manifestation. In particular, the duration is the continuance of an object's existence. The duration makes it possible to measure time on the basis of certain standards, compare and contrast different durations. The duration is also associated with another time's attribute – the sequence that expresses the alternation of stages, phases of development, succession of the links of cause-effect chain in the process of development[3].

The experts in criminalistics and forensic examination have researched the time, temporal connections and relations. They also made attempts to form the specific criminalistic theory of temporal connections[4]. The theory was created on the basis of the accumulation of a wide range of investigative and expert practice establishing the temporal characteristics of criminal activities. This practice needs further generalization[5].

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[1] Schopenhauer A. Paragraph 18 of the book "On the Fourfold Root of the Principle of Sufficient Reason" (1813).

[2] Encyclopedia of Epistemology and Philosophy of Science. Moscow: Canon + ROOI "Rehabilitation, 2009. P. 128–130.

[3] Askin Ya. Philosophical Determinism and Scientific Knowledge. Moscow, 1977. P.130.

[4] See:Meshkov V. Time in Criminal Procedure and Forensic Science: Monograph. Moscow: Yurlitinform, 2012, 216p.

[5] Ibid. P. 51.

The study of documents requires the establishment of temporal characteristics. The researchers have been interested in the problem of determining the time of documents origin since writing and written speech appeared. Although the time of documents creation could also be determined by so-called object mediums (or symbols): for example, cords with talking knots were used to communicate information (Fig.).

Communicating information through documents was an important milestone in the mankind development. The documents have been changed significantly: from cave paintings and images of ancient people to the use of papyri, and from written documents – to electronic ones. The Cairo Egyptian Museum exhibits papyri, the age of which is about 4,500 years (Fig.).

Communicating information by criminals through conventional images and symbols has also drawn considerable attention (H. Gross) (Fig.).

In accordance with the Law of Ukraine "On Information" the document is a material carrier containing information; the main functions of documents are preservation and distribution of information in time and space.

Nowadays art historians, archaeologists, historians, and literary critics often apply to the experts in forensic examinations to help establish the facts that are important for the resolution of certain issues concerning the authorship of literary and visual works, the time and place of certain objects creation[1]. An interesting example is the expert research of the portraits from various collections with possible images of Hetman Ian Mazepa conducted in Ukraine. From the historical data it is known that all the lifetime images of Hetman Ian Mazepa were destroyed under the order of Tsar Peter I.[2] (Fig.)

In the modern expert practice of questioned document examination there is a necessity to establish the temporal connections and relations, that is: 1) to determine the age of the document (absolute and relative); 2) to establish the sequence of writing of various parts of the document, introduction of changes or corrections; 3) to establish the time interval, during which the entire text and its requisites were created. The questioned document examination involves determining the time of creating the document, the calculation of certain time intervals with the use of materials of the document (or other media), establishing temporary links between the parts of the document or its entries.

For example, according to the results of the forensic examination of IOU or loan note of P., it was established that the signature on behalf of P. appeared on the document before the text was printed, which was proved by finding micro-particles of the laser printer toner with characteristic features (characteristic gloss, absence of traces of the ballpoint pen ink on the surface, absence of interaction with the writing part of the ballpoint pen, the shape of the "columns" etc.). (Fig.)

The Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examina-

[1] Gora I., Kolesnik V. The study of Objects of Antiquity – Not a New, but a Modern Direction in Using the Possibilities of Criminalistics. *First Printed Criminalist.* №8. 2014. P. 94.

[2] Ibid. P. 92–99.

tions and Expert Studies of the Ministry of Justice of Ukraine (08.10.1998 No. 53/5) contain the issues related to the need to establish temporal links and relations, for example, whether the documents or fragments of the document were made (completed) at different periods of time; in which order document entries (signature, seal, print, etc.) appeared on the document; whether the document was sealed (stamped) at the same time as it was dated; whether the document was created at the time as dated; when the handwritten text was put on the document; whether the handwritten and printed texts were put simultaneously or at different time.

The examination of the time when the documents were created allows to establish the following facts: 1) the date of drafting of the document and its parts; 2) the order of writing the text, adding signatures and stamps; 3) the fact that there are traces of natural and artificial aging[1]. Determination how long ago the documents were produced is carried out by an expert in a static and dynamic manner[2]. It is especially difficult for experts to establish the fact of deliberate impact on the document with the purpose of its artificial aging (Fig.).

The existing requirements (standards) for the drafting and handling documents are very important.

In Ukraine, there are standards (paperwork requirements State Standards of Ukraine 4163–2003) concerning organizational and administrative documents – decisions, orders, regulations, provisions, protocols, acts, letters etc. created as a result of activities of government bodies of Ukraine, bodies of local self-government; enterprises, institutions, organizations and their associations of all forms of ownership. According to this standard, there are the following document entries: the image of the state emblem of Ukraine, the image of the emblem of the organization or trademark (service mark), the images of awards, the organization codes, standard forms of documents, the name of the organization, the name of the organizational unit, types of documents, document date, document registration index, etc.

The questioned document examination allows to establish the temporal connections and relations, determination of the duration, consistency, continuity and other properties of time in relation to the production and use of documents.

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[1] Avdeieva G. Natural and Artificial Aging of Documents: Essence and Features. *First Printed Criminalist.* № 15. 2017. P. 48.

[2] Ibid. C. 48.

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CLASSIFICATION OF CRIMINALISTIC METHODS OF CRIME INVESTIGATION

Summary. *The paper highlights modern scientific approaches to the classification of certain forensic methods of crime investigation. Special attention is drawn to the fact that current criminalistic science lacks a uniform, complete, consistent and scientifically substantiated classification system of forensic methods, which negatively affects both their formation and the ability to adapt to the specific conditions of the investigation. Emphasizing that forensic classification of methods should be based on the forensic classification of crimes, and the main criteria of separation and segregation of forensic methods of investigation of crimes should be the features (differences) of the organization of the main directions of investigation, based on the initial situations. The expediency of the classification of forensic methods based on the degree of generalization, the level of specification of individual methodological recommendations is also substantiated in the work. It is proposed to distinguish the following types (tiers) of forensic methods of investigation of crimes: basic; simple (single) methods – specific, subspecific (micromethodics); sophisticated (group) methods – generic, intergeneric, complex. Forensic methods of crime investigation included in the classification should be developed while considering certain unified, basic approaches, and therefore the basic method should be placed on the upper level as a starting point in the hierarchy of methods, serving as a benchmark for the formation of all below-placed techniques. Further proving that the established classification provides not only for the clear division of the forensic methods, but also allows to define different approaches to the technology of their formation.*

Key words: *classification of separate criminalistic methods of investigation of crimes; types (tiers) of forensic methods; basic, generic, intergeneric, specific, subspecific and complex methods.*

Formulation of the problem. Modernization and improvement of existing and development of new methods of investigation of crimes presuppose the necessity of forming an established configuration of the system of these methods. It should be noted that this process is only in the stage of its formation. This provides for a variety of approaches to determining the classification tiers of certain forensic methods and their titles. At the same time, in the process of the formation of the modern doctrine of forensic methods, the key importance lies in the clear idea of their classification structure. In addition, the existence of an established classification model of forensic methods of crime

investigation determines not only their distribution, but also determines different technological approaches to their creation.

The relevance of the research topic. Determining the grounds for the classification of forensic methods of crime investigation is one of the most important areas of forensic doctrine. The state of the formation of scientific views on this issue directly affects both the procedure for developing the most criminalistic investigative techniques and their adaptation to the specific circumstances of the investigation.

Analysis of recent research and publications. An important contribution to the development of the classification of forensic methods for crime investigation was made by such scholars as V. P. Bakhin, S. V. Velikanov, I. O. Vozghrin, Yu. P. Harmaiev, V. Ye. Kornoukhov, S. Yu. Kosariev, O. F. Lubin, B. Ye. Luk'ianchykov, H. A. Matusovskyi, V. O. Obraztsov, R. L. Stepaniuk, M. V. Subbotina, S. N. Churylov, A. V. Shmonin, B. V. Shchur, M. P. Yablokov. It should also be noted that, despite the huge amount of scientific works on this issue, there is still no comprehensive unified approach to this issue and the approaches taken by the scholars are very diverse and sometimes incoherent.

Formation of the article's objective. The objective of the article is to analyze modern scientific approaches to the classification of criminalistic methods of crime investigation, to spark the discussion on this issue, to provide the scientific community with author's proposals regarding possible schemes of the classification of forensic methods according to the degree of generalization, the level of specification of individual methodological recommendations.

Presentation of the main material. The implementation of grounds for the classification of forensic methods of crime investigation has always been considered a key task for the criminologists. In this regard, they expressed a variety of opinions. Thus, according to V. O. Obraztsov, the only basis for the classification of investigative techniques is the forensic characterization of the crime[1], and the most typical forensic methods as a type of scientific "production" should be divided into: general and individual[2]; methods of detection and investigation of certain groups of forensically similar types of crimes; methods of detection and investigation of certain criminal types of crimes; methods of detection and investigation of certain criminal-legal subspecific groups of one type of crime; methods of detection and investigation of certain groups of crimes, which are divided on the basis of forensic classification of criminal types and subtypes of crimes[3].

In his later works, V. O. Obraztsov presented additional arguments regarding the proposed classifications. Accordingly, he divided the general techniques into two groups. The first includes methods for solving typical tasks

[1] Образцов В. А. К вопросу о методике раскрытия преступлений. *Вопросы борьбы с преступностью.* 1977. Вып. 27. С. 107.

[2] Криминалистика: учебник / под ред. В. А. Образцова. Москва: Юристъ, 1995. С. 376.

[3] Образцов В. А. Криминалистическая классификация преступлений. Красноярск: Изд-во Краснояр. ун-та, 1988. С. 69.

for different categories of cases (for example, a methodology for investigating an alibi, a method for investigating events associated with falsehood, a method for detecting and exposing crime staging, etc.), and the second is the methodology for investigating certain groups of criminologically similar subgroup of crimes (for example, the method of investigation of crimes committed by minors, the method of investigation of crimes committed by convicted prisoners, the method of investigation of crimes committed in the field of economics, etc.). The individual ones, according to V. O. Obraztsov, consist of methods for investigating certain types and varieties of socially dangerous acts (for example, the method of investigation of pocket thefts, the method of investigation of murders with the dismemberment of a corpse, etc.)[1]. Some of the arguments presented are rather controversial, for example, the study of alibi and the investigation of events related to falsity, in general, can hardly be attributed to the category of techniques because these are separate tactical tasks solved by special tactical methods.

Additional attention to the classification of techniques was paid by I. O. Vozgrin, who developed many different approaches to the classification. One of the last options was a sufficiently detailed approach based on the following criteria: 1) by purpose: a) general forensic methodology for crime investigation; b) group methods of crime investigation; c) separate methods of crime investigation; 2) with respect to the criminal law: a) typical (separate methods according to the types of crimes established by the current law); b) special (separate methods developed not by types of crimes established by law, but on other grounds, for example, depending on: the place of the crime; the person of the offender; the type of complicity in the joint commission of intentional crime by two and more persons, the victim, etc.; 3) by the tier of specification of the recommendations – may have different degree of detail, ranging from the generalized content or one-stage and to more detailed, that is, multi-stage; 4) by the scientific knowledge used: a) actually forensic, developed on the basis of forensic scientific knowledge; b) comprehensive, covering not only forensic methodological recommendations, but also information from the sciences of criminal law, criminal process, forensic medicine and psychiatry, the theory of operative-search activity and other branches of scientific knowledge; 5) by completeness of the investigation of the process of organizing the investigation of crimes: a) complete, which contains methodological recommendations for the organization of crime investigation at all stages of work in criminal cases; b) abbreviate that partly determine the procedure for investigating a crime; 6) by author's affiliation: a) official, that is, those that are developed by officials of the relevant units of law enforcement agencies; b) doctrinal, the development of which is initiated by specialists in the field of criminalistics; 7) by form (in the form of methodological letters and explanations, practical and study aids, text-

[1] Образцов В. А. Общие положения криминалистической методики расследования. *Криминалистика*: учебник / под. ред. В. А. Образцова. 2-е изд. перераб. и доп. Москва, 1999. С. 583–588.

books, dissertation researches, monographs, methodical directories, etc.).[1]

I. O. Vozgrin's comments on the division of techniques into "one-step" and "multi-stage", "actually criminological" and "mixed", "complete" and "reduced", "official" and "doctrinal" were widely criticized criminalistical literature[2].

V. P. Bakhin outlines the main (general provisions) of the methodology; specific and subspecific; non-specific and group methods[3]. It is unclear why the author refers the general provisions to the elements of the structure of the classification formation of forensic techniques. In turn, H. A. Matusovskyi divided the system of methods for investigating economic crimes into five tiers: the first tier – the basis of this system – general methodology for investigating economic crimes (methodology for investigating the class of economic crimes); the second tier consists of methods based on criminalistic criteria that reflect the corresponding classification groups of economic crimes (group methods); the third tier covers the methods included in a certain classification group of the second tier (subgroup techniques); the fourth tier represents the methods corresponding to the criminal law system of the norms of the CC (Criminal Code), which are included in the corresponding classification groups of the third tier (type methods); the fifth tier – methods of investigation, built on the basis of forensic criteria of systematization, which take into account the features of the area of committing crimes, criminal mechanisms, methods, etc. (separate methods)[4].

This problem has not lost its significance even today. Frequent attempts are made to classify certain criminalistic methods in modern forensic theory. At the same time, some scholars distinguish methods of a certain type or group of crimes when classifying[5]. Others indicate the existence of specific and special investigative techniques[6], although they never explain what the essence and differences between these techniques are. Thus, S. N. Churylov believes that the system of forensic methodology consists of two subsystems: the first tier of the system of separate forensic methods is based on the criminal-legal classification of crimes; the second one is based on criminalistic criteria[7]. According to S. H. Liubichev, while classify-

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[1] Возгрин И. А. Криминалистические методики расследования пре ступлений. *Курс криминалистики*: в 3 т. Санкт-Петербург: Юрид. центр Пресс, 2004. Т. 2. Криминалистическая методика: методика расследования преступлений против личности, общественной безопасности и общественного порядка / под ред. О. Н. Коршуновой и А. А. Степанова. С. 69–75.

[2] Щур Б. В. Теоретичні основи формування та застосування криміналістичних методик: моногр. Харків: Харків юридичний, 2010. С. 117–118.

[3] Бахин В. П. Криминалистическая методика: лекция / В. П. Бахин. Киев, 1999. С. 21–22.

[4] Матусовский Г. А. Экономические преступления: криминалистический анализ: моногр. Харьков: Консум, 1999. С. 129.

[5] Криминалистика: учебник / под ред.: Е. П. Ищенко, В. И. Комиссарова. Москва: Юристъ, 2007. С. 341.

[6] Біленчук П. Д., Гель А. П., Семаков Г. С. Криміналістична тактика і методика розслідування окремих видів злочинів: навч. посібн. Київ: МАУП, 2007. С. 253.

[7] Чурилов С. Н. Криминалистическая методика: история и современность. Москва: Изд.-книготорг. центр "Маркетинг", 2002. С. 189–190.

ing the forensic techniques it is reasonable to distinguish three tiers: general, specific and subspecific. The general methods include the investigation of crimes of various categories related to the solution of complex tactical tasks: methods of studying alibi, revealing and exposing staged crimes, self-incrimination. Subspecific techniques are based on the study of generalized practices for the investigation of homogeneous crimes (e.g., apartment, pocket theft, etc.)[1].

Recently, suggestions arise for the division of methodological recommendations based on the degree of groupness (level of concretization). Thus, M. P. Yablokov allocates the following tiers of methodological recommendations by the degree of groupness (level of concretization):

1. High degree of groupness, that is, "large groups of various crimes", associated with the improper performance of professional functions in the field of production; crimes committed by organized criminal groups, and so on.
2. A lesser degree of groupness, that is, a group of homogeneous crimes (for example, against the environment).
3. An even smaller degree of groupness, that is, specific, subspecific methods (e.g., investigation of fraud, theft, etc.).
4. Specific methods (investigation of certain types of crimes in various typical investigative situations).

In addition, M. P. Yablokov emphasizes on the existence of techniques of a complex nature, such as the investigation of arson and criminal violations of the rules of fire safety[2].

M. V. Subbotina proposed a slightly different classification formation of methods for crime investigation, built with such elements:

1. General provisions.
2. The basic methodology for investigating several types or groups of crimes.
3. A separate method of investigation of a particular type or group of crimes.
4. Separate methodological recommendations for investigating a certain subset of crimes (for example, thefts committed by minors).

Separate forensic methods of investigation are further divided into two groups: a) group-related methods of investigation (for example, crimes committed by minors); b) specific-related methods of investigation (theft, murder, etc.)[3]. As for M. V. Subbotina's classification, the inclusion of the general provisions and individual methodological recommendations in its structure as those that form the basis of any variety of forensic methods of investigation of crimes can be objected.

In the system of methods of crime investigation committed in the budget sphere of Ukraine R. L. Stepaniuk distinguishes the following types: intergeneric; interspecific (general and special); complex; specific (Articles 210,

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[1] Любичев С. Г. Общетеоретические положения криминалистической методики. *Криминалистика*: учебник / под ред. Е. П. Ищенко. Москва: Юристъ, 2000. С. 441.

[2] Криминалистика: учебник / отв. ред. Н. П. Яблоков. Москва: Юристъ, 2001. С. 494.

[3] Субботина М. В. Общие положения методики расследования преступлений. *Криминалистика*: учебник / под ред.: А. П. Резвана, М. В. Субботиной, Н. Ф. Колосова, Р. И. Могутина. Москва: ЦОКР МВД России, 2006. С. 239–241.

211, 233 of the Criminal Code of Ukraine); subspecific (investigation of fraud, bribery, service negligence and other types of crimes committed in the budgetary sphere). At the same time, it seems that the author's position regarding the division of techniques into general and special (interspecific, complex) lacks reasoning.[1]

In turn, B. V. Shchur, based on the conducted scientific analysis and the study of the types of forensic methods offered in the forensic literature, has proposed a different classification:

1) depending on the scope of the implementation (forensic investigation techniques and forensic methods of trial);

2) depending on the type of crime (specific forensic methods): the method of investigation of murders; the method of investigation of theft; fraud detection technique; the method of investigation of rape, etc.;

3) depending on the criminologically significant features in a certain type of crime (under the forensic criminalistic methods or "micromethodics"): the method of investigation of murders in the absence of a corpse; the method of investigation of murders in the presence of staging; the method of investigation of contracted murders; the method of investigating murders with the dismemberment of a corpse, etc.;

4) depending on criminologically significant features that go beyond the type of crime (group forensic techniques): the method of investigation of crimes committed by organized groups; the method for investigating crimes committed by minors; the method of investigation of crimes by persons with mental deviations, and others.;

5) depending on the existence of links between certain types of crimes (complex forensic methods): the methodology for investigating criminal corruption; the methodology for investigation of crime cells etc.[2]

A. Shmonin, based on the analysis of various positions regarding the differentiation of forensic methods, concluded that the introduction of a block-hierarchical approach to their division is advisable. To this end, he distinguishes between two classification blocks of methods for crime investigation: a) the first classification block (separate forensic methods), which is divided into two categories (groups): "simple" and "complex". The latter, in turn, – are "mono-objective" (single-objective) and "poly-objective" (multi-objective). "Mono-objective" are differentiated into: "mono-generic", "mono-specific", "mono-enclosed"; "poly-objective" – on "poly-generic" and "poly-specific". At the same time, "simple" criminalistic methods can also be differentiated into "mono-generic", "mono-specific", "mono-enclosed"; b) the second classification unit starts on the level at which "the exit point" of the simple and complex forensic methods are determined and is in turn determined by separate forensic elements of the crimes. The latter, in turn, is largely linked to the elements of the crime, the subject of evidence and

[1] Степанюк Р. Л. Теоретичні засади методики розслідування злочинів, вчинених у бюджетній сфері України: автореф. дис. … д-ра юрид. наук: 12.00.09. Харків, 2012. С. 26–27.

[2] Щур Б. В. Теоретичні основи формування та застосування криміналістичних методик: моногр. Харків: Харків юридичний, 2010. С. 122–123.

other essential characteristics of each separately criminalized element of the crime (a substantial element and/or its manifestations.) Forensic techniques at this level can be classified by the method of crime, the offender's person and/or criminal entities (groups), the subject of crime, the means of a crime, etc.[1]

Particular attention is drawn to the efforts of Yu. P. Harmaiev on creating an optimal classification of forensic methods of crime investigation. Based on the criminal-law classification and the degree of groupness (level of concretization) of recommendations, he distinguishes the "subject-based" and "vertical" classification and the following tiers of the system of forensic techniques: specific; generic; interspecific[2]. In subsequent writings, Yu. P. Harmaiev, together with O. F. Lubin, proposed a slightly different approach to the creation of classifications of forensic methods. The researchers developed a classification built on three bases: "vertical", "subject-based" and "volumetric". The first classification, based on such a criterion as the "degree of groupness" distinguishes general and separate methods. General is divided into interspecific, interspecific (complex), generic and specific methods, when separate ones – into the techniques of one type of crime, groups of similar crimes. Based on "the level of specification of individual methodological recommendations", the scientists divide the techniques and the methodology into a single-level, double-level and a large degree of concretization[3].

Quite interesting though unconditional suggestions on this issue are expressed by S. Yu. Kosariev, who divides all methods into typical and special. He understands the typical ones as the methods built on the categories of crimes established by the current criminal law in accordance with the structural elements of the Special Part of the Criminal Code; the special ones – methods, built on other grounds. As for the typical, they are divided by the author into six paired (symmetric) units. Some of these methods are distinguished only by certain criminal-legal criteria, and the others – similarly by the same criminal-law and additionally considering a certain criminalistic criterion[4].

Despite the fact that the classifications proposed by A. V. Shmonin, Yu. P. Harmaiev, O. F. Lubin, S. Yu. Kosariev's are rather complex for perception and practical implementation, they should be considered as the first attempts for multidimensional analysis of types of techniques and methodology.

The approaches to the construction of classifications of methods for crime investigation present in the forensic literature are characterized not only by the

[1] Шмонин А. В. Методика расследования преступлений: учеб. пособие. Москва: ЗАО Юстицинформ, 2006. С. 155–158.

[2] Гармаев Ю. П. К проблеме классификации методик расследования преступлений. *Тезисы Всероссийских криминалистических чтений, посвященных 100-летию со дня рождения проф. А. Н. Васильева*, Москва, 16 апреля 2002 г. Москва: МАКС Пресс, 2002. С. 65.

[3] Гармаев Ю. П., Лубин А. Ф. Проблемы создания криминалистических методик расследования преступлений: теория и практика. Санкт-Петербург: Юрид. центр Пресс, 2006. С. 162–186.

[4] Косарев С. Ю. История и теория криминалистических методик расследования преступлений / под ред. В. И. Рохлина. Санкт-Петербург: Юрид. центр Пресс, 2008. С. 248–265.

multivariance of grounds and levels but also by terminological diversity regarding the titles of the forensic methods themselves, some of which require additional explanation. Thus, B. E. Luk'ianchykov, while investigating non-traditional investigative techniques developed based on mixed (forensic) grounds, uses the title "non-perpetual methods of investigation of crimes" for their designation[1]. S. V. Velikanov introduces into the conceptual apparatus of the science of criminalistics such terms as "modifying techniques" and "combined methods"[2].

Regarding the proposed titles of varieties of certain forensic methods – categorical methods, combined methods, modifying techniques, "mono-objective", "poly-objective", "mono-generic", "mono-specific", "mono-enclosed", "poly-generic", "poly-specific", the scientists, of course, have the right to offer their own names of certain criminalistic methods, but the main thing here is not the originality of the proposed names of techniques, but their substantial content. Because, in the opposite case, these terms contribute nothing besides the overly complex perception, understanding, confusion, and clogging of the scientific apparatus (the language of criminology).

Analyzing of the approaches proposed in the forensic literature to the development of classification constructs of methods for crime investigation allows us to agree with the conclusions of A. V. Shmonin that today in criminology science there is no single, complete, consistent and scientifically grounded classification system of forensic methods, which negatively affects the possibilities of 1) systematical study of the problems of forensic techniques; (2) development of specific methods for investigating crimes; (3) providing the most effective and purposeful use of developed techniques in the practice of investigating authorities[3].

These are the most significant shortcomings of the proposed criminal scientists' forensic methods classifications:

1) the lack of clearly defined principles for the formation and reasonable, unified criteria for the division of forensic methods of crime investigation;

2) the development of constructs highly differentiated by levels (tiers) and elemental composition of classification, which significantly impedes their understanding and implementation, or, on the contrary, the provision of limited, simplified variants of those that do not provide a complete understanding leaving individual varieties of techniques out of focus;

3) the lack of logical approach (hierarchy, the interconnection between the whole and the part), and the systematic approach in the development of classification constructs of methods for crime investigation, which leads to the assignment of the same method to two or even more classification groups;

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[1] Лук'янчиков Б. Є., Лук'янчикова В. Є. Класифікація позавидових методик розслідування. *Криміналістика у протидії злочинності*: тези доп. наук.-практ. конф. (м. Київ, 16 жовт. 2009 р.). Київ: Хай-Тек Прес, 2009. С. 155.

[2] Веліканов С. В. Родові, видові, підвидові, комплексні та модифікуючі методики розслідування злочинів. *Питання боротьби зі злочинністю.* 2009. Вип. 18. С. 215–216.

[3] Шмонин А. В. Методология криминалистической методики: моногр. Москва: Юрлитинформ, 2010. С. 140.

4) the use of an overblown terminological apparatus in determining the titles of classification levels (tiers), groups of forensic methods of crime investigation, that is, the existence of a situation when scientists discuss the same things, but each one gives them a different name.

The analysis of the current state of formation of classification structures of forensic methods for crime investigation necessitates the formulation of certain provisions which, in our opinion, should become the starting point for solving the given problem:

1) forensic classification of methods should correspond to the forensic classification of crimes, which, in turn, is conditioned by the criminal-legal characteristic, the subject of proof (Article 91 of the Criminal Procedural Code of Ukraine), the basis of search and cognitive activity of the investigator;

2) the main criteria for the division and separation of forensic methods of crime investigation should be the features (differences) of the organization of the main areas of investigation, considering the initial situations (the beginning of criminal proceedings, the implementation of planning, the formation and verification of investigative versions, the conduct of individual investigative (search) actions, etc.);

3) in classifications, separate criminological methods of crime investigation should be divided by the degree of generalization, the level of specification of individual methodological recommendations, while the number of levels and degrees should be such that, on the one hand, would cover all possible types of techniques, and, on the other, would emphasize their distinctiveness;

4) certain criminalistic methods of crime investigation included in classification constructs should be developed taking into account certain unified, basic approaches, and therefore in the hierarchy of the methods, the basic ones should be placed on the upper level as a starting point, serving as a benchmark for the formation of all below-placed techniques;

5) the establishment of a unified, generally accepted and consistent classification of methods for crime investigation is a guarantee not only of their successful application in the law enforcement of investigative bodies but also in the definition of conceptual approaches to the creation of the "technique for the creation of these methods" as different technological approaches can be proposed to different classification levels of the methods whilst their formation (construction);

6) the main, prevailing purpose of the classification of techniques should be implemented by a vertical system, the importance of which, according to V. Ye. Kornoukhov, is as follows: firstly, the relationship between methods is revealed; secondly, the higher level (for example, generic methodology) reflects general features that are inherent in the genus, whereas the specific one reflects a distinctive feature inherent to the specificity which makes overlapping impossible; thirdly, this will determine those techniques that are poorly understood, which will provide for the purpose of the further scientific research; fourthly, it highlights the need (or lack thereof) in the development of the methodology; fifthly, the place of one or another methodol-

ogy in the classification series is determined[1].

Conclusions. Based on the above, as well as applying a multidimensional approach to the distribution of forensic methods for crime investigation, we can propose the following vertical and horizontal division:

1. Basic methodology.
2. Simple (single) methods – specific, subspecific (micromethodics).
3. Complicated (group) methods – generic, intergeneric, complex.

Consequently, based on conceptual approaches to the formation of a system of forensic methods for crime investigation, in the above-proposed interpretation its main elements are:

1) *basic* methodology as a universal, unified model, according to which other separate criminalistic methods of investigation of crimes should be created[2]. It serves as "the root of the system of forensic techniques and is considered as a conceptual model with an approved structure and recommendations for the content-based signification of elements of practical recommendations located at lower levels"[3];

2) s*pecific* forensic investigation methodology (types of crimes clearly defined in the relevant sections of the Special Part of the Criminal Code, such as the method of investigation of fraud, theft, etc. This level is the most stable, traditional, the level on which the system of separate forensic investigation methods was formed since it is based on criminal-law classification of crimes);

3) *subspecific* forensic investigative methodology (subtypes or varieties isolated from the crimes of the same specificity by criminologically significant features, for example, with such a crime as a willful murder, we can distinguish such subtype techniques (micromethodics) as a technique for investigating murders with dismemberment, contracted murders, murders on religious grounds, etc. In this sense, the forensic classification is a more differentiated entity than a criminal-legal one, bringing the first closer to the law enforcement practice);

4) *generic* forensic investigation methodology (techniques) (crimes grouped on the basis of a generic object in a single section of the Special Part of the Criminal Code and on the basis of criminalisticaly significant features inherent in several types), for example, the method of investigation of crimes: a) against the environment; b) against sexual freedom and sexual integrity of a person; c) when providing medical aid, etc.;

5) *intergeneric* forensic investigation techniques (methodology) (groups of crimes differentiated according to their grouping in different sections of the Special Part of the Criminal Code and on the basis of criminalisticaly significant features inherent in several types, for example, the method of investigation of crimes committed by minors, organized criminal groups, in the field of entrepreneurial activity, etc., where the person of the offender acts as

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a combining forensic classification feature, the sphere of realization of his criminal intention, etc.);

6) *complex* criminalistic methods of crime investigation, which reflect recommendations for investigating complexes of interrelated criminal acts, united on the basis of simultaneous consideration of criminal-legal and forensic criteria for the classification of crimes. The common feature of these criminal manifestations lies in the fact that in practice they are committed in real and perfect totalities (complexes). In this case, they are covered by the sole intention of organizers, instigators, accomplices and performers, common purpose and motives, a general mechanism for the implementation of a criminal plan, etc. It is about a single chain of criminal behavior, in particular, about the so-called technology of criminal enrichment, for example, when the investigation of the predicate (basic) crime is combined with the investigation of the legalization related to it, which in this case is the last step in this kind of criminal activity. Investigation of such complexes of criminal acts determines the specifics of the proclamation and verification of investigative versions, planning, tactics for the conduct of certain investigative (search) actions, secret investigative (search) actions and operational activities, features of tactical operations, etc.

The proposed classification allows not only to clearly divide the forensic methods by the degree of generalization, the level of concretization of individual methodological recommendations but also to define different approaches to the technology of their formation (construction).

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SOCIAL CONDITIONALITY OF CRIMINAL–LEGAL GUARDSHIP (DEFENSE) AND PROTECTION OF HUMAN DIGNITY IN UKRAINE

Abstract. *Human dignity always was the subject of attention from scholars and practitioners. Most research is reduced, mainly, to the identification of the most essential substantive features of the concept of human dignity, clarification of its functional properties, the development of effective legal mechanisms of guardship and protection. Modern international law serves as a normative basis of all this activity. In particular, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of the European Union, with these documents' conceptual normative provisions implemented (as a part of the process of our European integration) into the Constitution of Ukraine and Ukrainian sectoral legislation. Along with this, the ability of legislative response to the challenges of the practice of providing and protecting human dignity is still preserved.*

The purpose of this research is to analyze the legislative practice of human dignity protection in the leading European countries and to justify on this basis a list of propositions on criminal-legal guardship and protection of human dignity in Ukraine.

The results of this study highlight the main social factors that predetermine the need to establish criminal liability for defamation and abuse as crimes against human dignity. In particular, the public danger of encroachments on human dignity, the prevalence of such acts and the expediency of their criminalization and the compliance of such criminalization with the norms of international law and the Constitution of Ukraine, the legislative approaches of the leading European states in counteracting such an encroachment.

Key words: *human rights and freedoms, human dignity, slander and insult as crimes against human dignity.*

Modern philosophical and legal literature highlights two basic concepts: human dignity and the dignity of a human being. Human dignity expresses the self-worth and the social significance of a person, which is determined by the existing level of social relations, general ideas of freedom, justice, equality. The source of human dignity is a natural right, not a positive one, and therefore it is endowed with absolute character – supranationality, independence from the peculiarities of the state's legal regulation of human rights,

freedoms, and responsibilities. Human dignity, as a subjective right, belongs to every person equally. It, as a value, acts as a normative basis, an interpretative principle for the definition of rights, freedoms, and responsibilities of a person. Human dignity, according to the essential manifestation, has two normative criteria: a) positive – subjectivity (autonomy) of man; and b) negative – the prohibition to put a person in such situations or to treat it in such a way as to deny its human dignity.

The dignity of a human being is its internal assessment of its own value, which is based on the approval of the dominant part of the society of moral consciousness and readiness to protect it in all conditions, as well as expectations of respect for such actions from other people[1].

The system of positive (effective) law of the state must contain comprehensive legal guarantees of human dignity, its guardship, and protection on the basis of international law. Guardship and protection of human dignity are systemic, provided that all elements of the legal system are involved in harmony. In this regard, the situation in Ukraine shows that not all the regulative and protective instruments of law are utilized for the fullest possible guarantee of human dignity. Civil law instruments are considered the main means of providing and protecting human dignity, even though such an approach lacks proper scientific justification. This, obviously, raises the question about the social precondition of criminal-legal guardship and the protection of human dignity.

Philosophical science identifies the doctrine of the subordination of the natural course of things to the objective causality as determinism. The etymological origin of the concept of determinism is revealed based on the Latin word *determinare* – to determine.

The category of determinism reflects the notion of causation and causality. The corresponding state of society and each individual process in its development acts simultaneously as a determined (deterministic) by its previous condition and as a determinant for its next state. Consequently, all events, in reality, are conditioned by the necessary and sufficient circumstances (factors) and cannot occur in their absence. Necessary factors determine the possibility of serving, and sufficient – turning this opportunity into social reality.

The leading role in the determination of social development and human activity is played by circumstances of an economic, political and legal nature. In its unity economic, political and legal circumstances determine the social development of a person itself. Thus, the determination is systematic. At the same time, we should not forget about the methodological significance of the unity of the causal-genetic and functional aspects of the problem. The genetic approach is aimed at revealing the causes and bases of social activity, while the functional one – the interaction of different circumstances within the mechanism of this activity.

The categories of objective and subjective factors achieve the methodological significance in determining the phenomena of social existence. In its

[1] O. Hryshchuk, Liudska hidnist u pravi: filosofski problem [Human dignity in law: philosophical problems] (Atika 2007) 432.

widest sense, the objective factor includes historical preconditions, interethnic and inter-state relations, natural conditions, existing social relations and relationships between people. Such components of the objective factor as politics, law, interethnic and external interstate relations, the state of objects of nature can sometimes act as dominant in human activity in general. They are all interconnected and interdependent.

The constituent subjective factor forms the socio-political and spiritual activity of people. Moral, emotional, psychological and ideological factors tend to prevail in it. The structure of the subjective factor involves all components of consciousness. Purposeful and systemic activity of people is what makes them a driving force. Not only the conscious activity of people but also spontaneous manifestations of human abilities and passions are involved in the mechanism of action of the subjective factor. In its organic and harmonious combination objective and subjective factors manifest themselves as dialectically contradictory and inextricably interacting sides of the phenomena of social development. To the full extent, these general approaches are inherent in the activities of finding out the social precondition for criminalizing such acts against human dignity as slander and insult.

In legal literature, while analyzing particular problems of criminal-law problems the concepts of "guardship" and "protection" are commonly used in the same situations, although the etymological content of them seems to be different. "To guard" means to protect someone or something from danger, to protect from the threat of attack (encroachment – V. K.), an attempt, to guarantee the inviolability of someone, something. "To protect" – to defend, protect someone, something from attack, an assault, a blow, hostile or dangerous acts, etc.[1] (1). The difference between them is that the first concept reflects the statics of social relations, provided by the norms of material criminal law. These norms include orders, volitional regulations of the state, expressed in models of the corresponding behavior of a person: prohibition, duty, permission (granting of right), promotion, exercising the same protective function of criminal law. The second concept reflects the dynamics of social relations when a person performs the corresponding criminally wrongful act. For example, preparation of a crime, an attempt to commit a crime or a criminal offense. In the above cases, the rules of substantive criminal law, figuratively speaking, "come alive" and are applied by the competent authorities of the state. In this case, in addition to the norms of substantive criminal law, criminal procedure norms are applied, and further – the norms of penal execution. And one more thing, in the case of a person's conviction, the rules of administrative law apply. In general, the regulatory function of criminal law is exercised in relation to relations that arise between a person who commits an offense, or a criminal offense and a state represented by its competent authorities. Consequently, if the subject of the protection of criminal law is not any

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[1] V. Busel (red), Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy [Great explanatory dictionary of modern Ukrainian language] (VTF "Perun" 2009) 432, 870

specific social relations that arise as a result of a person's actions, then the regulatory function of criminal law cannot completely "engage", be carried out. In practical terms, both of these functions of criminal law could, in their own way, effectively guarantee the dignity of a person in Ukraine if such acts as slander and insult were criminalized. It shows that the factors of social conditioning for this already do exist, and we will address this in a logical way later in this research.

The activity of the legislator cannot be arbitrary. Criminal law-making, and hence criminal responsibility must be conditioned by certain social needs and must be built on serious grounds. To act on the basis of something means to rely on something, to have something based on, to rely on something, to have something to justify, a sufficient reason for the activity[1].

A scientific research of a complex of urgent problems of the social predisposition of criminal-legal guardship (defense) and protection of human dignity, as well as any other socially significant values, must provide, first of all, the answer to the question: are there social circumstances that confirm the need for a prohibition of slander and insults under the threat of punishment, and if so, what should be the theoretical and applied model of the norms (norm) of the law on criminal liability.

The doctrine of criminal law does not provide for a generally accepted understanding of the circumstances leading to the criminalization of human actions. These can can be called differently – grounds, principles, criteria, conditions, reasons, prerequisites and reasons, grounds, reasons and principles, reasons, grounds and principles, preconditions and grounds, factors, etc. There are, however, reasons to think that it is advisable to call them factors (circumstances) that predetermine the criminalization of certain socially dangerous acts, that is, criminal liability for their commission.

When addressing the social condition of the criminalization of offenses affecting human dignity, in particular slander and offenses, the most significant factors are as follows: 1) the social danger of acts that infringe on human dignity; 2) the relative prevalence of such acts; 3) the expediency of counteracting this encroachment by means of criminal law; 4) the coherence of their criminalization with the norms of international law; 5) the conformity of their criminalization with the Constitution of Ukraine; 6) legislative practice of counteracting such encroachment in European countries; 7) the traditions of the Ukrainian legislative practice of such counteraction. Let's consider each one of them in the above order.

The public danger of encroachments on human dignity, their prevalence was especially evident during the whole period of the hybrid war against Ukraine. Mass media, for example, systematically and purposefully distributed so-called fake news, false information, which includes defamatory, offensive attacks on the President of Ukraine, the Prime Minister of Ukraine, ministers, other public government officials in order to undermine their credibility in the eyes of the people, to weaken the belief

[1] L Brych ta V Navrotskyi, Kryminalno-pravova kvalifikatsiia ukhylennia vid opodatkuvannia v Ukraini [Criminal law qualification of tax evasion in Ukraine] (Atika 2000) 13, 59

in the effectiveness of social reforms being implemented and in the European future of Ukraine. Slander and insult have become commonplace means of clarifying the relations between politicians on different levels, the implementation of a competitive confrontation between business entities in the economic sphere, the settlement of accounts between individual citizens in the workspace and at the household level. Obviously, the limits of normative freedom in the information sphere are unjustifiably wide, which leads to lack of its integrity. All this undermines the normal, civilized moral and psychological state of social relations, promotes the implementation of hostile technologies to weaken the Ukrainian state and society. Given the above circumstances, slander and insult as an encroachment on human dignity constitute an increased public danger.

The desirability of counteracting slander and public insult by criminal means is obvious, since, as you can see, the application of only civilian remedies is clearly inefficient, both for general and special prevention of such crimes' commission.

The criminalization of slander and public insult is in accordance with the norms of international law, the Constitution of Ukraine, the legislative practice of counteracting such actions in European states and the traditions of Ukrainian historical legal practice.

In international law, human dignity has been the subject of special protection for a relatively long time. Thus, in the Universal Declaration of Human Rights (1948) the notion of dignity is appealed to multiple times. In particular, its preamble proclaimed that recognition of dignity and stated that it is inherent in all members of the human family along with their equal and inalienable rights acting as the foundation of freedom, justice, and universal peace, and in Article 1 it was declared that all people are born free and equal by virtue of their dignity and rights. According to article 5 of the Declaration, nobody can be subjected to torture or cruel, inhuman or degrading treatment or punishment. In the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966) it has been proclaimed, in particular, that all rights derive from the inherent dignity of a human person. These and other key provisions on human dignity have also been enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), various OSCE acts and received specification and clarification in the judgments of the European Court of Human Rights.

Human dignity achieved a new level of international legal protection of with the Charter of the European Union (2000), article 1 of which unequivocally proclaimed that human dignity is untouchable and that it must be respected and protected. Thus, there are grounds to argue that, in international law, human dignity is both a source of human rights and a principle of law, and this should be taken into account when developing legislative mechanisms to ensure the protection of its integrity in Ukraine.

The Constitution of Ukraine organically embodies all the achievements of international legal science and practice in protecting human dignity. The key one is Article 3, which proclaims hu-

man dignity as the highest social value. In accordance with the Constitution, all people are free and equal in their dignity and rights (Article 21), every person has the right to respect for his dignity (Article 28), the use of property cannot harm the rights, freedoms, and dignity of a person, and it's every person's duty to restrain from violating the rights and freedoms, honor and dignity of others (Article 68). Consequently, the above provisions of the Constitution, as the main law of the state, serve as the legal basis for the comprehensive guardship (defense) and protection of human dignity, including criminal law.

An important prerequisite for Ukraine's integration into the European Union is the harmonization of Ukrainian legislation, bringing it in line with European standards. In this regard, a lot of work has already been done already, yet for some reason, the practice of European lawmakers in the area of guardship (defense) and protection of human dignity by criminal means was avoided. It is quite extensive. For example: the Criminal Code of the Federal Republic of Germany provides for liability, in particular, for the offense of the Federal President (paragraph 90), insult (paragraph 185), slander (paragraph 186), discredit (paragraph 187), defamation or slander against politicians (paragraph 188), against the publice image or memory of the dead (paragraph 189); Denmark has the same norms related to the offense (paragraphs 266b, 267), defamation (paragraphs 266c, 267a, 268–275); Switzerland – for the offense (Article 177), defamation (Articles 173,174), wrongful depiction of memory of the dead (Article 175); Sweden – an insult (Article 3), defamation (Article 1.2), memory of the deceased (article 4); Spain – for insult (Articles 209–210), defamation (Articles 206–207); Austria – for insult (paragraph 115), defamation (paragraph 111) of a public image of a constitutional representative body, federal armed forces, a federal body (paragraph 116); Poland – for the offense (article 216), of religious feelings (article 196), the public image of a person or group of persons in connection with their national, ethnic, racial or religious affiliation (article 196), the image of the Polish people or the Republic of Poland (Article133), a public image of the President (paragraph 2 of article 135); France – ridicule aimed at the violation of a person's (Article 226-4-1). It should be noted that the Criminal Code is not the only source of French criminal law. In addition, criminal liability is provided by separate French laws. In particular, the Freedom of the Press Act provides for criminal liability for insult and slander (Chapter 4 of the Law). According to Article 26 of this Act, a public insult of the President of France is punishable by deprivation of liberty for a term of three months to one year and a fine of 300 to 300 thousand francs.

The above selective analysis of the legislative criminal practice of European states suggests the expediency of applying the norms of the criminal law for the guardship (defense) and protection of human dignity in Ukraine.

Historical legislative practice in Ukraine is also full of criminal and legal means of defending (guarding) and protecting human dignity. In the so-called Soviet period, three criminal codes were in force and all of them assumed responsibility for such attacks

on human dignity as slander and insult. Thus, in Chapter 5 of the Criminal Code of the Ukrainian SSR of 1922, "Crimes against life, health, freedom and dignity of a person", there are the following types of crimes: in insult by action, spoken word or in writing (Article 172), an insult in the widespread or publicly displayed works of press or images (Article 173), defamation (Article 174), slander in a printed or otherwise reproduced product (Article 175). In the Criminal Code of Ukrainian SSR of 1927, the sixth section called "Crimes against life, health, will and dignity of a person", provided for the following offenses: an insult by action, spoken word or in writing (art. 167), an insult in widely distributed or publicly displayed printed works or images (Article 168), defamation as the main component of a crime and defamation in a printed or otherwise reproduced work (Article 169) is a qualified offense. The Criminal Code of the Ukrainian SSR also provided for liability for such acts. In the third section of its Special part "Crimes against life, health, will and dignity of the person" there are two corpus delicti: 1) defamation as the main component of the crime, , carried out in print or otherwise multiplied work, in the anonymous letter, as well as committed by a person previously convicted of such acts; and a specially qualified one – defamation combined with a charge of committing a state or other grave crime (Article 125); 2) a public insult (Article 126).

Recent codification of the criminal law of independent Ukraine was flagged by democratization, humanization, and strengthening of the protection of human rights. It finalized the process of bringing criminal law to the urgent interests and needs of social development, providing them with an effective tool for the protection and regulation of social relations in a certain tangible perspective. The Criminal Code of 2001 turned out to be a legal act of new, higher quality. The Code, while becoming an objective reality, at the same time, acquired the status of a priority object of scientific research, the process of which noted its most important positive features, discussion approaches etc. In particular, attention was drawn to a certain lack, incompleteness of certain system-forming links between the Code and the Constitution, the scope of which concerns the criminal-legal guardship (defense) and protection of human dignity. Thus, despite the fact that honor and dignity of a person are proclaimed in Article 3 of the Constitution of Ukraine among the benefits of man recognized as the highest social values in Ukraine, and the title of the third section of the Special Part of the Criminal Code contains wording "honor" and "dignity", the section itself contains no relevant corpus delicti. In addition, unlike the previous criminal codes, this one uses the notion "honor" in its text, while this appears to be incorrect in relation to the above-mentioned modern understanding of human dignity in the doctrine of the philosophy of law and the theory of law. Consequently, while the title of this section is wider than its content, there is no criminal responsibility for encroachments on the mentioned values.

It should be noted that the dignity of a person being recognized as a victim, serves as an additional object of the respective crimes. For example, crimes against life and health, the will of a person, crimes against sexual freedom and

sexual integrity of a person, crimes against property, etc. It is also necessary to draw attention to the fact that a person with high prosocial attitudes can perceive any crime as an attack on its dignity.

The above analysis of factors gives us grounds to conclude that there is, in fact, a social precondition for establishing criminal liability for such attacks on human dignity as slander and insult, which will effectively contribute to the further consolidation of human rights and freedoms in Ukraine.

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CRIMINAL POLICY IN EAST EUROPEAN TERRITORIES

Summary. *Different methodological approaches, weakness and virtuality of state governing has of great impact of modern criminal policy in East European Territories. Analyzing modern ECHR and ECJ practice, one could consider that Crime, Criminal responsibility, and Punishment in Eastern territories will be reflected from the limits of internationally recognized substantive forms of conduct that necessary to criminalize, margins of criminal responsibility and the nature of punishment in comparison with preventive detention, security measures and criminal restitution, while conceptualizing unified approach of judicial practice on international level for future realization in native doctrine and legislation.*

Key words: *ECHR practice, criminal policy, sovereignty, crime, punishment, abuse of powers.*

Criminal Law is a tool to protect Sovereignty and Security and is considered as major instrument to defend Human rights and ensure Harmony between State and Citizens [1]. But time changes and State's Sovereignty is frequently secured by disciplinary measures that due to rational purposes are not included at criminal legal relations being naturally the part of them. As time goes by, we have to analyze criminal responsibility, offence construction and trends in sentencing while colonizing criminal law at National level.

Colonizing Criminal Law means certain attack on its purity and clear subject as law of Crime and Punishment. A time when Criminal Law was associated with 'Ultima ratio Regis" unfortunately has passed away. One considering emerging issues in modern criminal justice, has to analyze zemiotic and narrative tendencies in legal policy associated with diversification of the sense of Criminal to administrative and disciplinary practices. This widespread characteristic of state's punitive power. It means that usage of new methodological approach (triangle or holistic) formats legality depending on diverse narratives of law enforcement and judiciary [2].

At Z. A. and others v. Russia [3] the ECHR case concerns complaints brought by 4 individuals from Iraq, the Palestinian territories, Somalia and Syria who were travelling via Moscow's Sheremetyevo Airport and were denied entry into Russia. They spent between five months and nearly 2 years in the airport's transit zone. Thus, use of disciplinary measures without necessary human rights guarantees is at any extent is more efficient for the state abuses of power than criminal proceedings.

The role of Individual changes too. Network and social clusters and platforms formulate new narratives that differ by state, national and common paradigms. These paradigms (Safety, Security and Independence) contradict each other on above mentioned levels, generating different understanding of what is the right to happiness and the right to be punished. The Law in action needs protective usage of new approaches from modern economy, psychiatry, neuroscience, sociology, political science.

But there are some gaps on the path to way of formatting Effective Criminal Policy against of "Mad Printer" one while legislators tend to use laws on crime and punishment as frequent instrument to fulfill fake political needs or social interests [4]. The urge to make something criminally liable gives politician or party to show them as a strongmen fighting for peoples needs. As usual that is a bogus political trick, because is made for popularity and rating, nor for certain real protection and safety. In this way Eastern European Countries due to Slavic ideology and post-communist background are formatting specific family in European Criminal policy Synergy process.

First, only the countries of the Eastern European territories establish criminal responsibility in a single normative act – the Criminal Code. The practice of most European countries, based on the widespread interpretation of the crime in accordance with the established Engel rules (ECHR Case of Engel and others v. The Netherlands), sets out a diversified approach to sources of criminal law regulation [5, 6].

Secondly, the ECHR speaks of the definition of the Convention on Human Rights as a "constitutional instrument of the European public order" in the field of human rights. (Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland, § 156 [7]). The same can be said about the approach to punishment. The court found in case of S., V. and A. v. Denmark [8] that any flexibility of law enforcers and lawmakers in the application of the deprivation of human rights and freedoms should be limited to certain guarantees provided for in paragraph 5 of Article 5 including the deprivation of liberty, and the requirement that the offense must be specific and specifically defined, and the authorities indicate that the potential offender may be restricted in rights, if this does not damage the fair procedure for his detention and he will be entitled to a refund.

From our point of view, the regulatory function of Criminal Law is not only to secure of criminal law protection objects by the normative-determined measures of state coercion, but also the achievement of harmony in relations between the state and citizens, where the responsibility of the offender corresponds to the state's duty to seek, fair punishment and rehabilitation of the offender; compensation and restitution to a victim of a criminal offense; achieving social peace and harmony at the national, local and individual levels.

This fully corresponds to the interpretation of legality principle in implementation of the provisions of Article 7 of the Convention, whereby the court must verify whether the act of state coercion is punishable and that the penalty imposed does not exceed the limits imposed (ECHR Coëme and Others v. Belgium, § 145; Del Río Prada v Spain, § 80 – [9,10]).

We know that sometimes levels of punishment or other coercive measures exceed stated limits. For example, in Ukrainian legislation applying more severe punishment under current criminal legislation is possible:

- With the departure of the sanction in cases provided in Part 2 of Article 53 of Ukrainian Criminal Code [11]. For the commission of a crime for which basic punishment is imposed in the form of a fine of more than three thousand tax-free minimum incomes, the amount of the fine imposed by the court may not be less than the amount of property damage inflicted by the crime or received as a result of a crime of income, regardless of the limit amount a fine stipulated by the sanction of the article (a sanction of part of the article) of a special part of this Code.
- With the departure of the sanction in cases of imprisonment established for a term of more than fifteen years, in accordance with Part 2 of Article 53 of the Criminal Code, and the provisions for the imposition of punishment on the totality of sentences. In drawing up sentences in the form of deprivation of liberty, in accordance with the rules of Part 2, Clause 71 of the Criminal Code, the total period of sentences finally imposed on the totality of sentences should not exceed fifteen years, and if at least one of the crimes is particularly grave, the total the term of imprisonment may be more than fifteen years, but shall not exceed twenty five years.
- In theory, there is a possibility to determine a longer sentence if the President is to be deprived of liberty by deprivation of liberty for a certain period of time in the form of pardon. According to the provisions of Part 2 of Art. 87 KK, the act of President's pardon may be replaced by person sentenced by the court in the form of life imprisonment for a term of at least twenty five years. In addition, this act is not an act of justice. And the possibility of substituting a punishment by an act of an administrative authority for a period of not less than 25 years does not correspond to the generally accepted principle of legality. By the way, the draft Law of Ukraine dated 03.03.2015 N 2292 "On Amendments to Certain Legislative Acts of Ukraine regarding the Replacement of Life Longer Imprisonment by Milder Penalties" provided for the possibility of limiting the president's discretionary powers, was vetoed October 3, 2018. We consider it expedient to consider in the future the determination of a two-stage solution to this issue: pardoning the person by the president and replacing the sentence with the pardoned person solely by the court.
- Discriminatory practice. Unfortunately there are specific examples that need immediate removal. Thus, violation of the above-mentioned provisions of the practice of the ECHR was implemented by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the System of Guaranteeing Individuals' Deposits and Removing Insolvent Banks from the Market", dated July 16, 2015, No. 629-VIII. According to the latter, the sanction of Article 220–2 and part 1 of Article 365–2 introduced additional punishment in the form of deprivation of the right to occupy certain positions or engage in certain activities for a term up to ten years [12]. Given the fact that according to Art. 55 of Criminal Code

deprivation of the right to occupy certain positions or engage in certain activities may be imposed as the main punishment for a term of only two to five years or as an additional punishment for a term of one to three years, the stated "novel" is an obvious case of neglect of the principle of legality and should be eliminated from the existing criminal legislation.

Next existing question is concerned the problem of what criminal policemakers should do when the State or its part became Virtual due to separation of uncontrolled territory, rebellion or national-liberation movement? How criminal policy in Virtual state will affect people's rights and duties when there is no border or other elements of State Sovereignty, but administrative oppression exists?

People's safety needs to be protected on European Continent. But social control schemes from the field of Virtual State differ on International and National level, perpetrator, victim and civil society attitudes.

Feeling safe, secure and independent means to be happy. The status of Happiness reflects the mainstream at modern sustainable World. Developed countries and virtual territories differ each other regarding to Happiness status.

The concept of Virtual State is based at State's Sovereignty erosion in favor of Nation's and People's security attitudes. Nation or People's development rise against different threats and criminogenic factors through their own legally mentioned obligations, rights and freedoms [1]. It is significant that the latest decisions of Taricco II, ECJ 2017 [13], Tsezar and others v. Ukraine, ECHR 2018 [14] demonstrate a shift in focus on the priority of the values of collective actors over individual rights (European and State Values). Naturally these rulings are only bricks at informational wall.

But National and Peoples' Sovereignties are constructed on their own Cultural and Religious platforms that differs from the State one [1].

In addition the role of Protective State changes at multipolar, post-truth informational society. It is the fact that the diversification of Criminal law enforcement understanding at the auspices of civil society cognitive mood, has a chance to be resulted in a situation when political union or party (civil society representatives) assumes the right to abuse opponents, forming armed groups, with a tolerance of local restrictions on the freedom of movement that, as a basis for the right to revolt during the rebellion, undermining the idea of the legitimacy of power and widespreading corruptive practices in the transitive development period. Criminal legal form has to be in a dissonance with developing public and social relations and processes.

Sometimes the effect of Informational society and Networks triggers Social Anomy and Protest against State Sovereignty as narcissistic energy Boom. Principle of Legality at Metamodern Society validates depending more on General Values of Happy Nation, Happy and Prosperous Social Group nor Happy State, aggressively contradicting to Enemies image and Rule of Law's State Concept.

Due to this backdrop, abuses of power and the abuses of law are forming specific compensational mechanisms.

The Right to be law obedient supplements the Right to be deviant.

The question is what we have to do to harmonize Crime and Punishment, Justice and Prevention notions not on the level of National or People's narratives but on the level of legal Dynamics and Ideology. Does the State has to make a plain Criminal Legislation version, or we have to find proper ways to correct National and Peoples' Laws approximating State's Justice to people's needs. New actors need a new place at Public law balances and distribution of powers' background.

Does the Virtual State have to make a plain Criminal Legislation version, or we have to find proper ways to correct National and Peoples' Narratives, Rights and Obligations approximating State's Justice to people's needs. New actors need a new place at Public law balances and distribution of powers' background. To my opinion it should run through internationally accepted model like the trade state concept, or through more typical local Unrecognized State model. Northern Cyprus and Kosovo, Donetsk and Luhansk rebels' fake republics, Transnistria, South Ossetia, Abkhazia, etc., symbolize legal, moral and social circumstances that affect Human rights and obligations while fundamentals of public law and justice are formulated null and void on unrecognized territories. Thousands of applications, broken lives…

Regarding Ukrainian situation, the European Court of Human Rights has to decide this December that any related individual applications concerning violations or abuses of power at Crimea Peninsula or on other territories that are out of Ukrainian governmental control and which are not declared inadmissible or struck out at the outset will be communicated to the appropriate respondent Government or Governments for observations in parallel with the inter-State case (Ukraine vs Russia). After receiving the Governments' and applicants' observations in reply, the Court intends to record an adjournment for each case, pending a judgment in the inter-State case, with a view to having the files complete and ready for decision or judgment as soon as possible thereafter [15].

Thus Crime, Criminal responsibility, and Punishment in Eastern territories will be considered from the limits of internationally recognized substantive forms of conduct that necessary to criminalize, margins of criminal responsibility and the nature of punishment in comparison with preventive detention [16], security measures and criminal restitution, while conceptualizing unified approach of judicial practice on international level for future realization in native doctrine and legislation.

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SOCIAL FUNDAMENTAL OF CRIMINALITY

The work substantiates the concept of criminality as an aggregate of offenses of one or several types of mass character, committed regularly in a country or a separate region during a certain period. It is argued that the social basis of criminality is the ill-conceived transformation of the economic, political, social and cultural spheres of life, the violation of the principle of equality, unfair privatization, sharp social dissociation, unemployment, inflation, corruption, poverty, and social conflicts.

Key words: *criminality, society, poverty, criminalization, personality, corruption.*

Combating crime in any country is one of the priorities of the state. This problem is also relevant for modern Ukraine, in which the criminogenic situation has sharply aggravated. "Traditional" causes and preconditions of crime are now supplemented with the negative circumstances that stem from the difficulties of current state development. The leading social problems Ukraine is facing right now are: the war in the eastern regions, unsuccessful or incomplete reforms in all spheres of public life, full control of the main resources of the state by minority groups, the neglect towards social problems of the majority, the economic crisis, the devaluation of the national currency, the decline of industrial production, which is causing significant job cuts, impoverishment and corruption. All these contribute to catastrophic crime growth. In this regard, it is necessary to determine the social basis of criminality to be able to effectively fight it.

First, we should address the notion and the concept of criminality itself. Usually, criminality is regarded as a historically changing, social and criminal phenomenon, an aggregate (system) of offenses committed in a given state (region) for a given period of time. Criminality is provoked by social phenomena and processes, embodied in the scale of society as a whole, manifests itself through the mass of crimes.

The concept of crime (as an act) is determined by a state in criminal legislation. Thus, according to Part 1, Article 11 of the Criminal Code of Ukraine, a crime is a socially dangerous offense (action or inaction) provided for by this Code committed by a subject of crime. An offense is always a culpable act of a sane subject who has reached a certain age required to understand the meaning and consequences of his/her actions and manage them.

Such a characteristic as a correlation to a social phenomenon, which is

always present in this concept, does not make it possible to distinguish criminality and crime, deviance, social interactions. This characteristic can be used to distinguish the genesis of crime, but not its concept [1].

What are social phenomena? These are all those aspects of social life, the result of the joint people's activities, a direct consequence of the current and pre-existing period of relations between people. A separate crime can be recognized as a social phenomenon, however, not every crime is necessarily a consequence of a relationship between people, it may even be a psychological need of an insane person. Obviously, no previous social relations are considered when talking criminal negligence.

We should also not the fact that a phenomenon in philosophy is a manifestation, an expression of the essence, something through which essence is manifested. A phenomenon (Greek φαινόμενον, from φαίνεσθαι – to exist, to be visible, to appear) is an event, a subject given through sensory perception (in an experience that is perceived by senses). A phenomenon differs fundamentally from a noumenon, which remains outside the experience and is the subject of intellectual contemplation. If the term noumenon denotes the hidden essence of an object or an event, which can be comprehended only in the process of its profound study, understanding, speculative contemplation, a phenomenon is the result of the influence of the object on the senses of a perceptive person, the external manifestation of some things, mistakenly perceived as its essence. The word phenomenon is also used to describe an unusual, rare event, an exceptional fact [2].

The notion of a term should contain a set of essential features that distinguish this term from all others. Based on the foregoing, we propose to understand the notion of criminality as an aggregate of crimes of one or more types of a mass character committed on a regular basis in a country or a separate region over a period of time.

The main, most significant feature of criminality is the aggregate of crimes, their repeatability. If a single crime, such as fraud, has become widespread, this doesn't mean criminality. This will only be widespread fraud. But if there is a situation of mass fraud, robbery, brigandage, murder, etc., constantly being committed – then we have criminality. Consequently, it is not correct to assert that criminality is a social phenomenon, criminality is a set of social phenomena.

The most important social factor operating in all modern societies and causing the growth of deviations, along with a complex of other phenomena, is a fundamental contradiction between the relatively similar needs of people and the essentially unequal possibilities of their satisfaction. Inequality of opportunities for satisfying needs is predominantly determined by the place of individuals and social groups in the social structure of itself. In other words, social inequality can be regarded as one of the most significant sources of criminality. A modern person is no longer satisfied being an observer of the well-being of others, it strives for well-being on its own. The opinion of the famous German lawyer and psychologist H.-Y. Schneider on this issue is interesting in this context, he stated that "objective" poverty does not contribute to the growth of criminality while society is in

more or less equally difficult financial situation. Criminality increases with the emergence of a sense of poverty, which manifests itself when individuals in the welfare society find themselves unemployed and, accordingly, become "relatively poor" [3, p. 5–6].

Recently Oxfam, an international organization dedicated to addressing poverty and related inequities, has published a further report on property stratification in the world. The report, coinciding with the International Economic Forum in Davos, Switzerland, states that the wealth of the planet's richest people grew over the year and now only 1% of the Earth's population owns more than half of all wealth. The poor half of the Earth's population is satisfied with less than 1% of the world's wealth, or even 0.5% if you discount their net debts [4]. According to Kaushik Basu, Professor of Economics at the Cornell University, income and overall welfare differences have become so extreme and rooted into social relations that they pass through generations; thus, family welfare and heritage have a far greater impact on economic prospects than talent and hard work. This works in both directions: children from wealthy families are more likely to become wealthy in their mature years, while children of former workers who work from childhood are more likely to work from childhood as well [5].

These global trends are fully realized in Ukraine, where the gap between the rich and the poor is shocking, and property inequality affects the direction of criminal encroachment. Significant material assets have now become the focus of unlawful and especially grave actions. Among the total number of criminal manifestations registered by law enforcement, a significant percentage is namely theft, robbery, and fraud [6].

According to Corresponding Member of the National Academy of Sciences of Ukraine, Academician of the NALS of Ukraine V. F. Sirenko, the most significant cause of the poverty of the general population of Ukraine is the unfair and illegal distribution of property. It is impossible to deny his statement that: "Public wealth must belong to all, while private individuals should be able to keep what was obtained as a result of their own work. This is the great principle of social justice, which excludes poverty as a mass and systematic social phenomenon" [7, p.120].

Poverty and lack of economic growth are complemented by huge external debt of Ukraine. As of the beginning of January 2018, Ukraine's foreign economic debt amounted to 83% of the country's GDP. This means that every Ukrainian owes international financial organizations about 1800–1900 dollars [8]. The low wages of Ukrainians and the shortage of jobs for skilled workers provoke large-scale migration. This critical situation is further substantiated by the fact that in 2017 eight million Ukrainian families, that is, half of the households in Ukraine, applied for subsidies for housing and communal services.

Currently, the number of people who have lost their social status and failed to acquire a new one is increasing. Systems of existing values have already been destroyed, while new ones have not been created yet. This leads to psychological discomfort of the population, its disorientation, confusion, mal-

adaptation, and massive deviant behavior. As a result, legal nihilism increases, reducing the threshold for crime intolerance and erasing the boundary between immoral behavior and crime. Law as a value, a regulator of behavior, is increasingly replaced by arbitrariness and group expediency.

We should also address some situations where legal nihilism is provoked by the very law itself. An example of such a situation is the adoption of illegal acts, imperfect and ineffective laws that fail to protect the interests of citizens. Legal insolvency provides for a total criminalization of social relations. Criminalization of social relations, as a result of the evolution of crime, the lack of effective prevention, marginalization of society and the creation of conditions under which criminality services are more acceptable to a part of society than the ones provided by a state, in turn, contributes to the further threatening evolution of crime. Criminal sphere, while being shaped as a reflection of society, in turn, deepens the problems of this society.

Considering criminality as a systematic construct, one cannot ignore the existence of the relationship between the criminogenic factors that belong to social circumstances and the individual biopsychic sphere. Individual personality traits certainly affect its behavior. So, those who are incapable of self-control usually enjoy dangerous enterprise, are impatient and impulsive, can act hesitantly. Typically, perpetrators are egocentric, indifferent and insensitive to the suffering and needs of other people. In addition, the result of many crimes is not the satisfaction of needs, but the release of instant anger. Individuals who are incapable of self-control encounter difficulties when tolerating frustration, they are not inclined to react verbally to conflict and prefer to solve problems using physical strength. These are the people who are the most exposed to unlawful behavior [9, p.114].

Also, the moral degradation of an individual can lead to unlawful acts. Disadvantages of moral education are manifested in the fact that a person does not have any ideas about duty, honor, and dignity, is accustomed to performing actions only profitable and safe for that person. Compliance with your word, fulfillment of obligations before another individual is not obligatory for such person. A person gets used to the fact that there are no limits, identifying all the other human beings as only means to ensure the reach of the goal. The obstacles before that goal can be overcome by any effective means necessary. The situation becomes especially concerning if such degradation occurs to a person with authority that can influence the fate of others.

It can be argued that a special type of person with a crisis or catastrophic consciousness has already formed. Apathy, cynicism, and indifference of an average person is our current reality. A person blocks itself out from the "inconvenient" social reality with a tough psychological barrier, becoming completely immersed in private life. Protection from the outside world, as proven by psychologists, requires constant support and self-confirmation. In order to maintain this, the carrier of catastrophic consciousness is actively searching for any negative information about the stranger outside world. Positive information is simply blocked out, denied or

perceived as false. At the same time, a modern person, as well as society as a whole, is characterized by increased suggestibility and openness for manipulation from the outside, aggressiveness towards the outside world and itself.

Corruption is an obstacle to the political, economic and spiritual development of the country. It creates unacceptable disproportions not only in the system of governance and functioning of state institutions but also influences the formation of public consciousness. V. Kramer expressed an interesting opinion about the nature of corruption. According to him, corruption is a natural form of adaptation of an underdeveloped person to the conditions of a developed civilization. Everyone seeks to live with dignity but is forced to live according to his abundance. Focusing on western patterns of the economy in a different reality, a person is only looking for ways to stealthily steal through the budget, social funds, market, taxes, or other financial manipulations. Having acquired the tendency to refrain from crime, grudges, and rudeness, a sane person thus gets devoid of means of survival in the conditions of a shortage of resources [10]. Unfortunately, it is difficult to argue here. Of course, not all people are looking for ways of unlawful gain, but there are just so many. Therefore, the priority of the fight against corruption should be the strategy of adopting measures that are not focused on the perpetrator but aimed at eliminating incentives for corruption.

The spread of crime is facilitated by bureaucratization of administrative apparatus and social conflicts. We are obliged to agree with the Doctor of Sociology, Prof. M. I. Piren, who argues that the interweaving of authoritarianism with bureaucracy generates a special spiritual environment, filled with a desire for profit, money, obedience, dogmatism of thought, conservatism, social apathy, the absence of trust to political elites in society. "The political elite is so irresponsible before ordinary people that it cannot even care to apply legal measures to those who violate the rules of law since the elite itself is the cause of such violations. The atmosphere of uncontrollability and irresponsibility led to a whole series of contradictions that grounded the system of conflicts between the authorities and people at the political, economic and legal levels" [11].

Thus, the social basis of criminality can be identified as a set of social factors contributing to criminality. Unstable and ill-conceived transformations of the economic, political, social and cultural spheres of life, violation of the principle of equality, unfair privatization, strict social segregation, unemployment, inflation, corruption, poverty, conflicts in society – all these factors form the foundation of criminality.

Along with the general social, economic, and political factors contributing to the spread of crime, we should take into account both the psychological and biological factors that determine different types of behavior in each particular case.

Inactivity of the state is the main determinant of criminality. The lack of legal regulation of social relations is always supplied with criminal regulation. The state is obliged to properly perform all its functions. Only a comprehensive impact on all spheres of public life can significantly reduce the probability of crime.

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SUBSTANTIAL PROBLEMS OF THE CRIMINAL–LEGAL POLICY OF MODERN UKRAINE

The declaration of independence of Ukraine in 1991 bolstered Ukrainian people with the feeling of the apparent rapid development of the country in line with the standards of Western democracies. The fact that the legal system of the state was built on different principles than in democratic countries, while communist ideology's long-term domination has distorted people's legal consciousness and the need for the enormous amount of legislative work to bring the entire legislative framework to democratic standards was completely ignored. No account was taken of many other things as well. Logically, in the first years of independence, a significant number of legal higher education institutions was created, as the country needed qualitatively new, educated legal staff capable of evaluating the legal space from new positions and working in new legal realities. One of these newest law schools has become our faculty of law, which over the years of its existence has turned into a legal-educational Law Institute.

Various academic schools were formed in each of the newest educational institutions, aimed at developing a number of legal issues. One of the following areas of the Educational and Scientific Law Institute of the "Vasyl Stefanyk Precarpathian National University" was research on crime prevention policy and, in particular, criminal-law policy.

It should be made clear that today these studies (in conjunction with research carried out in other scientific and educational institutions) indicate a critical, without exaggeration, state of both this policy and the legislation on criminal liability in general. First of all, it is believed that the foundation for this situation is the problem of the very criminal-legal policy of Ukraine, which should be the cornerstone of criminal law.

To speak frankly, in general, criminal-law policy in our country is non-existent today. There is only an illusion of its existence.

The state of domestic legislation on criminal liability and the science of criminal law is what leads to such a sad (and possibly even tragic) conclusion.

In the first place, this is a consequence of not defining the ideological basis of criminal law. This brings up the question: which ideology should be put into its foundation? Conservative? Liberal? Or, maybe, a postmodern ideology that is fundamental in the world in the era of globalization?

Of course, at first glance, the preference should be given to the very liberal ideology, which puts human rights protection before the protection of interests of the state and society. Such an approach is "fueled" by the desire to break away from the ideology of communism, which defined the foundations of Soviet criminal law and can be characterized by the famous phrase "Think Motherland first, and then about yourself!". Were we able to achieve this? Unfortunately, no! Conceptually, in developing the current Criminal Code, an ideology of conservatism was chosen, with the dominant advantage of protecting the public interest over an individual one. With all declarations of positivity of the Criminal Code of Ukraine of 2001, ideologically it did not differ much from the Criminal Code of the UkrSSR. In 2004, while analyzing the new Criminal Code, professor O. I. Kolb pointed out that the new Criminal Code is "harsher" by a third than its predecessor. It was only slightly transformed taking into account new socio-economic realities of existence. The further development of criminal legislation only substantiates this conclusion. Take for example the number of amendments made to the current Criminal Code of Ukraine, which to date has already more than 730. And this is far from the end. More than 100 bills have been registered in the Verkhovna Rada of Ukraine, according to which it is proposed to amend and supplement the Criminal Code with respect to another 280 norms! How can one assess this?! Of course, the relevant changes were objectively necessary and determined by the chosen route in the direction of Europe. Some changes were caused by the need to respond to the formation of a criminal society in Ukraine. But most of the changes were determined by the very criminal society that is doing everything to protect itself. Therefore, it laid the foundation for the criminal-legal ideology of conservatism and not just conservatism, but conservatism with a communist tint that neglects the interests of the individual and adheres to the principle of maximum prohibition!

At the same time, liberal ideology should not be perceived as the only true (especially in the present situation of the actual war in which Ukraine is in connection with the aggression of Russia). However, liberalism has two sides. The first is a liberal attitude towards society and its members. The second – attitude to the offender. Concerning the second aspect, it should be noted immediately that it has become, as a result of known historical reasons, almost the most important. The decade of Stalin's terror and the domination of the communist nomenclature distorted the idea of criminal punishment, turning it into a weapon of repression. On this basis, society has formed, as a basic requirement, the need to protect the person who falls into the gears of criminal justice and the court, protecting it from arbitrariness and lawlessness. In this situation, the protection of the interests of a victim and society went away to the fore. Instead of fighting crime, attention has been paid to *protecting society* from the crime that is not the same. That is why the active strategy of *combating crime* carried out taking into account the rights and legitimate interests of a person should determine the ideology of criminal law. The main thing is to achieve a balance in protecting the in-

terests of state, society, and person. Therefore, it is believed that the foundation of current ideology of criminal-legal policy (and policies in the field of combating crime in general) should be the neo-conservative ideology that can establish an appropriate balance – to protect the rights and freedoms of each individual through the protection of the rights and freedoms of the majority.

While determining the existence of crisis phenomena in science, we should elaborate on two more points.

The first is related to the lack of development of issues of criminal-legal policy (as well as policies in the field of combating crime in general) in domestic criminal law. Comparing the level of development of the problem in domestic science with the level of its comprehension in other countries (including our former neighbors in USSR), we can only see us seriously lagging behind. And this is manifested not only in quantitative indicators but also in qualitative. To this day, we have poorly developed the special issues of criminal-legal policy – its tier differentiation, by certain areas of its implementation, by subjects, participants, etc. Its special part is practically undeveloped. In fact, one hand is enough to count on the fingers all the works on this issue. Young scholars, for the most part, devote their dissertation papers to the analysis of individual articles of the Criminal Code, while not analyzing the criminal-political aspects of the problem. There are few doctoral dissertations with this analysis. And without deep scientific development of the problem, the formation of its doctrine, is impossible to create a *real* concept of criminal-legal policy, the development of a legislative plan and the transition, in the end, from the actual anarchy on this issue, to scientifically grounded estimated activities.

When drafting legislation on criminal liability, the authors of the bills ignore the rules of *modeling*, as a result of which these projects meet the requirements of neither criminal-legal protection nor legal technology.

In the early ’90s of the twentieth century, the researchers identified factors that necessitated changes to the Criminal Code and should be kept in mind and analyzed in detail before any introduction of even insignificant changes, not to mention the fundamental changes to the Criminal Code, related to the criminalization and decriminalization.

These determinants include 1) **the basic** (**law-making**) – 1.1. economic, 1.2. demographic, 1.3. geographical, 1.4. political and legal. 1.5. socio-cultural, 1.6 national, 1.7 international and others. 2) **providing** (**procedural**) – 2.1 organizational, 2.2 informational, 2.3 scientific, 2.4 programming [2]. The lack of analysis and consideration of these factors has a very negative effect on the effectiveness of the Criminal Law Act and its qualitative criteria in general. However, when analyzing the shortcomings of the Criminal Code, the analysis of these factors is not carried out, nor is their influence on the modification of the social relations regulated by them – the dynamics of the influence of novelties on the state of crime, the correctness of the wording of norms and their ability to apply, public trust in the Criminal Code, etc. are not monitored.

Establishing the presence of factors that determine the need for the implementation of changes in the criminal

law, objectively leads the initiator of such changes to the need for *simulation (modeling) of criminal law*.

It is immediately advisable to emphasize that the question of modeling criminal law, as well as the question of modeling laws in general, was not given enough attention in the legal science of our country. Frankly speaking – no attention was given at all. In fact, it is *terra incognita* for lawyers as a whole, as well as representatives of criminal science, in particular. Possibly, such a situation with a rather low level of domestic legislation makes it so "newly" adopted laws are amended or even abolished shortly. This puts forward the issue of the necessity of the initial modeling of the law, including modeling its effectiveness.

Modeling, as a scientific concept in sociology, is a well-known science and practice of conducting research. It is a method of scientific perceiving of reality, a method of solving cognitive tasks. According to I. T. Frolov, "Modeling means a material or imaginary imitation of the real (natural) system by the special construction of analogs (models), in which the principles of organization and functioning of this system are reproduced" [1, p.39]. A simulation (modeling) is a "method of indirect practical or theoretical operation with an object in which the object of interest is not investigated directly, but an auxiliary artificial or natural system ("quasi-object") is used, which is in a certain objective correspondence with a recognizable object, is capable of replacing it at certain stages of cognition, and, in the end, is providing the information about the object being simulated" [2, p.42]. Thus, it should be noted that the simulation involves the presence (creation) of the corresponding object which has the corresponding similarities to the object, which is supposed to be created as a result. The model represents a research ground on which tests the parameters of the object, that should later become the final result.

"A model," says V. O. Levanskyi – is a holistic system of representations about the essential features and characteristics of some other system, called the original; embodied in material constructions or information (graphic, statistical, mathematical, etc.), compositions; separated from the environment in accordance with the goals, tasks, and capabilities of the researcher; is able to give new knowledge about the system – the original or the environment, due to the unity of laws that operate in different spheres of reality" [3, p.20].

However, simulation is actually a method of managing processes and phenomena. The new explanatory dictionary of Ukrainian language defines this method as "Steering the course of a process, influencing development, the state of something" [4, p. 642]. In the context of the issue being researched, modeling is the establishment of the main areas of criminal-legal policy in the context of defining the main objectives, means, priorities and the limits of criminal law protection. On this basis, modeling in criminal-legal policy can be defined as a *method of the influence of criminal-legal policy aimed at the process of criminal law development.*

The ultimate goal of criminal-legal modeling should be the creation of a law that would most effectively solve the problem of criminal law protection. At the same time, a complex of tasks re-

lated to their external (at the level of laws belonging to different branches of the system of law) and internal (at the level of norms of the criminal law) correspondence should be solved. Laws should not interfere with the frank competition, which, unfortunately, occurs very often in our realities. They should be formulated in such a way as to exclude both ambiguous and far-reaching interpretations. The blankness of criminal law must be ensured. The number of evaluation concept determined on the basis of subjective approaches should be narrowed to a minimum.

Modeling (simulation) cannot be the prerogative of criminal law, as well as any law in general. In 2010 V. O. Tuliakov argued that: "… criminal law should be considered as a complex system, which is in constant dynamic development, interaction with society, reproducing itself through legalization. The impossibility of a strictly rational interpretation of the stability of social relations and processes leads to the consideration of the image of law as a dynamic structure that consistently reproduces old and occasionally forms new rules of conduct" [5, c. 389].

Thus, *the dynamism and the features of criminal law exclude its self-simulation. Criminal law can be simulated (modeled) with criminal-legal policy, defining those baseline directions (vectors) that must satisfy the interests of society and the state. Criminal law, as the content of the simulation, dictated by criminal-legal policy, is the result of the simulation of the latter.*

For example, the Criminal Code should meet the following requirements: be small in volume, rigid, understandable and specific. This is not an exclusive list of requirements, but the one with which the vast majority of specialists in the field of criminal law science do agree. However, only the criminal-legal policy as a guide can set the model that will be filled with the necessary and accurate content – the norms of the Criminal Code, which will optimally and fully ensure the effectiveness and humaneness of the enforcement of criminal liability.

Can the issue of simulation of the Criminal Code be solved without the foundation that is the criminal-legal policy? The answer to this question is obvious – no. But after a long time recognizing the significance of such a policy, such baseline concept is hidden behind the customary doctrine of criminal law with a certain disregard for the significance of the criminal-legal policy itself, its positioning as if "behind the shoulders" of criminal law.

In fact, the first criminal-political attempt to scientifically develop a model of criminal law was implemented by an author team led by V. M. Kudriavtsev and S. H. Kelina and published in the monograph "Criminal Law: Theoretical Modeling Experience" [6] in 1987. Please note that in the name the term "criminal-legal policy" was absent, but the emphasis was placed on the theoretical experience of modeling (simulating) criminal law.

"Model" as a synonym for the terms "design" and "structure", of course, can be widely used in material criminal law, including its General Part. Some "models" have been developed long ago and tested by time. Thus, the model corpus delicti, its stages, complicity in the crime, mitigating and aggravating circumstances, the grounds for exemption

from criminal liability, and even the model of the rule of law, which consists of a hypothesis, disposition, and sanction, is used in the design of all, including criminal law. But the *very modeling of the criminal liability law, or the Criminal Code itself, is the prerogative of exclusively criminal-legal policy as a strategic, vector form of the criminal liability law.*

For criminal-legal policy, which develops promising directions for the formation, implementation of criminal law, modeling is important. In fact, it can be argued that the criminal-legal policy "functions" exactly at the level of the relevant models. This is its main function: to identify, declare and implement the most suitable and effective models of the whole system of the Criminal Code, as well as its separate sections, norms, or – the vectors of influence. While defining modeling (simulating) as activities related to the creation of appropriate abstract structures in the field of criminal law, we will try to determine the types of such structures.

It seems that the types of models that are created during the development of criminal-legal policy are, as follows:

– model of a concept of the criminal-legal policy of Ukraine

– model of the Criminal Code of Ukraine;

– model of a separate criminal law (adopted in the development of the Criminal Code);

– model of an article of the criminal law;

– model of a criminal-legal norm.

This is a rather generalized approach that does not take into account models that can be created "inside" of the individual ones.

Proceeding from the fact that the basic level of criminal-legal policy should the doctrinal level, doctrinal approaches to the basic models of the types mentioned above should be developed on its grounds.

The process of practical modeling should begin with the development of a general concept of the country's criminal-legal policy. The structure of such a concept should reflect the following elements (models):

– goals, objectives, and principles of criminal-legal policy of Ukraine;

– sources of criminal-legal policy;

– actors and participants of criminal-legal policy;

– methods of criminal-legal policy;

– the main directions of criminal-legal policy;

– fundamentals of ensuring the implementation of criminal-legal policy;

– criteria for the effectiveness of criminal-legal policy:

– efficiency at the criminal enforcement level;

– the effectiveness of law enforcement;

– the effectiveness of general and special prevention of crimes.

– the basis for amending criminal-legal policy;

– the correlation of criminal-legal policy with other components of the policy in the field of combating crime in Ukraine;

– terms of realization.

When drafting proposals for amending and supplementing the existing Criminal Code, from the criminal-legal standpoint it is necessary to establish the *expediency* of such changes.

Expediency, as is known, is the correspondence with the stated purpose,

practical utility, reasonableness, rationality, wisdom [7, p.837]. At the same time, it is a real or ideal end-result of the conscious or unconscious desire of the subject, its activities.

The expediency in criminal-legal policy should be viewed from two angles – a) in terms of lawmaking, and b) from the point of view of enforcement.

A). Considering the issue of expediency from the point of view of lawmaking, first of all, it is necessary to focus on the problem of the scope of criminalization, that is, the appropriateness of accepting criminal or legal protection of certain objects (criminalization of the corresponding types of socially harmful behavior that cause or may cause harm). The feasibility of this aspect is determined by a number of criteria.

1. The political and ideological criterion is determined by the correspondence of the forms and levels of political and ideological objectives put forward by the social group in power, the goals that are recognized by the majority of citizens of the country, legal and moral norms, common sense. It should be emphasized that this criterion often deforms the nature of criminal-legal policy, and hence the criminal law, allows it to be used in favor of the authorities, which can be anti-democratic, totalitarian. Such misuse of the Criminal Code, as in the history of human civilization, and in the history of our country is common. Only to mention the criminal law of the times of the "dictatorship of the proletariat," the Stalinist dictatorship, or the "stagnation" when it expressed the interests of the narrow circle of party economic nomenclature. In a democratic country, the political and ideological criterion of the appropriateness of criminal-legal policy should be understood as the correspondence between the scope of criminalization and the penalization of the goal of maximizing the protection of the most important social relations of the benefits and interests defined by society as a whole.

Analyzing the expediency of the current criminal legislation from this angle, it should be noted that the criminal-legal policy that is being implemented in Ukraine today is far from the goals and requirements to the criminal law by the majority of society. The reason for this lies in the fact that the new bourgeoisie, the oligarch, which was formed in the class of the Soviet "*nomenklatura*" with the inherent "rules of the game" (relations) came to power in Ukraine. In fact, today in our country there are two societies – a young civil society, which still has not enough power to come to "take over", and an old, experienced society, which in essence is a "criminal society" and acts as a powerful anti-social structure in the middle of society, which actually subjugates civil society. It is like a cancerous tumor that spreads through its metastases to the whole society, infecting it, and killing or subduing healthy and new cells, forcing them to work for their growth. Political confrontation between civil and criminal societies also has a corresponding effect on criminal-legal policy, determining its expediency[1].

Even though the impact of civil society on criminal-legal policy is present, it is not decisive. "Criminal Society" continues to determine the crimi-

[1] For details of these processes, see Fris P. L. "Criminal Society" and "Criminal Policy". Legal Bulletin of Ukraine.

nal-legal policy of Ukraine, to decide the fate of laws. In the Middle Ages in the East, in Arab society, there was such a notion as "*mulk*", which defined a combination of *power and property* as integrity. Such a combination created *specific self-governing social relations*. In fact, these medieval relations were institutionalized today in Ukraine. The part of a society that managed to privatize large batches of state property and become an "oligarch" either belonged to the class of the Soviet "*nomenklatura*" (former red directors, party economic apparatus) or to representatives of powerful mafia structures, etc. Only a small fraction of them came directly from business. The oligarch came to power and accept laws solely in their own interest, assessing expediency through the prism of their sense of justice. At the same time, while proclaiming a course towards Europe and implementing European legislation in the field of combating crime, they often simply imitate the path to Europe by adopting parallel procedural laws that make it possible to avoid criminal responsibility.

"Criminal" and civil society profess different ideologies, and in different ways determine the vectors of criminal-legal policy. It depends on the consciousness of the community, which is embodied in the ideology. It can be the legal consciousness of the majority of society or build on the group sense of justice. In this case, a social group can be both with a positive sense of justice, and with one that is in conflict with the legal consciousness of the majority of society. In the second case, the state criminal-legal policy will not express the interests of the majority, which is inherent in democratic countries, thus its expediency will be minimal since it will express the interests of only a separate group that is in power. In this case, such a policy would be contrary to the general social interests and, of course, will not be appropriate, will not perform its function. The latter, unfortunately, is inherent in our society.

The ideology of civil society is in essence liberal-democratic, while the ideology of a "criminal society" is based on the ideals of Soviet-type conservatism. The vector of criminal law today is directed, first of all, to protect the interests of the minority, not the majority. Proceeding from this, it is really hard to talk the expediency of criminal-legal protection today, because it is largely carried out not in the interests of the whole society, but only those who are in power today, those who today constitute a minority in the Ukrainian society.

2. The economic criterion is determined by the achievement of the maximum level of protection with the application of minimum material costs, facilities and time. Extremely often, when establishing criminal liability, this criterion is not taken into account, as a result of which the costs of criminal prosecution (pre-trial investigation, trial, expenses for the implementation of the imposed punishment, etc.) exceed (and then many times) the harm caused a crime. This makes the criminalization inappropriate. Today, the volume of the current Criminal Code was increased from its original version twice. Has criminal-legal protection of the most important social relations, benefits, and interests of man and society improved? Not by a bit. A large number of criminal-legal norms remain unclaimed,

"dead". And it should not be argued that this is a consequence of the preventive potential of these norms. It is well known that fear of punishment, as a precautionary factor, is in the top ten among such factors. During the course of its operation, the Criminal Code of Ukraine was supplemented by the norms that foresee criminal liability for acts whose public danger is rather dubious. The current Code of Criminal Procedure is formulated in such a way that it provides ample opportunity for actual liability avoidance, especially by economic crime perpetrators. This practically reduces the feasibility of a criminal-legal prohibition to zero and raises serious doubts about its cost-effectiveness. The economic feasibility criterion is also related to the dynamics of changes to the Criminal Code of Ukraine, which is discussed below. Here we only note that the instability of legislation has a significant impact on the cost-effectiveness of its application, which is well-known.

3. The technical and legal criterion is determined by the necessity of the protection itself by means of criminal law, and not by the norms of other branches of law, by the rules of the formulation of criminal law, etc. Today, this issue is extremely urgent in connection with the development of legislation on criminal misconduct. Opinions expressed in this regard[1] on the inappropriateness of transferring to the Criminal Code of Ukraine the norms of the Code of Ukraine on Administrative Offenses of Ukraine, which provide for liability for delicts having a judicial jurisdiction, is a vivid confirmation of the violation of the supporters of the transfer of the criterion of expediency. The need to increase the appropriateness of criminal-legal policy and criminal law as a general path requires a reduction of the Criminal Code. In this case, it would be optimal to create a separate Code of Criminal Offenses (CCO) and to transfer to it, according to a coherent criterion, the acts belonging to such category of crimes as well as administrative delicts that have a judicial jurisdiction. But this is a rather long way when the solution should be fast enough. That is why it is necessary to go on a stage slip and firstly allocate, according to the agreed criterion, the group of acts that are to be translated into a category of criminal offenses, while simultaneously regulating the institutes that they define (stages, complicity, plurality, etc.) The second step should be to proceed to the creation of an independent CCO. The legislator of the Republic of Poland went the same path, having Article 7 of the Criminal Code of Republic of Poland distinguished two types of criminal offenses – misconduct (występek) and crime (zbrodnią) [8, p. 4].

The current state of criminal-legal protection (the amount of criminalization) carried out by the norms of the Criminal Code of Ukraine clearly indicates its non-compliance with certain criteria, that is, *it is inappropriate*. The legislator carries out criminalization of acts, without taking into account the criteria of expediency, seeking to cover prohibitions and criminal liability, the maximum range of types of behavior. The aforementioned data on the changes made to the Criminal Code during the years of its existence clearly con-

[1] See works of V. Ya. Tatsii, V. I. Borysov, V. O. Tuliakov, V. I. Tiutiuhin, P. L. Fris, Yu. A. Ponomarenko and more.

firms this. Attempts to justify criminalization with the expediency of strengthening protection, strengthening responsibility (without taking into account its objective criteria) may lead to the formation of a police regime, and not to the development of democracy.

B). The question of the expediency of law enforcement should be considered from two points: 1) from the point of application (non-application) of the criminal law, and 2) from the point of view of the application of the punishment and release from punishment and its detention.

1). It seems that the question of the possibility (an impossibility) of application (non-application) of criminal law based on its expediency in a democratic country cannot be raised at all. At the heart of this constant is the principle *dura lex, sed lex*, formulated by ancient Roman lawyers. Under a democratic criminal law built on the criteria of expediency, such a question should not be raised at all – the law should be applied in all cases, everywhere and in relation to all those who violated it. There can be no selective application of the law. No expediency can be justified. Unfortunately, modern law enforcement gives grounds to argue that this provision is not always applied.

This question has another aspect: the application of criminal law on the grounds of expediency in cases where it should not be applied (ie, in the absence of a person's actions in corpus delicti). This situation is similar to the application of the grounds of the expediency of inappropriate law, which should be applied in a particular case. At the same time, officially it is never mentioned that this is done precisely in order to achieve expediency, although it is "read about between the lines." Unfortunately, such cases are recorded by our forensic practice. Of course, today they are not so widespread as they were in the Soviet Union, especially during the time of the Stalinist dictatorship, and was determined by the famous slogan – "ends justify the means!"

2). Addressing the expediency of imposing a punishment (the choice of its type and size) or exemption from punishment and its serving, it is seen that this is where the criterion of expediency is applied in full, which should be considered objectively correct. The parameters that determine the expediency, in this case, are related to the characteristics of the guilty person, the harm caused by its actions and other indicators.

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