JURIDICAL SCIENCES AND THEIR ROLE IN THE FORMATION OF LEGAL CULTURE OF A MODERN PERSON

Collective monograph

Lviv-Toruń
Liha-Pres
2019

Recommended for printing and distributing via the Internet
as authorized by the Decision of the Academic Council
of Black Sea Research Institute of Economy and Innovations
(Minutes No 9 dated 30.09.2019)

Reviewers:

Prof. dr hab. ***Sabina Grabowska****, Uniwersytet Rzeszowski / University of Rzeszow (Republic of Poland);*

Prof. dr hab. ***Joanna Marszałek-Kawa****, Uniwersytet Mikołaja Kopernika w Toruniu / Nicolaus Copernicus University (Republic of Poland).*

Kateryna Holovko, *Doctor of Law, Head of the Department of Economic and Legal Research, Black Sea Research Institute of Economy and Innovations (Ukraine).*

Juridical sciences and their role in the formation of legal culture of a modern person : collective monograph / A. A. Blinova, M. S. Kelman, R. E. Ennan, K. M. Hlynyanaya, etc. – Lviv-Toruń : Liha-Pres, 2019. – 256 p.

ISBN 978-966-397-142-1

Liha-Pres is an international publishing house which belongs to the category „C" according to the classification of Research School for Socio-Economic and Natural Sciences of the Environment (SENSE) [isn: 3943, 1705, 1704, 1703, 1702, 1701; prefixMetCode: 978966397]. Official website – www.sense.nl.

CONTENTS

DOI https://doi.org/10.36059/978-966-397-142-1/1-27

LEGAL REGULATION OF USE OF PUBLIC ELECTRONIC INFORMATION RESOURCES BY PUBLIC ADMINISTRATION BODIES DURING DEVELOPMENT OF UKRAINE AS A DIGITAL COUNTRY

Blinova A. A., Kelman M. S.

INTRODUCTION

In the Digital Agenda Ukraine-2020 it has been stated that at present in Ukraine there is no full electronic interaction between national information resources. The lack of systemic e-interaction leads to the fact that citizens spend much time and resources for obtaining various certificates and documents for the further reception of complex administrative services (eg licenses, permits), and authorities continue to interact with "papers" or forced because of lack of electronic interaction duplicate (ie keep your own) registers and systems. The key solution is to introduce electronic interactions and interoperability of digital systems of government institutions through the use of common open standards, requirements and formats, including the introduction of an electronic interaction system and connecting to it at least 50 public registers, filling a single demographic register and the link of data collection in various registries with the help of a citizen ID, introduction of 100% electronic circulation of documents[1].

The implementation of these measures will establish an effective e-governance system. The strategy of reforming the public administration of Ukraine for 2016–2020 defines electronic governance as the use of information and communication technologies to improve the efficiency of the public administration system, its transparency and convenience, in particular, the operational component that provides the state bodies activities. The main task in this area is the building (improvement) of the data registers of citizens, legal entities, land plots and real estate, taxes, social insurance, ensuring the interoperability of systems and exchanging data at the operational level instead of filing certificates and other

[1] Цифрова адженда України – 2020 («Цифровий порядок денний» – 2020): Концептуальні засади (версія 1.0). Першочергові сфери, ініціативи, проекти «цифровізації» України до 2020 року: Проект URL: https://ucci.org.ua/uploads/files/58e78ee3c3922.pdf.

documents. Electronic Governance provides for interoperability of systems that will facilitate the exchange of data between registries and institutions, openness of registers for use by public authorities with guaranteed personal data protection, which will facilitate the simplification of the procedure for granting administrative services by public administration bodies to citizens and legal entities for the verification of facts and information, which is contained in official government registers, in particular, electronically through web services[2].

Ensuring electronic interaction between government information resources and the development of interoperability infrastructure is a major challenge for the development of e-government in Ukraine, as outlined in the Concept for the Development of the Digital Economy and Society of Ukraine for 2018–2020. Almost every government body faces the need for access to one or another national register or database. Electronic purchases, an electronic declaration system, a single customs window, etc., for their full functioning, need integration with many national registries and databases. The lack of electronic interaction between government systems does not make it possible to simplify the procedure of granting services and to comply with requirements of the Law of Ukraine "On Administrative Services" regarding the prohibition to require information from actors or data that are in other government agencies, that is, have already been granted to citizens earlier.

Qualitative, logically constructed on a unified basis, taking into account European and international principles, the system of information support of public administration bodies, which includes all national electronic information resources, is the basis of a digital country in Ukraine.

1. The formation of Ukraine as a digital country is a prerequisite for improving the system of state electronic information resources

The future of Ukraine is a digital country. Social, political, economic and legal indicators shows acceleration of the restructuring of all national structures in this direction, which has been conditioned by the modern information society requirements.

The agenda of the EU-Ukraine Association in 2009 stipulates that the parties cooperate in preparing for the implementation of the acquis

[2] Стратегія реформування державного управління України на 2016-2020 роки : Розпорядження Кабінету Міністрів України від 24 червня 2016 р. № 474-р // Урядовий кур'єр от 27.07.2016 – № 139.

communautaire through the exchange of information and experience in implementing the EU i2010 initiative to develop and implement e-strategies in Ukraine, including the implementation of the National Development Concept telecommunications and the state program "e-Ukraine"[3]. The Annex XVII-3 to Chapter IV of the Association Agreement already obliged Ukraine to implement series of EU acts that set common standards in the market for granting electronic communications services. Also the agreement provides that a road map of changes should be adopted in this comprehensive area. Among the EU Association Agreements outlined in this Agreement is Framework Directive EU/2002/21 on a common legal framework for electronic communications networks and services, as well as a number of directives and regulations. The scientific community, business representatives, public figures and authorities actively initiate the processes of forming the elements of a digital country in Ukraine.

In order to bring Ukraine's legislation closer to EU legislation in 2015, a number of EU technical assistance measures have been implemented. The Administration of the State Special Communication Service within the competence ensures implementation of the Plan of Measures for the Implementation of the Association Agreement between Ukraine and the EU for 2014–2017, approved by the Cabinet of Ministers of Ukraine from 17.09.2014, No. 847, the Plan for the Implementation of Certain Acts of EU Legislation in the Field of Telecommunications[4], approved by the Decree of the Cabinet of Ministers of Ukraine from 15.04.2015 № 360-p. [5,6] In particular, two events within the framework of the TAIEX project were carried out on the topic: "Implementation of the

[3] Порядок денний асоціації Україна – ЄС для підготовки та сприяння імплементації Угоди про асоціацію. «Україна – Європейський Союз: зібрання міжнародних договорів та інших документів (1991–2009)». https://zakon.rada.gov.ua/laws/show/994_990/print.

[4] Про імплементацію Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : Розпорядження Кабінету Міністрів України від 17.09.2014 р. № 847-р. Урядовий кур'єр від 08.10.2014. – № 185.

[5] Про схвалення розробленого Адміністрацією Державної служби спеціального зв'язку та захисту інформації та Національною комісією, що здійснює державне регулювання у сфері зв'язку та інформатизації, плану імплементації деяких актів законодавства ЄС у сфері телекомунікацій: розпорядження Кабінету Міністрів України від 15 квітня 2015 р. № 360-р. Урядовий кур'єр від 29.04.2015. – № 78.

[6] Про виконання Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони: Постанова Кабінету Міністрів України від 25 жовтня 2017 р. № 1106. Урядовий кур'єр від 17.03.2018. – № 52.

European policy in the area of information security (cyber security) audit" and "Approximation of the policy of technical regulation of Ukraine to the EU legislation regarding access of radio equipment and telecommunication terminal equipment to the national market". More than 100 participants – representatives of government authorities of Ukraine, research institutes and telecommunication companies took part in these events. The best European experience in the aforementioned areas was presented by experts from Estonia, Italy, Lithuania, Portugal, Finland, Czech Republic.

On February 16, 2017, the Verkhovna Rada Committee on Informatization and Communications held a hearing called "Digital Agenda for Contemporary Ukraine". The participants of this event discussed further joint efforts in the course of implementation of the Digital Agenda for Ukraine and its integration into the world of digitalisation processes. The hearing participants agreed on the priority of further digital development of Ukraine, and also agreed to cooperate actively to develop legislative and institutional capacities for the development of the digital economy for Ukraine. On March 3, 2017, at a meeting of the Committee on Electronic Communications at the Chamber of Commerce and Industry of Ukraine, a presentation of the draft law "Digital Agenda for Ukraine 2020" for business and government representatives has been prepared by scientists and experts in the field of information technologies. The participants of the meeting discussed the urgent issues of the development of the digital society in Ukraine demanding a legislative settlement, summed up the proposals and recommendations regarding the improvement of the national information society development policy, as well as identified the priorities and mechanisms for its implementation. The Digital Agenda 2020 project identifies Ukraine's key goals in stimulating the economy and attracting investment, laying the platform for transforming various sectors of the economy into competitive, accessing digital technologies throughout the country, making new conditions and opportunities for human capital, developing digital industries and businesses. In addition, the document defines the path of Ukraine's development and its global leadership in the context of the export of digital products and information services. It is foreseeing that effective steps should be taken to digitize Ukraine in healthcare, infrastructure, ecology, etc. [7]

[7] Цифрова стратегія України 2020: успішна інтеграція країни у глобальний ринок https://ckp.in.ua/events/16407 (дата звернення 23.06.19).

An indicator of the movement of Ukraine to the standards of a digital country is also the adoption and updating of such Laws as "On Information"[8], "On Personal Data Protection"[9], "On Public Information Access"[10], "On Electronic Documents and Electronic Documentation"[11], "On Electronic Trust Services"[12], "On Telecommunications"[13], etc.

As a result of these processes, a public administration agency such as the State Agency for E-Governance of Ukraine, which is a central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine, and which implements state policy in the areas of informatization, e-government, formation and use national electronic information resources, information society development[14]. The State Agency for E-Governance in Ukraine fulfilled its tasks before it adopted a number of orders common to all public authorities, for example, "On Approval of Requirements for Data Formats for Electronic Documentation in State Authorities"[15].

The Orders of the Cabinet of Ministers of Ukraine of September 20, 2017 No. 649-p. "On Approval of the Concept of the Development of Electronic Governance in Ukraine", No. 797-r of November 8, 2017 "On Approval of the Concept of the Development of Electronic Democracy in Ukraine and Plan of Measures for its Implementation" and No. 67-p of

[8] Про інформацію : Закон України від 2 жовтня 1992 року № 2657-XII (в редакції Закону № 1774-VIII від 06.12.2016). Відомості Верховної Ради України від 01.12.1992. 1992 р. № 48. Стаття 650.

[9] Про захист персональних даних: Закон України від 1 червня 2010 року № 2297-VI (в редакції Закону № 2168-VIII від 19.10.2017). Відомості Верховної Ради України від 27.08.2010 – 2010 р., № 34, стор. 1188, стаття 481.

[10] Про доступ до публічної інформації: Закон України від 13 січня 2011 року № 2939-VI (в редакції Закону України від № 319-VIII від 09.04.2015) Відомості Верховної Ради України від 12.08.2011 – 2011 р., № 32, стор. 1491, стаття 314.

[11] Про електронні документи та електронний документообіг: Закон України від 22 травня 2003 року № 851-IV (в редакції Закону України від 05.10.2017 № 2155-VIII. Відомості Верховної Ради України від 05.09.2003. 2003 р. № 36. стаття 275.

[12] Про електронні довірчі послуги: Закон України від 5 жовтня 2017 року № 2155-VIII. Відомості Верховної Ради України від 10.11.2017 – 2017 р., № 45, стор. 5, стаття 400.

[13] Про телекомунікації: Закон України від 18 листопада 2003 року № 1280-IV (в редакції Закону від № 2740-VIII від 06.06.2019). Відомості Верховної Ради України від 19.03.2004 – 2004 р., № 12, стаття 155.

[14] Про затвердження Положення про Державне агентство з питань електронного урядування України: Постанова Кабінету Міністрів України від 1 жовтня 2014 р. № 492.

[15] Про затвердження Вимог до форматів даних електронного документообігу в органах державної влади: Наказ Державного агентства з питань електронного урядування України від 07 вересня 2018 року № 60. Офіційний вісник України від 14.12.2018 – 2018 р., № 96, стор. 186, стаття 3191, код акта 92451/2018.

January 17, 2018 "On Approval of the Concept for the Development of the Digital Economy and Society of Ukraine for 2018–2020 and approval of the plan of measures for its implementation "make preconditions for the emergence of new goals, interests and needs in the information area of public administration bodies namely the introduction of: information and telecommunication systems for decision-making and automation of administrative processes; e-voting, e-justice, e-mediation, e-referendums, e-consultations, e-petitions, e-political campaigns, e-polls; realization of smart city concept – "Smart city"; digital state platforms; the concept of blockchain; ensuring electronic interaction of national information resources and development of interoperability infrastructure; the introduction of digitalisation of government agencies, multi-channel information and citizen engagement, the concept of open source data using electronic platforms, such as "Civil Society and Power" or "Unified System of Local Petitions"; etc.[16,17,18] These are the elements of the electronic country.

Ukraine has identified digital transformation as a priority policy, which has already been noted by recent advances in the implementation of ProZorro and e-Health systems, the introduction of 4G mobile coverage and the launch of e-services in the public and private sectors. Digitalization of Ukraine is carried out jointly by experts and business communities. Priorities of the Digital Agenda of Ukraine include the legislation on digital economy and telecommunications, digital infrastructure, namely, the strategy for developing high-speed broadband Internet access, the e-commerce e-commerce e-business, electronic security eTrust and cybersecurity, the Smart Cities initiative regions", which focuses on the decentralization and implementation of the e-Skills e-skills program, eHealth e-health and e-commerce eTrade in the regions of Ukraine[19].

---

[16] Про схвалення Концепції розвитку електронного урядування в Україні: Розпорядження Кабінета Міністрів України від 20.09.2017 № 649-р : Урядовий кур'єр від 27.09.2017 – № 181

[17] Про схвалення Концепції розвитку електронної демократії в Україні та плану заходів щодо її реалізації: Розпорядження Кабінета Міністрів України від 8 листопада 2017 р. № 797-р // Урядовий кур'єр від 17.11.2017 – № 217

[18] Про схвалення Концепції розвитку цифрової економіки та суспільства України на 2018-2020 роки та затвердження плану заходів щодо її реалізації: Розпорядження Кабінету Міністрів України від 17 січня 2018 р. № 67-р // Урядовий кур'єр від 11.05.2018 – № 88.

[19] ЄС запускає в Україні нову програму EU4Digital для покращення онлайн-сервісів. URL: https://eeas.europa.eu/delegations/ukraine/62915 d0%b2_uk.

On May 22, 2019, the European Union officially launched in Ukraine a new program "EU4Digital: Supporting the Digital Economy and Society in the Eastern Partnership". EU4Digital aims to enhance the benefits of the European Union's Single Digital Market for Ukraine and other Eastern Partnership countries to stimulate economic growth, create workplaces, improve people's lives and help businesses [20].

In the conditions of the development of a digital state in Ukraine, in our opinion, the "digital" workplace of a civil servant becomes. That is why the special role in the above-mentioned documents is devoted to the transformation of civil servants' jobs into digital jobs, as the state administration of Ukraine, in the conditions of increasing the number of tasks, initiatives, projects and simultaneous optimization of expenses, should be based on the technological and digital forms of ensuring its uninterrupted functioning. "Digital workplace" will facilitate flexibility in the way public officials perform their duties, will encourage their joint work and interaction, support decentralized and mobile working environments, and will require a civil servant to choose technologies for work to ensure the ultimate goal of a service state – to provide its citizens with high-quality and available administrative services[21].

A "digital" workplace is the virtual equivalent of a physical workplace, which requires proper organization, use and management, since it must be a guarantee of increased efficiency of workers and the making of more favorable working conditions for them[22].

In the concept of a "digital" workplace, the Digital Adzhda of Ukraine 2020 defines the following essential aspects: 1) people have the highest priority – the impact on employees is the most important factor in the digital workplace; 2) technological level – technological advances result in changes in the digital workplace, so the technology is always a topical issue; 3) management and structure – the development of a "digital" workplace, aimed at overcoming the requirements of modernity, means the attitude towards it as a single whole, which organically takes into account aspects of technologies, processes and employees.

[20] ЄС запускає в Україні нову програму EU4Digital для покращення онлайн-сервісів. URL: https://eeas.europa.eu/delegations/ukraine/62915 D0%B2_uk.

[21] Уряд хоче запровадити для держслужбовців віртуальні робочі місця. URL: http://zaxid.media/news/5206757.

[22] Лопушинський І.П. «Цифрові робочі місця» державних службовців як вагома складова електронного урядування в Україні. URL: http://el-zbirn-du.at.ua/2018_1/29.pdf.

The "digital" workplace combines virtually all the technologies that people use to perform work in a modern working environment. "Digital" workplaces can be business applications, e-mail, instant messaging, corporate social networks, and virtual meeting tools[23].

In order to benefit positively from the introduction of "digital" civil servants' workplaces, four elements need to be taken into account: access devices, communications infrastructure, business applications, telecommunication tools for the workplace. So, public officials need to provide the choice of the most effective way to access their used business applications: smartphones and tablets. Reliable communication remains one of the most important requirements in the context of the "digital" workplace, which includes the possibility of simultaneous processing of audio, video and other data. Providing government officials with access to business applications, regardless of where and when they perform their duties, increasing productivity and supporting cooperation with other employees, partners and clients. Such applications provide instant access to essential information needed to help virtual teams work together and interact effectively. Platforms for working together and managing knowledge bases become critical. They enable the centralized storage of project documents, provide easy access to them, and allow team members to cooperate when making changes to files, viewing them and exchanging them in real-time. Workplace tools have a large impact on employee motivation and productivity. Sometimes email and phone calls may not be enough, for example, when you get a remote expert or work at home. Significant advantages are communication technologies that provide real-time presence and allow for rich online meetings, including audio, video and web conferencing.

In the Digital Agenda Ukraine-2020 it is noted that there is no single correct way of spreading the culture of "digital" workplaces. The essence is that organizations and enterprises can improve their internal and external efficiency. The development of a culture of "digital" workplaces is facilitated by the program of disseminating digital skills and competencies, incentives for career growth, the objective need to balance work and personal life, and motivate personal development. A key step for Ukraine towards a strategy in this matter should be the active position

[23] Цифрова адженда України – 2020 («Цифровий порядок денний» – 2020): Концептуальні засади (версія 1.0). Першочергові сфери, ініціативи, проекти «цифровізації» України до 2020 року: Проект URL: https://ucci.org.ua/uploads/files/58e78ee3c3922.pdf.

of state institutions. A large number of employees at the central and regional levels are potential users of "digital" workplaces, especially civil servants such as inspectors, social workers, etc. The government is the main player in the "digital space". By using and making demand for modern IT solutions, putting in place the most advanced electronic administrative services and introducing innovative models, the state should serve as an example in the transition to "digital" technologies for the whole of Ukraine. The use of "digital" and "mobile" workplaces in the public segment will bring employees closer to society, allow them to perform their inspection and other functions more efficiently, and save significant money[24].

In our opinion, the introduction of the "digital" workplace of civil servants is a step towards e-government and a digital country that requires thorough research and balanced and systematic changes in national legislation. The realization of the aspirations and needs of the new information generation of civil servants through their "digital" workplaces is a reflection of not one or two functions of the electronic country, it is not a technical solution that automatically reduces corruption and immediately makes absolute transparency – this is the formation of a new way of thinking and life of Ukrainians and the digital civil society of Ukraine.

The implementation of the concept of a "digital" civil servant workplace is absolutely in line with the trends of free information flows in Europe, which built an inclusive digital society in which citizens have the necessary skills to access the Internet, which increases their chances of optimal employment, education, business and social activity[25]. It should be noted that the current national information policy is directly related to the formation and implementation of the concept of a digital state in Ukraine[26]. In our opinion, the main elements of the global digital information security system are national electronic information resources.

---

[24] Цифрова адженда України – 2020 («Цифровий порядок денний» – 2020): Концептуальні засади (версія 1.0). Першочергові сфери, ініціативи, проекти «цифровізації» України до 2020 року: Проект URL: https://ucci.org.ua/uploads/files/58e78ee3c3922.pdf.

[25] Нині в Європі успішно реалізується стратегія Єдиного цифрового ринку – Digital Single Market Strategy. URL: https://www.ukrinform.ua/rubric-economy/2364078-misia-ocifruvati-ekonomiku-strategia-edinogo-cifrovogo-rinku.html.

[26] У команді Зеленського розробили концепцію розвитку цифрової держави. URL: https://www.unn.com.ua/uk/news/1794460-u-komandi-zelenskogo-rozrobili-kontseptsiyu-rozvitku-tsifrovoyi-derzhavi.

2. Legal regulation of the use of national electronic information resources by public administration bodies

The Resolution of the Cabinet of Ministers of Ukraine "On Certain Issues of Electronic Interaction of National Electronic Information Resources" provides for the introduction of a system of electronic interaction of state electronic information resources in accordance with the requirements of the EU[27].

The Regulation on the electronic interaction of national electronic information resources determines the general principles for the exchange of electronic data, in addition to information constituting state secrets, between authorities of national electronic information resources during the provision of administrative services and the exercise of other powers in accordance with their assigned tasks. The electronic interaction system of national electronic information resources is intended for the automation and technological provision of the exchange of electronic data between the subjects of authority on national electronic information resources during the granting of administrative services and the exercise of other powers in accordance with the tasks assigned to them, using a service-oriented architecture that are application programming interfaces for access to national electronic information resources constructed in accordance with the only requirements, as well as using common formats, protocols, directories, templates and classifiers[28].

The order of organization of electronic information interaction of national electronic information resources determines the mechanism of organization of electronic information interaction of national electronic information resources. To organize the electronic information interaction of national electronic information resources, the subjects of the authorities use the means of the software complex of the National Register of Electronic Information Resources. The State Agency for E-Government creates, with the help of the software of the National Register, personal offices of the authorities with the forms of applications submitted by the supplier and the recipient[29].

---

[27] Деякі питання організації електронної взаємодії державних електронних інформаційних ресурсів: Постанова Кабінету Міністрів України від 10 травня 2018 р. № 357. Урядовий кур'єр від 30.05.2018. – № 100.

[28] Положення про електронну взаємодію державних електронних інформаційних ресурсів: затверджено Постановою Кабінету Міністрів України від 8 вересня 2016 року № 606. Урядовий кур'єр від 14.09.2016. – № 172.

[29] Порядок організації електронної інформаційної взаємодії державних електронних інформаційних ресурсів: затверджено Постановою Кабінету Міністрів України від 10 травня 2018 р. № 357. Урядовий кур'єр від 30.05.2018. – № 100.

The National Register of Electronic Information Resources is aimed at introducing a unified system of accounting for electronic information resources of the state and is being developed using the latest advances in the field of information and telecommunication technologies. The National Register of Electronic Information Resources is an information and telecommunication system designed for registration, accounting, accumulation, processing and storage of information about the composition, content, location, conditions for access to electronic information resources and to meet the needs of legal entities and individuals in information services. The National Register shall include information on state electronic registries, inventories, state and other obligatory classifiers, as well as information systems that ensure their operation and use information from them. The Customer and the holder of the National Register are the State Agency for e-Governance. The creation, operation and improvement of the maintenance of the National Register is provided at the expense of the budget funds provided for this purpose by the State Agency on e-Governance. Public authorities, local governments and other legal entities of public law use the National Register's information fund free of charge[30].

The Regulation on the electronic interaction of state electronic information resources provides for the list of priority national electronic information resources to be registered in the National Register of Electronic Information Resources: the Uniform State Register of Legal Entities, Individuals – Entrepreneurs and Public Formations, the State Register of Real Property Rights to Real Estate, the State Register of Acts of the Citizens' Civil Status, the Uniform Register of Power of Attorney, the State Register of Moving Property, the State Land Cadastre, State Registry of Individuals – Taxpayers, Register of Value Added Tax Payers, Single State Automated Register of Persons Entitled to Privileges, Uniform Information System of the Ministry of Internal Affairs, Uniform State Register of the Ministry of Internal Affairs for registered vehicles and their owners, the State Register of Obligatory State Social Insurance, the State Register of Voters, the Unified State Register of Judgments, the Single Regime pages of documents that grant the right to perform preparatory and construction works and certify the acceptance into

[30] Положення про Національний реєстр електронних інформаційних ресурсів : Постанова Кабінету Міністрів України від 17 березня 2004 р. N 326. Офіційний вісник України від 02.04.2004. 2004 р. № 11, стор. 45, стаття 665, код акта 28119/2004.

operation of completed objects of construction, information on the return for revision, refusal to issue, and cancellation of these documents, the Unified Register of State-owned objects, electronic Health security system, Unified State Electronic Education Base.

The formation and operation of these state electronic information resources is regulated by the following groups of normative legal acts as: 1) Codes of Ukraine: Land Code of Ukraine[31] and Tax Code of Ukraine; 2) Laws of Ukraine: On State Registration of Legal Entities, Individuals – Entrepreneurs and Public Formations[32]; On state registration of real rights to real estate and their encumbrances[33]; On state registration of civil status acts[34]; About the State Land Cadastre[35]; About the Uniform State Demographic Registry and documents confirming the citizenship of Ukraine, certify the person or his/her special status[36]; About the State Register of Individuals – Taxpayers and Other Obligatory Payments[37]; About the National Police[38]; On the collection and registration of a single contribution to compulsory state social insurance[39]; About the State Voters Register[40]; About access to judgements[41]; 3) Decrees of the

[31] Земельний кодекс України: Закон України від 25 жовтня 2001 року № 2768-III. Відомості Верховної Ради України від 25.01.2002. 2002 р. № 3. стаття 27.

[32] Про державну реєстрацію юридичних осіб, фізичних осіб – підприємців та громадських формувань: Закон України від 15 травня 2003 року № 755-IV. Урядовий кур'єр від 08.10.2003 – № 188.

[33] Там само.

[34] Про державну реєстрацію актів цивільного стану: Закон України від 1 липня 2010 року № 2398-VI. Відомості Верховної Ради України від 24.09.2010. 2010 р. № 38. Стор. 1381. Стаття 509.

[35] Про Державний земельний кадастр: Закон України від 7 липня 2011 року № 3613-VI. Відомості Верховної Ради України від 24.02.2012. 2012 р. № 8, стор. 348. Стаття 61.

[36] Про Єдиний державний демографічний реєстр та документи, що підтверджують громадянство України, посвідчують особу чи її спеціальний статус: Закон України від 20 листопада 2012 року № 5492-VI. Відомості Верховної Ради України від 20.12.2013. 2013 р. № 51. Стор. 2733. Стаття 716.

[37] Про Державний реєстр фізичних осіб – платників податків та інших обов'язкових платежів: Закон України від 22 грудня 1994 року № 320/94-ВР. https://zakon.rada.gov.ua/laws/show/320/94-%D0%B2%D1%80/ed19941222.

[38] Про Національну поліцію: Закон України від 2 липня 2015 року № 580-VIII : Відомості Верховної Ради України від 09.10.2015. 2015 р. № 40-41. Стор. 1970. Стаття 379.

[39] Про збір та облік єдиного внеску на загальнообов'язкове державне соціальне страхування: Закон України від 8 липня 2010 року № 2464-VI. Відомості Верховної Ради України від 21.01.2011. 2011 р. № 2, № 2-3. Стор. 34, стаття 11.

[40] Про Державний реєстр виборців: Закон України від 22 лютого 2007 року № 698-V. Відомості Верховної Ради України від 18.05.2007. 2007 р. № 20. Стор. 764. Стаття 282.

Cabinet of Ministers of Ukraine: On Approval of the Procedure for keeping the State Register of Real Property Rights in Real Estate[42]; On Approval of the Procedure for keeping the State Register of Acts of Citizens Civil Status[43]; On Approval of the Procedure for keeping the State Register of Moving Property Encumbrances[44]; On Approval of the Procedure for the State Land Cadastre[45]; On Approval of the Procedure for Receipt, Removal from the Uniform State Population Register and the removal of digitized fingerprints of the person's hands[46]; On approval of the Procedure for maintaining the Unified State Register of Demographic Registers and the provision of information from it, the interaction between authorized entities, as well as identification and verification[47]; On the Unified State Automated Register of Persons Who Have the Right to Privileges[48]; On approval of the Regulation on a unified information system of the Ministry of Internal Affairs and a list of its priority information resources[49]; Some issues of providing information about

[41] Про доступ до судових рішень: Закон України від 22 грудня 2005 року № 3262-IV. Відомості Верховної Ради України від 14.04.2006. 2006 р. № 15. Стор. 585. Стаття 128.

[42] Про затвердження Порядку ведення Державного реєстру речових прав на нерухоме майно: постанова Кабінету Міністрів України від 26 жовтня 2011 р. № 1141 (в редакції постанови Кабінету Міністрів України від 6 червня 2018 р. № 484). Урядовий кур'єр від 23.11.2011 – № 218.

[43] Там само.

[44] Про затвердження Порядку ведення Державного реєстру обтяжень рухомого майна: постанова Кабінету Міністрів України від 5 липня 2004 р. № 830. Урядовий кур'єр від 18.08.2004 – № 155.

[45] Про затвердження Порядку ведення Державного земельного кадастру: Постанова Кабінету Міністрів України від 17 жовтня 2012 р. № 1051. Урядовий кур'єр від 27.11.2012. № 218.

[46] Про затвердження Порядку отримання, вилучення з Єдиного державного демографічного реєстру та знищення відцифрованих відбитків пальців рук особи: Постанова Кабінету Міністрів України від 26 листопада 2014 р. № 669 (в редакції Постанови КМ № 628 від 18.08.2017). Урядовий кур'єр від 10.12.2014. № 230.

[47] Про затвердження Порядку ведення Єдиного державного демографічного реєстру та надання з нього інформації, взаємодії між уповноваженими суб'єктами, а також здійснення ідентифікації та верифікації: Постанова Кабінету Міністрів України від 18 жовтня 2017 р. № 784. Офіційний вісник України від 03.11.2017. 2017 р. № 86. Стор. 38. Стаття 2610. Код акта 87704/2017.

[48] Про Єдиний державний автоматизований реєстр осіб, які мають право на пільги: Постанова Кабінету Міністрів України від 29 січня 2003 р. № 117. Урядовий кур'єр від 06.02.2003. № 23.

[49] Про затвердження Положення про єдину інформаційну систему Міністерства внутрішніх справ та переліку її пріоритетних інформаційних ресурсів: Постанова Кабінету Міністрів України від 14 листопада 2018 р. № 1024. Урядовий кур'єр від 12.12.2018. № 235.

registered vehicles, their owners and proper users[50]; On Approval of the Regulation on the Unified Register of State Property Objects[51]; Some issues of the electronic health system[52]; On the establishment of the Unified State Electronic Education Base[53]; 4) Orders of the Ministry of Justice of Ukraine: On Approval of the Procedure for the Functioning of the Portal for Electronic Services of Legal Entities, Individuals – Entrepreneurs and Public Formations that do not have the status of a legal entity[54]; On Approval of the Procedure for Granting Information from the Unified State Register of Legal Entities, Individuals – Entrepreneurs and Public Associations[55]; On Approval of the Instruction on the State Register of Citizens Civil Status Acts[56]; On Approval of the Rules for State Registration of Civil Status Acts in Ukraine[57]; On introduction of Unified Register of Power of Attorney and the introduction of amendments and additions to certain legal acts of the Ministry of Justice of Ukraine[58]; Regulations on the Unified Register of Power of Attorneys

[50] Деякі питання надання інформації про зареєстровані транспортні засоби, їх власників та належних користувачів: Постанова Кабінету Міністрів України від 25 березня 2016 р. № 260. Урядовий кур'єр від 07.04.2016 – № 66.

[51] Про затвердження Положення про Єдиний реєстр об'єктів державної власності. Постанова Кабінету Міністрів України від 14 квітня 2004 р. № 467. Урядовий кур'єр від 06.05.2004. № 84.

[52] Деякі питання електронної системи охорони здоров'я: постановою Кабінету Міністрів України від 25 квітня 2018 р. № 411. Урядовий кур'єр від 25.05.2018. № 98.

[53] Про створення Єдиної державної електронної бази з питань освіти: постанова Кабінету Міністрів України від 13 липня 2011 р. № 752. Урядовий кур'єр від 02.08.2011. № 139.

[54] Порядок функціонування порталу електронних сервісів юридичних осіб, фізичних осіб – підприємців та громадських формувань, що не мають статусу юридичної особи: Наказ Міністерства юстиції України 23.03.2016 № 784/5.

[55] Про затвердження Порядку надання відомостей з Єдиного державного реєстру юридичних осіб, фізичних осіб – підприємців та громадських формувань: Наказ Міністерства юстиції України від 10.06.2016 № 1657/5. Офіційний вісник України от 17.06.2016. 2016 г. № 45. Стр. 332. Статья 1661. Код акта 82215/2016.

[56] Про затвердження Інструкції з ведення Державного реєстру актів цивільного стану громадян: Наказом Міністерства юстиції України від 24.07.2008 № 1269/5. Офіційний вісник України від 08.08.2008. 2008 р. № 56. Стор. 93. Стаття 1891. Код акта 43819/2008.

[57] Про затвердження Правил державної реєстрації актів громадянського стану в Україні: Наказ Міністерства юстиції України від 18.10.2000 № 52/5. Офіційний вісник України від 03.11.2000 .2000 р. № 42. Стор. 205. Стаття 1803. Код акта 16932/2000.

[58] Про запровадження Єдиного реєстру довіреностей та внесення змін і доповнень до деяких нормативно-правових актів Міністерства юстиції України: Наказ Міністерства юстиції України від 28.12.2006 № 111/5. Офіційний вісник України від 09.01.2007. 2006 р. № 52. Стор. 421. Стаття 3547, Код акта 38296/2006.

certified in a notarial order[59]; On the introduction of the Unified Register of Power of Attorney and the introduction of amendments and additions to certain legal acts of the Ministry of Justice of Ukraine[60]; On approval of the Instruction on the procedure for keeping the State Register of movable property encumbrances and filling in applications[61]; On approval of the Regulation on registration of taxpayers of value added tax[62]; 5) normative legal acts of other ministries and departments: On Approval of the Procedure for providing the Ministry of Internal Affairs of Ukraine with information from the Unified State Register of Registered Vehicles and their Owners to the National Agency for Corruption Prevention[63]; On Approval of the Regulation on the Register of Insured Persons of the State Register of Mandatory State Social Insurance[64]; On Approval of the Procedure for Providing Information from the Register of Insurers of the State Register of Mandatory State Social Insurance[65]; On Approval of the Procedure for the Administration of the Unified State Register of Judgements[66]; On approval of the Procedure for maintaining a single

[59] Положення про Єдиний реєстр довіреностей, посвідчених у нотаріальному порядку: Наказ Міністерства юстиції України від 29 травня 1999 р. № 29/5. URL: https://nais.gov.ua/m/str_2.

[60] Наказ Міністерства юстиції України від 28.12.2006 № 111/5. Офіційний вісник України від 09.01.2007. 2006 р. № 52. Стор. 421. Стаття 3547. Код акта 38296/2006.

[61] Про затвердження Інструкції про порядок ведення Державного реєстру обтяжень рухомого майна та заповнення заяв : Наказ Міністерства юстиції України 29.07.2004 № 73/5. Офіційний вісник України від 20.08.2004. 2004 р. № 31. Стор. 58. Стаття 2084. Код акта 29638/2004.

[62] Про затвердження Положення про реєстрацію платників податку на додану вартість: Наказ Міністерства фінансів України 14.11.2014 № 1130. Офіційний вісник України від 21.11.2014. 2014 р. № 91. Стор. 617. Стаття 2631. Код акта 74766/2014.

[63] Про затвердження Порядку надання Міністерством внутрішніх справ України інформації з Єдиного державного реєстру про зареєстровані транспортні засоби та їх власників Національному агентству з питань запобігання корупції: Наказ Міністерства внутрішніх справ України 21 серпня 2018 року № 689, Рішення Національного агентства з питань запобігання корупції 21 серпня 2018 року № 1843. Офіційний вісник України від 02.10.2018. 2018 р. № 75. Стор. 67. Стаття 2518. Код акта 91570/2018.

[64] Про затвердження Положення про реєстр застрахованих осіб Державного реєстру загальнообов'язкового державного соціального страхування: Постанова правління Пенсійного фонду України 18.06.2014 № 10-1 (у редакції постанови правління Пенсійного фонду України від 27.03.2018 № 8-1).

[65] Про затвердження Порядку надання інформації з реєстру страхувальників Державного реєстру загальнообов'язкового державного соціального страхування: Наказ Міністерства фінансів України 21.07.2017 № 651. Офіційний вісник України від 29.09.2017. 2017 р. № 76. Стор. 114. Стаття 2347. Код акта 87373/2017.

[66] Про затвердження Порядку ведення Єдиного державного реєстру судових рішень: Рішення Вищої ради правосуддя 19.04.2018 № 1200/0/15-18. URL: https://zakon.rada.gov.ua/rada/show/v1200910-18/print.

register of documents that grant the right to perform preparatory and construction works and certify acceptance into operation of completed objects of construction, information on the return for revision, refusal to issue, and cancel the indicated documents[67]; On Approval of the Procedure and Terms of Use of the Unified Register of Public-Owned Objects[68]; On Approval of the Regulation on the Uniform State Electronic Education Base on Education[69] and others.

The above list of national electronic information resources is not limited. The national legislation of Ukraine provides for the operation and use of such registers as: the Uniform Register of Special Forms of Notarial Documents, the Uniform Register of Notaries, the Register of Special Forms of Documents of the Information System of the Ministry of Justice of Ukraine, the Hereditary Registry, the Unified State Register of Persons Who Committed Corruption Offenses, the Unified State Register of Persons , which are subject to the provisions of the Law of Ukraine "On purification of power", the Unified Register of Enterprises, in respect of which proceedings have been instituted in a bankruptcy case, arbitration managers Unified Register, Register of methodologies for forensic examination, the State Register of certified court experts Unified State Register of legal acts, Electronic register of Apostille Unified Register of prohibitions alienation of immovable property; Register of property rights to real estate, State register of mortgages, Register of non-profit institutions and organizations, State register of printed mass media and information agencies as subjects of information activity, Unified state

[67] Про затвердження Порядку ведення єдиного реєстру документів, що дають право на виконання підготовчих та будівельних робіт і засвідчують прийняття в експлуатацію закінчених будівництвом об'єктів, відомостей про повернення на доопрацювання, відмову у видачі, скасування та анулювання зазначених документів: Наказ Міністерства регіонального розвитку, будівництва та житлово-комунального господарства України 24.06.2011 № 92 (у редакції наказу Міністерства регіонального розвитку, будівництва та житлово-комунального господарства України від 16.07.2015 № 165). Офіційний вісник України від 05.08.2011. 2011 р. № 57. Стор. 175. Стаття 2312. Код акта 57716/2011.

[68] Про затвердження Порядку та умов користування Єдиним реєстром об'єктів державної власності: Наказ Фонду державного майна України 23.03.2005 № 622 (у редакції наказу Фонду державного майна України 06.08.2013 № 1535). Офіційний вісник України від 06.05.2005. 2005 р. № 16. Стор. 101. Стаття 866. Код акта 32118/2005.

[69] Про затвердження Положення про Єдину державну електронну базу з питань освіти: Наказ Міністерства освіти і науки України 08 червня 2018 року № 620. Офіційний вісник України від 02.11.2018. 2018 р. № 84. Стор. 272. Стаття 2790. Код акта 91900/2018.

register on state registration of creation of a legal entity and its separate subdivision, a separate subdivision of a foreign non-governmental organization , representative offices, branches of a foreign charitable organization and other registers. All registries are designed to accumulate, organize and facilitate the use of relevant information to meet the information needs of public administration, society and citizens.

CONCLUSIONS

The analysis of national normative legal acts regulating the use of state electronic information resources by public administration bodies revealed significant problems of legal regulation of their functioning and use by public administration bodies.

The first problem is the terminological non-consistency of various normative and legal acts that determine the functioning and use of state electronic information resources. National legislation uses the terms "automated information and telecommunication system", "state register", "single state register", "web portal", "automated system of collection, storage, protection, accounting" for the purpose of formulating the concepts of various state electronic information resources, search and provision", "portal of electronic services", "database", "geoinformation system", "information (automated) system", "electronic information and telecommunication system", "multifunctional integrated automated system", "software and information complex", "organizational and technical system "and others. This testifies to the lack of unified methodological principles for determining the content, structure, criteria for the systematization of state electronic information resources.

Secondly, there is no systematization or classification of state electronic information resources, fixed at the level of the regulatory act. Taking into account the analysis conducted, in our opinion, when forming such a classification, the following criteria for grouping these state electronic information resources can be used as: 1) the scope of their use; 2) the registry holder; 3) the registry administrator; 4) the main circle of users of the registry; 4) the validity period of the registry; 5) access to the information stored in the register; 6) ownership of the register; 7) the territory on which the register is used; 8) the amount of information in the register; 9) the level of systematization of information; 10) the method and procedure for access to information from the register; 11) payment access to the registry; 12) level of normative legal act, which determines the rules of its functioning; 13) purpose of the registry (registry

assignment); 14) the complexity of the structure of the registry; 15) the number of public administration bodies whose information requirements satisfy the register and so on. The assignment of state electronic information resources to one or another group should result from the application of separately defined principles of their functioning.

The third problem is the lack of general principles and principles for the organization, operation, use, storage of state electronic information resources. Some normative legal acts, which are minority, contain certain principles, others – no. However, even the stated principles and principles for the organization, operation, use, storage of state electronic information resources are strikingly different. In our opinion, further analysis of the principles of functioning of state electronic information resources requires further research. At the same time, we believe that such principles should be grouped at certain stages, for example: principles of creation of state electronic information resources, principles of information storage in state electronic information resources, principles of updating, transmission, verification, archiving, provision, exchange of information on resources, etc. This will allow the formation of a coherent system of state electronic information resources that will operate on the same basic principles, which, in turn, will increase the level of integration and compatibility of state electronic information resources. The basis of the formation of a system of principles for the functioning of state electronic information resources should be laid the pan-European and international principles of the organization of the digital state's infrastructure.

In connection with the above, we consider it necessary to develop and adopt the Laws of Ukraine "On State Electronic Information Resources". In this legal act we propose to consolidate the principles of the creation, operation, maintenance, use, security of access to state electronic information resources, etc.; to formulate the general principles of management of these processes; normalize and specify the concepts used in this area; systematize subjects of public relations that arise in connection with the use of state electronic information resources, determine their legal status (guarantees of activities, tasks, functions, rights and responsibilities, responsibility) and the order of their interaction; to specify the responsibility for violation of this legislation; to determine the procedure for the control and supervision of the operation of such resources; to fix the directions of improvement of the technical support of the operation of these resources taking into account the relevant international standards.

SUMMARY

The content of the concept "digital state" has been explored. The indicators of the formation of a system of social relations refering a digital state in Ukraine have been determined. The main directions of the formation of the national policy have been determined by the implementation of the needs of the information society, digital manufacturing and e-government in Ukraine. The present state of legal regulation of the processes of formation of the digital infrastructure of Ukraine and prospects of its improvement due to international rules has been determined. The leading role of public administration, implementation of the concept of a "digital" workplace of a civil servant and state electronic information resources in the process of forming a digital state has been determined. The author has proved that the main purpose of state electronic information resources is to meet the information needs of public administration bodies. The general principles of legal regulation of formation, exploitation, modernization, liquidation of hational electronic information resources are determined. The main circle of national electronic information resources and public administration bodies that are their holders and users has been revealed. The international assessment of legal regulation, the actual state of use of state electronic information resources by public administration bodies in Ukraine and their compliance with international standards have been highlighted. The problems of legal regulation of the use of state electronic information resources by public administration bodies in Ukraine have been detected and directions for their solution have been outlined.

REFERENCES

1. Верховна Рада підтримує проект «Цифрового порядку денного України». URL: https://www.kmu.gov.ua/ua/news/249748834.

2. Деякі питання електронної системи охорони здоров’я: постановою Кабінету Міністрів України від 25 квітня 2018 р. № 411. Урядовий кур’єр від 25.05.2018. № 98.

3. Деякі питання надання інформації про зареєстровані транспортні засоби, їх власників та належних користувачів: Постанова Кабінету Міністрів України від 25 березня 2016 р. № 260. Урядовий кур’єр від 07.04.2016 – № 66

4. Деякі питання організації електронної взаємодії державних електронних інформаційних ресурсів: Постанова Кабінету Міністрів

України від 10 травня 2018 р. № 357. Урядовий кур'єр від 30.05.2018. № 100.

5. Європейська інтеграція. URL: http://www.dsszzi.gov.ua/dsszzi/control/uk/publish/article?art_id=125660&cat_id=97065.

6. ЄС запускає в Україні нову програму EU4Digital для покращення онлайн-сервісів. URL: https://eeas.europa.eu/delegations/ukraine/62915 d0%b2_uk.

7. Земельний кодекс України: Закон України від 25 жовтня 2001 року № 2768-III. Відомості Верховної Ради України від 25.01.2002. 2002 р. № 3. Стаття 27.

8. Лопушинський І.П. «Цифрові робочі місця» державних службовців як вагома складова електронного урядування в Україні. URL: http://el-zbirn-du.at.ua/2018_1/29.pdf.

9. Наказ Міністерства юстиції України від 28.12.2006 № 111/5. Офіційний вісник України від 09.01.2007 – 2006 р., № 52, стор. 421, стаття 3547, код акта 38296/2006.

10. Нині в Європі успішно реалізується стратегія Єдиного цифрового ринку – Digital Single Market Strategy. URL: https://www.ukrinform.ua/rubric-economy/2364078-misia-ocifruvati-ekonomiku-strategia-edinogo-cifrovogo-rinku.html.

11. Податковий кодекс України від 2 грудня 2010 року № 2755-VI. Відомості Верховної Ради України від 08.04.2011. 2011 р. № 13, № 13-14, № 15-16, № 17. Стор. 556. Стаття 112.

12. Положення про електронну взаємодію державних електронних інформаційних ресурсів: затверджено Постановою Кабінету Міністрів України від 8 вересня 2016 року № 606. Урядовий кур'єр від 14.09.2016. № 172.

13. Положення про Єдиний реєстр довіреностей, посвідчених у нотаріальному порядку: Наказ Міністерства юстиції України від 29 травня 1999 р. № 29/5. URL: https://nais.gov.ua/m/str_2.

14. Положення про Національний реєстр електронних інформаційних ресурсів : Постанова Кабінету Міністрів України від 17 березня 2004 р. № 326. Офіційний вісник України від 02.04.2004. 2004 р. № 11, стор. 45, стаття 665, код акта 28119/2004.

15. Положення про Національний реєстр електронних інформаційних ресурсів : Постанова Кабінету Міністрів України від 17 березня 2004 р. № 326. Офіційний вісник України від 02.04.2004. 2004 р. № 11. Стор. 45. Стаття 665. Код акта 28119/2004.

16. Порядок денний асоціації Україна – ЄС для підготовки та сприяння імплементації Угоди про асоціацію. Україна – Європейський Союз: зібрання міжнародних договорів та інших документів (1991–2009). URL: https://zakon.rada.gov.ua/laws/show/994_990/print.

17. Порядок організації електронної інформаційної взаємодії державних електронних інформаційних ресурсів: затверджено Постановою Кабінету Міністрів України від 10 травня 2018 р. № 357. Урядовий кур'єр від 30.05.2018. № 100.

18. Порядок організації електронної інформаційної взаємодії державних електронних інформаційних ресурсів: затверджено Постановою Кабінету Міністрів України від 10 травня 2018 р. № 357. Урядовий кур'єр від 30.05.2018 – № 100.

19. Порядок функціонування порталу електронних сервісів юридичних осіб, фізичних осіб – підприємців та громадських формувань, що не мають статусу юридичної особи: Наказ Міністерства юстиції України 23.03.2016. № 784/5.

20. Про виконання Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони: Постанова Кабінету Міністрів України від 25 жовтня 2017 р. № 1106. Урядовий кур'єр від 17.03.2018. № 52.

21. Про Державний земельний кадастр: Закон України від 7 липня 2011 року № 3613-VI. Відомості Верховної Ради України від 24.02.2012. 2012 р. № 8. Стор. 348. Стаття 61.

22. Про Державний реєстр виборців: Закон України від 22 лютого 2007 року № 698-V. Відомості Верховної Ради України від 18.05.2007. 2007 р. № 20. Стор. 764. Стаття 282.

23. Про Державний реєстр фізичних осіб – платників податків та інших обов'язкових платежів: Закон України від 22 грудня 1994 року № 320/94-ВР. URL: https://zakon.rada.gov.ua/laws/show/320/94-%D0%B2%D1%80/ed19941222.

24. Про державну реєстрацію актів цивільного стану: Закон України від 1 липня 2010 року № 2398-VI. Відомості Верховної Ради України від 24.09.2010. 2010 р. № 38. Стор. 1381. Стаття 509.

25. Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень: Закон України від 1 липня 2004 року № 1952-IV. Відомості Верховної Ради України від 17.12.2004. 2004 р. № 51. Стаття 553.

26. Про державну реєстрацію юридичних осіб, фізичних осіб – підприємців та громадських формувань: Закон України від 15 травня 2003 року № 755-IV. Урядовий кур'єр від 08.10.2003. – № 188.

27. Про доступ до публічної інформації: Закон України від 13 січня 2011 року № 2939-VI (в редакції Закону України від № 319-VIII від 09.04.2015) Відомості Верховної Ради України від 12.08.2011. 2011 р. № 32. Стор. 1491. Стаття 314

28. Про доступ до судових рішень: Закон України від 22 грудня 2005 року N 3262-IV. Відомості Верховної Ради України від 14.04.2006. 2006 р. № 15. Стор. 585. Стаття 128.

29. Про електронні довірчі послуги: Закон України від 5 жовтня 2017 року № 2155-VIII. Відомості Верховної Ради України від 10.11.2017. 2017 р. № 45. Стор. 5. Стаття 400.

30. Про електронні документи та електронний документообіг: Закон України від 22 травня 2003 року № 851-IV (в редакції Закону України від 05.10.2017 № 2155-VIII. Відомості Верховної Ради України від 05.09.2003. 2003 р. № 36. Стаття 275.

31. Про Єдиний державний автоматизований реєстр осіб, які мають право на пільги: Постанова Кабінету Міністрів України від 29 січня 2003 р. № 117. Урядовий кур'єр від 06.02.2003. № 23. Урядовий кур'єр від 06.02.2003 – № 23.

32. Про Єдиний державний демографічний реєстр та документи, що підтверджують громадянство України, посвідчують особу чи її спеціальний статус: Закон України від 20 листопада 2012 року № 5492-VI. Відомості Верховної Ради України від 20.12.2013. 2013 р. № 51. Стор. 2733. Стаття 716.

33. Про запровадження Єдиного реєстру довіреностей та внесення змін і доповнень до деяких нормативно-правових актів Міністерства юстиції України: Наказ Міністерства юстиції України від 28.12.2006 № 111/5. Офіційний вісник України від 09.01.2007 – 2006 р., № 52, стор. 421, стаття 3547, код акта 38296/2006.

34. Про затвердження Вимог до форматів даних електронного документообігу в органах державної влади: Наказ Державного агентства з питань електронного урядування України від 07 вересня 2018 року № 60. Офіційний вісник України від 14.12.2018. 2018 р. № 96. Стор. 186. Стаття 3191. Код акта 92451/2018.

35. Про затвердження Інструкції з ведення Державного реєстру актів цивільного стану громадян: Наказом Міністерства юстиції

України від 24.07.2008 № 1269/5. Офіційний вісник України від 08.08.2008. 2008 р. № 56. Стор. 93. Стаття 1891. Код акта 43819/2008.

36. Про затвердження Інструкції про порядок ведення Державного реєстру обтяжень рухомого майна та заповнення заяв : Наказ Міністерства юстиції України 29.07.2004 N 73/5. Офіційний вісник України від 20.08.2004. 2004 р. № 31. Стор. 58. Стаття 2084. Код акта 29638/2004.

37. Про затвердження Положення про Державне агентство з питань електронного урядування України: Постанова Кабінету Міністрів України від 1 жовтня 2014 р. № 492

38. Про затвердження Положення про Єдиний реєстр об'єктів державної власності. Постанова Кабінету Міністрів України від 14 квітня 2004 р. № 467. Урядовий кур'єр від 06.05.2004. № 84.

39. Про затвердження Положення про Єдину державну електронну базу з питань освіти: Наказ Міністерства освіти і науки України 08 червня 2018 року № 620. Офіційний вісник України від 02.11.2018. 2018 р. № 84. Стор. 272. Стаття 2790. Код акта 91900/2018.

40. Про затвердження Положення про єдину інформаційну систему Міністерства внутрішніх справ та переліку її пріоритетних інформаційних ресурсів: Постанова Кабінету Міністрів України від 14 листопада 2018 р. № 1024. Урядовий кур'єр від 12.12.2018. – № 235.

41. Про затвердження Положення про реєстр застрахованих осіб Державного реєстру загальнообов'язкового державного соціального страхування: Постанова правління Пенсійного фонду України 18.06.2014 № 10-1 (у редакції постанови правління Пенсійного фонду України від 27.03.2018 № 8-1).

42. Про затвердження Положення про реєстрацію платників податку на додану вартість: Наказ Міністерства фінансів України 14.11.2014 № 1130. Офіційний вісник України від 21.11.2014. 2014 р. № 91. Стор. 617. Стаття 2631. Код акта 74766/2014.

43. Про затвердження Порядку ведення Державного реєстру актів цивільного стану громадян : Постанова Кабінету Міністрів України від 22.08.2007 р. № 1064 (в редакції від 27.03.2019). URL: https://zakon.rada.gov.ua/laws/show/1064-2007-%D0%BF.

44. Про затвердження Порядку ведення Державного земельного кадастру: Постанова Кабінету Міністрів України від 17 жовтня 2012 р. № 1051. Урядовий кур'єр від 27.11.2012. № 218.

45. Про затвердження Порядку ведення Державного реєстру обтяжень рухомого майна: постанова Кабінету Міністрів України від 5 липня 2004 р. № 830. Урядовий кур'єр від 18.08.2004 – № 155.

46. Про затвердження Порядку ведення Державного реєстру речових прав на нерухоме майно : постанова Кабінету Міністрів України від 26 жовтня 2011 р. № 1141 (в редакції постанови Кабінету Міністрів України від 6 червня 2018 р. № 484). Урядовий кур'єр від 23.11.2011 – № 218.

47. Про затвердження Порядку ведення Єдиного державного демографічного реєстру та надання з нього інформації, взаємодії між уповноваженими суб'єктами, а також здійснення ідентифікації та верифікації: Постанова Кабінету Міністрів України від 18 жовтня 2017 р. № 784. Офіційний вісник України від 03.11.2017. 2017 р. № 86. Стор. 38. Стаття 2610. Код акта 87704/2017.

48. Про затвердження Порядку ведення Єдиного державного реєстру судових рішень: Рішення Вищої ради правосуддя 19.04.2018 № 1200/0/15-18. https://zakon.rada.gov.ua/rada/show/v1200910-18/print.

49. Про затвердження Порядку ведення єдиного реєстру документів, що дають право на виконання підготовчих та будівельних робіт і засвідчують прийняття в експлуатацію закінчених будівництвом об'єктів, відомостей про повернення на доопрацювання, відмову у видачі, скасування та анулювання зазначених документів: Наказ Міністерства регіонального розвитку, будівництва та житлово-комунального господарства України 24.06.2011 № 92 (у редакції наказу Міністерства регіонального розвитку, будівництва та житлово-комунального господарства України від 16.07.2015 № 165). Офіційний вісник України від 05.08.2011 – 2011 р., № 57, стор. 175, стаття 2312, код акта 57716/2011.

50. Про затвердження Порядку надання відомостей з Єдиного державного реєстру юридичних осіб, фізичних осіб – підприємців та громадських формувань: Наказ Міністерства юстиції України від 10.06.2016 № 1657/5. Офіційний вісник України от 17.06.2016. – 2016 г., № 45, стор. 332, статья 1661, код акта 82215/2016.

51. Про затвердження Порядку надання інформації з реєстру страхувальників Державного реєстру загальнообов'язкового державного соціального страхування: Наказ Міністерства фінансів України 21.07.2017 № 651. Офіційний вісник України від 29.09.2017. 2017 р. № 76. Стор. 114. Стаття 2347. Код акта 87373/2017.

52. Про затвердження Порядку надання Міністерством внутрішніх справ України інформації з Єдиного державного реєстру про зареєстровані транспортні засоби та їх власників Національному агентству з питань запобігання корупції: Наказ Міністерства внутрішніх справ України 21 серпня 2018 року № 689, Рішення Національного агентства з питань запобігання корупції 21 серпня 2018 року № 1843. Офіційний вісник України від 02.10.2018 – 2018 р., № 75, стор. 67, стаття 2518, код акта 91570/2018.

53. Про затвердження Порядку отримання, вилучення з Єдиного державного демографічного реєстру та знищення відцифрованих відбитків пальців рук особи: Постанова Кабінету Міністрів України від 26 листопада 2014 р. № 669 (в редакції Постанови КМ № 628 від 18.08.2017). Урядовий кур'єр від 10.12.2014. – № 230.

54. Про затвердження Порядку та умов користування Єдиним реєстром об'єктів державної власності: Наказ Фонду державного майна України 23.03.2005 № 622 (у редакції наказу Фонду державного майна України 06.08.2013 № 1535). Офіційний вісник України від 06.05.2005. 2005 р. № 16. Стор. 101. Стаття 866. Код акта 32118/2005.

55. Про затвердження Правил державної реєстрації актів громадянського стану в Україні: Наказ Міністерства юстиції України від 18.10.2000 № 52/5. Офіційний вісник України від 03.11.2000. 2000 р. № 42. Стор. 205. Стаття 1803. Код акта 16932/2000.

56. Про захист персональних даних: Закон України від 1 червня 2010 року № 2297-VI (в редакції Закону № 2168-VIII від 19.10.2017). Відомості Верховної Ради України від 27.08.2010. 2010 р. № 34. Стор. 1188. Стаття 481.

57. Про збір та облік єдиного внеску на загальнообов'язкове державне соціальне страхування: Закон України від 8 липня 2010 року № 2464-VI. Відомості Верховної Ради України від 21.01.2011. 2011 р. № 2, № 2-3, стор. 34, стаття 11.

58. Про імплементацію Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : Розпорядження Кабінету Міністрів України від 17.09.2014 р. № 847-р. Урядовий кур'єр від 08.10.2014. № 185.

59. Про інформацію : Закон України від 2 жовтня 1992 року № 2657-XII (в редакції Закону № 1774-VIII від 06.12.2016). Відомості Верховної Ради України від 01.12.1992. 1992 р. № 48. Стаття 650.

60. Про Національну поліцію: Закон України від 2 липня 2015 року № 580-VIII : Відомості Верховної Ради України від 09.10.2015. 2015 р., № 40-41, стор. 1970. Стаття 379.

61. Про створення Єдиної державної електронної бази з питань освіти: постанова Кабінету Міністрів України від 13 липня 2011 р. № 752. Урядовий кур'єр від 02.08.2011. № 139.

62. Про схвалення Концепції розвитку електронного урядування в Україні: Розпорядження Кабінета Міністрів України від 20.09.2017 № 649-р : Урядовий кур'єр від 27.09.2017. № 181.

63. Про схвалення Концепції розвитку електронної демократії в Україні та плану заходів щодо її реалізації: Розпорядження Кабінета Міністрів України від 8 листопада 2017 р. № 797-р. Урядовий кур'єр від 17.11.2017. № 217.

64. Про схвалення Концепції розвитку цифрової економіки та суспільства України на 2018-2020 роки та затвердження плану заходів щодо її реалізації: Розпорядження Кабінету Міністрів України від 17 січня 2018 р. № 67-р. Урядовий кур'єр від 11.05.2018. № 88.

65. Про схвалення розробленого Адміністрацією Державної служби спеціального зв'язку та захисту інформації та Національною комісією, що здійснює державне регулювання у сфері зв'язку та інформатизації, плану імплементації деяких актів законодавства ЄС у сфері телекомунікацій: розпорядження Кабінету Міністрів України від 15 квітня 2015 р. № 360-р. Урядовий кур'єр від 29.04.2015. № 78.

66. Про телекомунікації: Закон України від 18 листопада 2003 року № 1280-IV (в редакції Закону від № 2740-VIII від 06.06.2019). Відомості Верховної Ради України від 19.03.2004. 2004 р. № 12. Стаття 155.

67. Стратегія реформування державного управління України на 2016–2020 роки : Розпорядження Кабінету Міністрів України від 24 червня 2016 р. № 474-р. Урядовий кур'єр от 27.07.2016. – № 139.

68. У команді Зеленського розробили концепцію розвитку цифрової держави. URL: https://www.unn.com.ua/uk/news/1794460-u-komandi-zelenskogo-rozrobili-kontseptsiyu-rozvitku-tsifrovoyi-derzhavi.

69. Уряд хоче запровадити для держслужбовців віртуальні робочі місця. URL: http://zaxid.media/news/5206757.

70. Цифрова адженда України – 2020 («Цифровий порядок денний» – 2020): Концептуальні засади (версія 1.0). Першочергові сфери, ініціативи, проекти «цифровізації» України до 2020 року: Проект URL: https://ucci.org.ua/uploads/files/58e78ee3c3922.pdf.

71. Цифрова стратегія України 2020: успішна інтеграція країни у глобальний ринок. URL: https://ckp.in.ua/events/16407 (дата звернення 23.06.19).

Information about the authors:
Blinova A. A.
Candidate of Law, Associate Professor,
Head of the Department of Civil Law Disciplines
of the Dnipro Humanitarian University
35, Yermolovoi str., Dnipro, 49033, Ukraine
Kelman M. S.
Doctor of Law, Professor,
Professor at the Department of Theory,
History and Philosophy of Law
of the Educational and Scientific Institute of Law,
Psychology and Innovative Education
of the National University "Lviv Polytechnic"
12, Stepana Bandery str., Lviv, 79000, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/28-47

LEGAL REGULATION OF INTELLECTUAL PROPERTY IN THE EUROPEAN UNION

Ennan R. E.

INTRODUCTION

There can little doubt the importance of intellectual property in the modern world. A successful patented invention can make a fortune for the inventor, or a business empire for the commercial operation created to exploit it. The vast western entertainment industry is dependent for its importance on the protection given to books, performances, records and films by the law of copyright, right in performance, and recording right. Western industry is increasingly aware of the significance to its success of its trade secrets, industrial designs, and confidential internal information.

Finally, and by no means of least importance, in an image-conscious and advertising-led consumer society the importance of trade marks as the primary means by which brands names and image may be protected gallops on apace, a development now emphasized by the now general practice of putting a value on the brand names of a business and including the values in the business balance sheet. Indeed often the value of the brands constitute the major assets of the business.

Given the importance of the intellectual property rights framework to the national economies of the Member States of the European Community created by the Treaty of Rome in 1957, the common market has shown itself to be but poorly designed to handle the consequences of such rights within the community-wide commercial arrangements which it sought to establish. In particular, it has found that the existence of such rights as essentially national rights created by national legislation has an entirely natural tendency to fragment and divide markets on a purely national basis, to the detriment of the principles which caused the creation of the community in the first place and which are intended to inform and direct its everyday operation.

National rights are an inherent obstacle to the creation of a true common market with free movement of goods and services. It is perhaps understandable that in the 1950s the drafters of the Treaty should have failed to appreciate the full extent of the problems which intellectual property potentially posed to the ideals to which they were endeavoring to

bring practical expression. The ever onward march of the commercial significance of intellectual property rights both nationally and internationally was still in quite early stages. By a process of change which has proceeded at an ever increasing rate of velocity, the commercial world of the 1990s is barely recognizable if placed in direct comparison with the 1950s. It is small wonder that the fathers of European commercial integration should fail to foresee changes which, even with the advantages of retrospect, are incompletely known and understood.

Since intellectual property rights were protected under the Treaty despite their national basis and frequently national exploitation, problems were bound to arise as national rights intruded on community wide trade, particularly in the field of parallel imports, where goods released in one part of the Community might be prevented from importation into another Member State on the grounds that importation would conflict with an intellectual property right existing in that state.

If the drafters of the Treaty failed to appreciate that there was a large problem to which no coherent and consistent reply could be deduced from the Treaty itself, the Commission established under the Treaty terms showed itself much more alert to the unresolved tensions arising from the Treaty provisions, and before the expiration of that founding decade was urging the original six Member States to consider the implications of the national systems for trade marks, designs and patents for the evolution of a true common market. However, such deliberations are inevitably lengthy, and the process of implementation of any recommendations arising from the discussions even longer. The first necessity was to recognize that a real issue exists. This the Court of Justice did quite openly and frankly, stating: “The national rules relating to the protection of industrial property have not yet been unified within the Community. In the absence of such unification, the national character of the protection of industrial property and the variations between the different legislative systems on this subject are capable of creating obstacles both to the free movement of goods and to competition within the Common Market[1]”.

The basic doctrine thus emerges in simple and clear form, but has to be considered in relation to each type of intellectual property separately, if its implications are to be properly perceived. In relation to each type

[1] *Parke, Davis* v *Centrefarm,* Case 24/67 [1968] ECR 55. See also *Deurkoop v Nancy Dean,* Case 114/81 [1982] ECR 2853;
Thetford v Fiamma, Case 35/87 [1988] 3 CMLR 549.

of intellectual property right – trade marks, patents, design rights, copyright and analogous rights – it has to be asked what are the specific rights associated with this particular right and what are the consequences of the distinction for the exploitation of this particular form of intellectual property right across the Community.

1. Development of the legal protection of products of intellectual activities

Copyright. The applicability of the principle of exhaustion of rights to copyright and analogous rights was decided by the *Deutsche Gramophone Case* itself. However, that case had made its decision on the basis of an assumption – the assumption that copyright and associated rights were industrial and commercial rights within art. 36. If subsequently the issues were actually argued before the Court, and after taking argument it concluded that its assumption had been unwarranted, it could easily follow that the distinction between the essential subject matter of the right and the circumstances of its exercise could be inapplicable to copyright[2]. Subsequently that issue was argued before it in the case of *Musik-Vertrieb Membram v GEMA*[3] in part on the basis that since copyright included 'moral' rights it was neither purely industrial or commercial. The Court disagreed and applied to the facts before it the doctrine of exhaustion of rights.

However, while it was thus established that the principle of exhaustion of rights applied to copyright and its neighboring rights no attempt was made to define the specific subject matter(s) of such rights. In fact in wrestling with this problem in subsequent case law the ECJ has found that the position is complex given the very varying ways in which such rights may be exploited. In *Coditel v Cine Hog*[4] the Court held that in the case of a film 'the right that of the copyright owner and his assigns to require fees for any showing of the film is part of the essential function of copyright in this type of literary and artistic work' thus enabling the copyright owner to grant effective licenses for different Member States covering the showing of the film in each state.

On the other hand the specific subject matter of the copyright in a video cassette may differ from that in a film since its usual means of exploitation differs. The exploitation of a video cassette may be by sale,

[2] It might still be applicable if the distinction was rebased on art. 222 and not art. 36.
[3] *Warner Bros v Christiansen,* Case 158/85 [1987] ECR 2605.
[4] *Basset v SAC EM,* Case 402/85 [1987] ECR 1747.

rental or showing. Whether the commercial rental rights are exhausted by the sale of the cassette depended on whether the law of the country in which the rental took place did, or did not, recognize a rental right separate from the sale, because in the absence of a unified European Community structure in the area national laws inevitably prevailed[5]. By the same token one of the ways on which a record is frequently exploited is by playing in public. Thus, if a discotheque makes use of records in the course of its business and a supplementary fee is payable under national law for this particular mode of public playing, the additional fee is a normal incident of the exploitation of the record even though not levied elsewhere within the community[6].

Therefore Community law has been consciously developed to try to ensure that copyright owners retain the normal means of exploitation of the various forms of material in which copyright and its neighboring rights may subsist. A necessary corollary of the policy in the application of the concept of exhaustion of rights is that the alleged exhausting act (usually the initial sale by the copyright owner) be a voluntary act. Involuntary activity cannot lead to exhaustion as otherwise the copyright owner's opportunities to exploit his rights would be exhausted without his having any genuine opportunity to exploit them[7].

Patents. The concept of rights applied in relation to copyright and neighbouring rights was quickly held applicable to the field of patents. In *Centrafarm B. V.* v *Sterling Drug Inc*[8] the drug 'Negram' was being imported into Holland from the UK, where it was sold at a considerably cheaper price. The owners of the mark under which the same drug was to be sold in Holland brought action to try to prevent the parallel import which threatened their profits, relying on an alleged infringement of their patent and trade mark rights. The ECJ applied the concept of exhaustion, holding that the patent rights were exhausted on the sale in the UK, and that the exercise of the rights to prevent parallel importation constituted an unreasonable interference to the free movement of goods. This was compatible with the proper protection of the specific subject matter of a patent which the court found to be 'the guarantee that the patentee...has the exclusive right to use an invention with a view to manufacturing industrial products and putting them into circulation for the first time,

[5] *EMI Electrola v Patricia*, Case 341/87 [1989] 2 CMLR 413.
[6] *Bassett* v *SACEM*, Case 402/85 [1987] ECR 1747.
[7] *Pharman v Hoechst.* Case 19/84 [1985] ECR 2281.
[8] Case 15/74 [1974] ECR 1147.

either directly or by the grant of licenses to third parties as well as the right to oppose infringements.

In this particular case it could be assumed that the patent owner could ensure adequate recompense for himself by the price he attached to the use of the patent in the UK, so that substantially he had exercised his right to exploit the patent in authorizing sale to that particular area of the community. However, it has since been decided that the same principles are applicable if no patent protection is available in the Member State where the patented goods are first marketed, and where, therefore, the invention has no patent protecting it around which the investor can negotiate recompense from protection of a monopoly position[9]. While marketing in these circumstances means that the patent owner is deprived of protection from the eat of parallel imports throughout the Community without having any Duopoly protection in the state in which the sale was made, it can be said at this is the result of the patent owner's choice in marketing in that country in the first place.

More significant problems in patent law have arisen from the licenses of right available in some Member States under which licenses to manufacture a patented product can, in some circumstances, be obtained as of right and without the consent of the owner. In principle the ECJ takes the view that such licenses are obtained without the consent of the owner, and that, therefore, goods manufactured pursuant to such licenses are not put on the market with the consent of the patent owner[10]. However, to this general principle the Court has evolved an exception in the case of patent endorsed licenses of right. These arc licenses of a type which were available under UK legislation under the transitional provision of the Patent Act 1977 where patents given under previous legislation[11] were given an additional four years protection when the latter legislation came into force. During the extra four years anyone who wanted a license to manufacture goods could have one. When such a license of right was used not to manufacture but to import the patented goods into the UK from elsewhere within the Community the patent owner took action. The ECJ concluded that the distinction between importation and manufacture in the compulsory license would only be justifiable if it were necessary for the proprietor to obtain a fair return from his patent, which in the circumstances it was not[12].

[9] Merck and Co Inc v Stephar B.V., Case 187/84 [1981] ECR 2063.
[10] *Pharman v Hoechst,* Case 19/84 [1985] 3 CMLR 463.
[11] Patents Act 1949.
[12] Allen and Hanbury v Generics, Case 434/85 [1988] 1 CMLR 701.

Trade Marks. Trade marks have been at the forefront of the evolution of the jurisprudence of the ECJ, since goods which are the subject of underlying patent and copyright type rights are usually marketed under specific marks so that issues of infringement arise as to both the underlying rights and the marks themselves. In addition, trade marks also confer protection on goods unprotected by forms of intellectual property. Thus, the doctrine of exhaustion with its distinction between the subject matter of the trade mark of the right and its exercise came to be early applied within this area of law. The specific subject matter of the trade mark rights is "the guarantee that the owner of the mark has the exclusive right that trade mark for the purpose of putting products protected by the trade mark into circulation for the first time and is therefore intended to protect him against competitors wishing to take advantage of the status and reputation of the trade mark by selling products illegally bearing that mark"[13].

While trade marks thus fit simply into the overall structure of the Court's jurisprudence in one respect it has given rise to an especial difficulty. This is the concept of common origin, a concept evolved because the Court has seen the function of a trade mark as that of denoting the origin of goods[14]. Under this doctrine of the Court's jurisprudence where similar or identical trade marks having a common origin are separately owned in different Member States, the owner of one of the marks cannot rely on it to prevent the importation of goods lawfully marketed under the other, since this is seen as being incompatible with the free movement of goods within the Community[15]. The practical implications of the doctrine are well illustrated by the case in which it was first laid down and applied. In *Hag I* Hag Bremen was a German company which first produced a process for decaffeinating coffee. In 1907 they registered 'Hag' as a trade mark in Germany, and the following year they registered the same mark in Belgium and Luxembourg. In 1935 the two later marks were transferred to a wholly owned subsidiary 'Cafe Hag SA'. In 1944 the assets of Cafe Hag SA including the marks' were expropriated, and ultimately passed into the hands of the plaintiffs in

[13] Centrafarm B.V. v Sterling Drug Inc., Case 15/74 [1974] ECR 1147; Centrafarm B.V. v Winithorp, Case 16/74 [1974] ECR 1183.

[14] Franck Schechter 'The Rational Basis of Trade Mark Protection' (1927) 40 *Harv. L.R.* 813.

[15] *Van Zuylen Freres v Hag,* Case 192/73 [1974] ECR 713; *Terrapin (Overseas) Ltd v Terranova Industrie CA Kapferer and Co.,* Case 199/75 [1976] ECR 1039.

1972. Hag Bremen started to export decaffeinated coffee to Luxembourg under the mark 'Cafe Hag' prompting the plaintiffs, Van Zuylen Frercs, to bring infringement proceedings. The Court, however, evolved and applied the doctrine of common origin to reject the claim, concluding that where trade marks sharing a common origin (as here) fall into the hands of different owners in different Member States neither can rely on his mark to prevent importation of goods into his national market.

The doctrine was the subject of considerable criticism since it undermined the principle of consent on which the doctrine of exhaustion was itself built, and had the effect of largely destroying the usefulness of trade marks to protect goodwill in such circumstances.[16] However, the Court was subsequently given the opportunity of reconsidering this approach to national trade marks, for in 1979 Van Zuylen Freres was taken over by Jacobs Suchard, who as 'Hag Belgium' then proceeded to export decaffeinated coffee under the Hag mark into Germany. This prompted Hag Bremen to try to rely on its trade mark to meet the challenge to its German national market. These infringement proceedings constitute *Hag II*[17] and they gave the Court of Justice the opportunity to overrule its previous decision. Concluding that its own previous decision in *Hag I* was wrong, it stated that arts 30 to 36 of the Treaty did not preclude national legislation from preventing the sale within its territory of goods with a confusingly similar mark. While not expressly overruling the doctrine of common origin, it now seems clear that the major issue which the courts will address is not whether or not marks have common origin, but rather whether there is a national goodwill to be protected so that, in the words of the court, 'each of the marks has independently fulfilled within its own territorial limits its functions of guaranteeing that the marked products come from a single source.'

2. Harmonization and unification of industrial property law

While the ECJ has achieved a generally commendable degree of success in interpreting the Treaty so as to balance its twin objects of protecting national intellectual property rights and ensuring a freely running regional transnational market, there are clear limitations on how

[16] D. Gury and G.I.F. Leigh *The EEC and Intellectual Property,* (Sweet and Maxwell, 1981).

[17] *CNL-Sugal v HAG,* Case 10/99 [1990] ECRI-3711. This is now confirmed by the decision in *IHT Internationale Heinztechnik GMBH v Ideal-Standard GMBH,* Case 9/93 [1994] 3 CMLR 857.

much success can be achieved by this route. If Europe is to achieve a genuine integration, European wide intellectual property rights are the logical conclusion of this process. This cannot be achieved by judicial interpretation of the Treaty, and requires direct European legislative activity. This has been long realized. In 1959 the Commission recommended the Ministers of the original six Member States to set up working parties to consider the issues and problems separately for copyright, patents, and design rights. The legislative development arising from this initiative and those arising from other initiatives in the field of trade marks will be the subject of the rest of this overview of this very large topic.

However, one preliminary point needs to be made. Intellectual property is a subject in which policy factors arc usually in high focus, and often in considerable conflict. It is, therefore, often not easy to get the political agreement necessary for change in the very fragmented and politicized legislative machinery under which the community functions. As if that were not enough further tensions arise because of differing views relating to intellectual property protection arising among the Directorate General with responsibilities in this particular area. Most of the Commission's legislative proposals on this subject emanate from DGXV (Internal Market and Financial) which gives greatest weight to the protection of intellectual property rights, whereas DGIII (Industry), DGIV (Competition), and DGXIII (Telecommunications), which also have influence over the legislation, are much more concerned with the impact of the legislation on competition and industrial policy. However, while noting these tensions the eminent specialist Thomas J. Vinje now detects a somewhat healthier trend within the Commission. Writing in the European Intellectual Property Review he comments: “Recently, however, it is fair to say that DGIV has taken a more realistic view to competition cases involving intellectual property. In particular, DGIV has been more willing to accept provisions on intellectual property licensing agreements that might theoretically restrict competition, but that pose little real risk of anti-competitive dangers. DGIV has also liberated the patent licensing, know-how licensing, specialization, and research and developments block exemptions, and have proposed certain further liberalizations of the patent and know-how block inventions”.[18]

[18] T. Vinje Harmionising intellectual property laws in the European Union: past, present and future’, [1995] *EIPR* 361.

The European patent system. The European legislative dimension to patent law has taken two separate principle routes, one within and the other outside the Community as such. It was the system which lies outside the Community which came first, driven not so much by European idealism as the practical needs of industry to reduce the costs of obtaining patent protection within the Continent. Its origins rest not on a European Community basis but on the European Patent Convention[19], and is thus not restricted to Community members.

Prior to the introduction of the European Patent Convention and its system, patent protection was fundamentally national in character, so that if protection for an invention was required in more than one country separate applications had to be made in each country in which protection was required. Since different jurisdictions have different requirements for patentability (and also differing procedural requirements) the result was slow, complicated and expensive. Increasing internationalization of commercial activity simply gave these fundamental weaknesses wider and more substantial impact. A truly international structure for protection had been the aim of the Paris Convention for Protection of Industrial Property,[20] it this does not meet the problems arising from the underlying national basis of patent protection since its effect is solely to protect the priority of patent applications made within a participating country within twelve months of the first application in another Convention country. The system is one for the protection of priorities, not for avoiding the needs for separate national applications. Similarly the more recent Patent Co-operation Treaty of 1970[21], while making provision for the filing of an International Application, docs not address the fundamental problem because the so called International Application simply leads to separate individual national consideration of the application in every jurisdiction in which registration is sought.

The European Patent Convention. By contrast, under the European Patent Convention a single application can be made to the European Patent Office (hereafter EPO) in Munich to lead to the grant of a bundle of national patents valid in each country for which a patent is granted. In order for this to be feasible it is necessary that the patentability

[19] Convention on the Grant of European Patents, concluded at Munich 5 October 1973.

[20] Dating originally from 1883 this has been revised on several occasions, the most recent being the Stockholm revision of 1967.

[21] This came into effect from June 1978 with an administration provided by the World Intellectual Property Organization in Geneva.

requirements, which differ under national law, should be harmonized by the Convention for the purposes of its own operation and ambit, and this it docs by incorporating many of the harmonizing features of the earlier Strasbourg Convention of the 27th November 1963 on the harmonization of various aspects of patent law[22]. While there is thus a limited harmonization result arising from the Convention, it nevertheless gives rise to a complex splitting of responsibility for the operation of the intellectual property regime to which it gives rise between, on the one hand, the EPO and the Convention provisions, and on the other, national laws and national courts. Applications may be made initially to either the EPO itself, or to national patent offices who then forward the application to the EPO. The EPO then processes the application and examines the patentability of the invention. If the result is positive a grant of patent is made which, subject to some minor formalities, has the effect of conferring patent rights in each country covered by the application. With the exception of opposition proceedings mentioned below, the function of the EPO ends with the patent grant, which confers the same status on each national grant as it would have enjoyed under the law of that country. Consequently, matters of infringement or revocation fall to be dealt with under the national law of each country in respect of which the patent is granted. As a further consequence, a finding by one national court affects the patent in that country only, the effectiveness of the patent in other countries being unaffected. Exceptionally, however, opposition proceedings attacking the whole patent may be brought in the EPO within nine months of the publication of the patent by any opponent able to establish a sufficient ground, and successful opposition proceedings lead to the loss of the whole bundle of national patents.

Clearly, the fact that the treatment of the patents after the grant is dependent on the national laws of each country concerned is a definite weakness of the system. This is clearly understood, and the Convention docs envisage increasing harmonization of these areas of national law, although this will almost certainly prove extremely difficult to achieve. Nevertheless, the Convention has proved to be extremely popular. This is hardly surprising. Although the treatment of patents after registration remains to be harmonized, the harmonization of patentability itself is an

[22] Like the European Patent Convention itself the Strasbourg Convention was not a Community initiative or in any way directly related to the Community. It was promoted by the Council of Europe.

immeasurable simplification of the complex pattern of differing national requirements in this respect, and, at a practical level, a great contributor to efficiency and cost savings.

The Community Patent Convention. However, whatever the practical solutions which emerge from the European Patent Convention, it still remains true that its provisions do not provide a framework under which a Community wide patent can be obtained and maintained independently of national laws and enforcement. This is hardly surprising since, as has been noted, the European Patent Convention was not the result of a European Community initiative. This does not mean, however that the Community was indifferent to this area of intellectual property. A; result of the initiative of the Commission in 1959 a report on patents v prepared which recommended, *inter alia*, the creation of a true Community patent.[23] The result was the Community Patent Convention signed on 15th December 1975. There have proved to be difficulties in obtaining ratification of all Member States. Denmark and Ireland in particular have experienced political and constitutional difficulties in proceeding to ratify, despite agreeing the text of the draft. A conference held at Lisbon on 3rd and 4th May 1992 failed to find a solution to the difficulties. It is becoming increasingly unlikely that the draft Convention will ever receive the force of law.

In form the Community Patent Convention seeks to build on the structure created by the European Patent Convention, giving to the EPO the task of registering and maintaining community patents in special departments established for the purpose. The great difference between the two systems (apart from possible differences in the countries which choose to participate in the two regimes) is that the Community patent is a single patent covering the whole of the Community, and not a bundle of national patents having separate existence under the separate laws of the individual participant states. Thus, the terms of the Convention seek to cover not merely registrability, but also matters of infringement and revocation. Under the regime established under the Convention, certain courts will be specified in each country as Community patent courts of first instance, having jurisdiction over both validity and infringement. Appeals will be dealt with by certain national courts of appeal in each country, which will be second instance, Community patent courts. Over

[23] Convention for the European Patent for the Common Market (the Community Convention) and the 1989 Luxembourg Agreement relating thereto OJ 1989 L 401/1.

the whole structure there will exist a newly established Common Appeal Court to which issues of validity or infringement may be referred. It will also be possible to challenge at any time the validity of a Community patent before the EPO under its responsibilities for acting as the Community Patent Office.

Protection of Trade Marks. As with patents it is important also with trade marks to place European developments against the background of international law, if their significance is to be properly appreciated. The oldest relevant international intervention into the field of trade marks and their protection is the Paris Convention for the Protection of Industrial Property, but this is far more concerned with securing the provision of minimum protection by the national laws of its participating states than providing a transnational system for trade mark protection. By contrast The Madrid Agreement for the International Registration of Marks 1891 is much more comparable to the regime of the European Patent Convention. Under its provisions once a registration has been obtained under the national law of one of the participating states the owner of the domestic registered mark thus obtained may apply to the International Bureau of the World Intellectual Property Organization for an international registration. The Bureau then passes the application to the national trade mark registries of all participating countries in which registration is requested, who then may grant national trade marks. Effectively, therefore, the international application represents a batch of individual applications which then fall to be considered under the national laws, and which, if successful, leads to a bundle of trade marks depending on the relevant national laws for their validity and enforcement. Clearly such an approach is inadequate at a Community level, since it produces neither harmonization between the requirements of different national systems of law, nor a truly transnational system for registering and/or maintaining and enforcing trade mark rights within the Community.

European Community reform of trade marks addresses both problems. As part of the single market initiative the Council of the European adopted the First Trade Marks Directive of 21st December 1988[24] on the approximation of national trade mark laws and the Council Regulation (EC) of 20th December 1993[25] on the Community trade mark.

[24] First Council Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks: OJ 1989 L40/1.

[25] Council Regulation 40/94 on the Community Trade Mark: OJ 1994 L 11/1.

As their names imply the purpose of the Directive is to introduce a large degree of harmonization of national trade mark law, and the purpose of the Regulation is to introduce a Community wide trade mark based on a European central register.

While the purpose of the Directive is to achieve a greater degree of harmonization than that previously exhibited by the very different trade mark systems of the Member States of the Community, it does not seek to achieve total harmonization. Its aim was to reduce the substantive differences between national systems which operated as barriers to trade at a practical level, thereby hindering the free movement of goods and services and the development of a true single market. It thus concentrates on approximating the national laws of the Member States by specifying what can be registered as a mark, the scope of the right which accrues if registration is achieved, the ownership of the mark, and how a registered mark may be licensed and revoked. By contrast the procedural aspects of application and registering, infringement and revocation proceedings and procedures are left to national laws. Further, even in respect of matters with which the Directive does deal some of its provisions arc mandatory whereas others are optional, with the result that the latter can be ignored by those Member States that wish to do so. The result of implementation of the Directive will thus lead to a greater approximation of national laws, but not to uniformity.

The Directive draws very considerably on Benelux trade mark law which was perceived to be the most developed within the Community. The drafting of the Directive is in wide and general terms, and when interpreted by the ECJ will be subjected to a teleological style of interpretation making use of the available *travaux préparatoires.* In this particular case these include the Explanatory Memorandum of the Commission which preceded the first draft of the Directive in 1980, and the minutes of the meeting of the Council of Ministers which adopted it. The combination of the wide, indeed often general, terms of the Directive and this approach are likely to have the effect of giving a very wide impact to the Directive.

The Directive seeks to define a trade mark in terms of what it sees as the basic function of a trade mark, which in economic and legal terms, it sees as 'to indicate the origin of goods and services and to distinguish them from those of other undertakings'. Within the restrictions of these concepts trade marks are widely defined. 'A trade mark may consist of any sign capable of being represented graphically, particularly words,

including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings'. The Directive sets out a harmonizing structure for registrability, enforcement, licensing and revocation of marks, the adoption of which will bring national laws much closer together. Within the structure one particular provision is perhaps worth special mention. Art. 7 acknowledges the accumulated jurisprudence of the ECJ on its concept of doctrine of exhaustion of rights and seeks to summarize it, thus perhaps providing à framework from which it will become embodied in national legislation.

While harmonization of the domestic laws of the Member States of the Community is no doubt highly desirable, it does not create the means by which a community wide registration can be affected. All that it achieves is to make more comprehensible and uniform the domestic laws, under which individual applications within those states will be considered, as the proprietor seeks to build up the bundle of national rights which he will require to enjoy protection across the Community. The more radical step however, emerges from the second Community initiative, the Community Trade Mark Regulation. This provides the means by which a Community wide trade mark can be obtained by registration at a European central registry. One of the main functions of the Regulation is, therefore, to provide for the creation of a Community Trade Mark Office (the CTMO, in fact called officially the Office for the Harmonization in the Internal Market (Trade Marks and Designs), which is sited at Alicante in Spain.

The provisions relating to registrability and maintenance on the register of the Regulation are in very similar terms to those of the Directive. A Community trade mark can only be obtained by registration, and not by length of use and reputation. Since registration may be refused on the ground that the mark would conflict with an existing mark whether registered under national law or as a Community mark at the CTMO, it will be necessary to cause searches to be carried out both in Alicante and the national registers of those Member States which are affected before lodging an application. An application must be filed at CTMO or at a national trade mark registry. In the latter case the application must be forwarded to CTMO within two weeks.

Of course registration merely creates a property right which requires a structure of recognition and enforcement. Property rights are matters for the national laws of Member States themselves, and the Regulation is

obliged to work within this framework which is, or course, dictated by the Treaty itself. The property right has therefore to be tied to the national property rights of a Member State. Art. 16 of the Regulation achieves this by providing that a Community trade mark as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national trade mark registered in the Member State in which, according to the Register of Community trade marks the proprietor has his scat and domicile or, if he lacks both, his establishment. This then gives a legal framework for the existence of the property right. Its scope and extent is similar to that which arises for national marks under the Directive. However, the enforcement of the Community Trade Mark Right is left to national law although, as with patents, there will be a first and second tier of designated 'Community Trade Mark Courts' in each country with referral powers and responsibilities to the ECJ under art. 177. In this respect the harmonization of national laws from the Directive should be seen as a necessary and powerful ingredient in the Community Trade Mark framework itself.

Industrial Design Right. The protection of industrial design is an area of vast importance. Industrial design allows the product design of products and parts of products to be protected where there is novelty in a design feature, but where there is no invention protectably by patent. Most industrial products will have elements of design protection, so that the majority of manufactured goods the subject of trade between Member States within the Community will be subject to design rights. As examples television, motor cars, hi-fi contain large numbers of parts all or some of which may be subject to design rights, each of which represents considerable economic value to its owner. To register the right in each Member State in which business is done represents a considerable financial and operative expense.

Almost inevitably increased practical importance leads to increased political significance. Its increasing importance is also indicated by the level of litigation which it prompts. *Keverkoop* v *Nancy Kean Gifts*[26], *Renault* v *Maxicar*[27], and *Volvo v Veng*[28] were all cases on design protection. It was in the specific area of design protection that the ECJ laid down that in the absence of a Community-wide framework for a

[26] Case 144/81 [1982] ECR 2853.
[27] Case 53/87 [1988] ECR 6039.
[28] Case 238/87 [1988] ECR 6211.

specific area of intellectual property, the exercise of national property rights would not automatically be found to be an abuse of a dominant position. In the absence of a unified system national right owners are able to rely on those rights unless the particular exercise is abusive.

This, however, merely indicates that the economic considerations and policies on which the Community is based demand that harmonization and unification be used to overcome the economic disruption which flows from having a complex system of national rights having the potential to fragment a single market. The problem is to achieve that harmonization. In no other areas of intellectual property are the differences between national laws more pronounced[85]. it is this which makes harmonization and unification so difficult to achieve. At the same time, however, it is the particularly pronounced range of national approach which makes that harmonization and unification so specially needed.

While the problems in this area are particularly acute, the Community's interest goes back to 1959 when the working party on designs was part of the three pronged approach to the harmonization of intellectual property. The report of the working party pessimistically concluded that differences in national laws were so pronounced that no attempt at harmonization was feasible, but that nevertheless there was room for a community design system to co-exist with the very different national frameworks. No doubt infected by the pessimism of this report the Commission gave priority to the more promising possibilities of other areas of intellectual property, largely ignoring design protection. However, when the Green Paper on copyright was published the Economic and Social Committee noted the lack of progress in the area of designs[29], and expressed the hope that proposals in that area would not be long delayed. The Commission responded with a Green Paper on industrial design in June 1991[30].

The Green Paper adopted a twin approach to design protection within the Community, a formula very similar to its framework for trade mark protection, which is built also on a draft Regulation and a draft Directive. The draft Regulation is similar in mode to the draft trade mark Regulation, which, may be seen as its basic model, and has the purpose of creating a Community wide design right, based essentially on registration but with a

[29] OJ 1989 C71/9; Bull EC Supp. 1-1989, point 2.1.7.

[30] Green Paper on the Legal Protection of Industrial Design, Working Document of the Services of the Commission, III/F/5131/91-EN.

provision for a short period of unregistered protection. Under the Regulation designs would have an unregistered design right which would protect them for a limited term of three years from unauthorized copying. If a longer period were desired, the design could be registered and would confer a monopoly to use the mark for an extended period. In addition an initial grace period of protection conferred by the unregistered design right would run for a period (tentatively suggested as one year) from the date of disclosure to the public. Often this will be when articles to the design are first marketed to the public. Such disclosure will not destroy the novelty, and hence the registrability of the design. Thus, test marketing of a product would not destroy its registrability, and registration could be sought if the indications from the test marketing proved to be favorable. Thus, unregistered design rights would not come to an end at the end of the grace period but would continue for a further period of two years. This recognizes diat a system of protection which does not require registration is appropriate to those designs which enjoy relatively short lives such as fashions. By contrast the period of protection flowing from successful registration would be 25 years (an initial term of 5 years plus four possible five year renewals on payment of further fees). The creation of a Community wide system of registered design requires the setting up of a Community Design Registration Office similar to the Community Trade Marks Office at Alicante.

CONCLUSIONS

To achieve these ends the draft Directive seeks to achieve a harmonization of the very disparate national laws of the Member States in relation particularly to registrability, scope, and duration of the design rights conferred by national systems of registration. It does not therefore address the issue of unregistered design for registration purposes. The failure to address the issue of the existence of unregistered design protection might seem on the surface to cause difficulties for the UK use of this as a means of protecting functional designs introduced by the Copyright Designs and Patents Act 1988[31]. However, the Directive neatly disposes of this potential problem by treating the UK system of unregistered protection as a species of copyright, and therefore something which can be simply ignored. More significantly however, the use of copyright to provide protection to

[31] Copyright Designs and Patents Act 1988, Part HI, p. 213–264.

designs which are themselves artistic works is protected by the Directive which requires that such protection must be without restriction 'irrespective of the number of products in which such design is intended to be incorporated and/or to which it is intended to be applied, and irrespective of whether the design can be dissociated from the products in winch it is intended to be incorporated or to which it is intended to be applied'. This hits the industrial application rule applied by the laws of the UK and Eire which limits the duration if more than 50 articles are made to the design, and also the Italian requirement of *scindibilita* which turns on whether the aesthetic features of the design can be separated from the functional features of the product.

Both the Draft Regulation and Draft Directive in the original forms published by the Commission drew a great deal of criticism from industry, practitioners and other groups who considered their interests affected. Given the great differences between the various national laws to be harmonized design protection was always going to be controversial. The weight of the criticisms was considerable. In the light of them the Commission deliberated further and subsequently produced substantially amended drafts, which, however, retain the broad approach outlined here. The new drafts remain extremely controversial and it must remain questionable as to whether an appropriately speedy resolution of these particular problems of European intellectual property law can be effected. It would be unfortunate if it cannot.

SUMMARY

The article investigates the development of the concept of intellectual property law in the EU. One of the difficult issues in legal science is value and delimitation of the exclusive rights (intellectual property rights) and proprietary rights (classical property rights) as well as the feasibility of using the concept of "intellectual property". World jurisprudence and practice suggest different approaches legislators and the legal profession to address these issues.

The basic doctrine thus emerges in simple and clear form, but has to be considered in relation to each type of intellectual property separately, if its implications are to be properly perceived. In relation to each type of intellectual property right – trade marks, patents, design rights, copyright and analogous rights – it has to be asked what are the specific rights associated with this particular right and what are the consequences of the

distinction for the exploitation of this particular form of intellectual property right across the Community.

REFERENCES

1. Bainbridge David I. Intellectual property / David I. Bainbridge. – 5th ed., 2002.
2. Cornish W.R. Intellectual Property. – 1996. – 722 p.
3. Eastaway Nigel A. Intellectual property: law and taxation / Nigel A. Eastway, Richard J. Gallafent, Victor A.F. Dauppe. – 6th ed., 2004.
4. Keeling David T. Intellectual property rights in EU law / David T. Keeling. Volume 1, 2003.
5. Marshall, James. Non-contentious intellectual property / James Marshall, 2003.
6. Matthews Duncan Globalising intellectual property rights: the TRIPs Agreement / Duncan Matthews, 2002.
7. Tritton Guy. Intellectual property in Europe / Guy Tritton. – 2nd ed., 2002.
8. Audrey Horton. European design law and the spare parts dilemma: The proposed Regulation and Directive // European Intellectual Property Review. – 1994. – N° 16(2). – P. 51–57.
9. Alexander Bulling, Angelika Langohrig, Tillmann Hellwig. The Community Design: A New Right of Design Protection for the European Community // Journal of the Patent and Trademark Office Society. – February, 2004.
10. Briffa, Margaret. Design law: protecting and exploiting rights // Margaret Briffa and Lee Gage, 2004.
11. Graeme B. Dinwoodie. Federalized Functionalism: the Future of Design Protection in the European Union // AIPLA Quarterly Journal. – Spring-Fall 1996.
12. Hugh Griffiths. Overview of developments in Europe on industrial design protection // Fordham Intellectual Property, Media and Entertainment Law Journal. – Summer, 1993.
13. Musker David C. Community design law: principles and practice / David Musker, 2002.
14. Robin Whaite. Pharmaceutical Patent term restoration: the European Commission's Regulation // European Intellectual Property Review. – 1992. – N 14(9). – P. 324–326.
15. Suthersanen Uma. Design law in Europe: an analysis of the protection of artistic, industrial and functional designs under copyright,

design, unfair competition and utility model laws in Europe, including a review of the B.C. design regulation, the E.G. design directive and international design protection / by Uma Suthersanen, 2000.

Information about the author:
Ennan R. E.
PhD in Law, Associated Professor
at the Department of Intellectual Property Law,
National University “Odessa Law Academy”
2, Academychna str., Odessa, 65009, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/48-68

LEGAL REGULATION OF CHILDREN'S RIGHTS IN THE FAMILY LAW OF EUROPEAN COUNTRIES

Hlynyanaya K. M.

INTRODUCTION

In 1959, at the 14th session, the United Nations General Assembly adopted the Declaration of the Rights of the Child, dedicated exclusively to minors. This Declaration provides for the most important rules of principle[1]. The declaration of the rights of the child is not binding; it is recommendatory in nature. The main advantage of this declaration is that it establishes the equality of rights of all children without exception, without distinction or discrimination on the grounds of race, color, sex, language, religion, political and other beliefs, national or social origin, property status, birth or other circumstance relating to the child or his family. It lists the rights of the child as a citizen (in the name, citizenship, compulsory and free education, primary care and protection, especially against all forms of neglect, cruelty and exploitation); as independent, the provisions regarding his right to education in the family are highlighted. Society and public authorities should have a responsibility to take special care of children who do not have a family and children who do not have sufficient means of livelihood. In accordance with Art. 1 of the Convention on the Rights of the Child – a person is recognized as a child under the age of 18[2]. The Convention on the Rights of the Child not only emphasizes the priority of the interests of children over the interests of society, but also specifically emphasizes the need for special state care for socially deprived groups of children: children left without parental care, people with disabilities, refugees, and offenders.

She proclaims the child as an independent subject of law, Emphasizing the high requirements and demand for the fulfillment of the rights proclaimed by the states, he considers it necessary that each state

[1] Декларация прав ребенка. Международные конвенции и декларации о правах женщин и детей: сборник универсальных и региональных международных документов / Сост. Л. В. Корбут, С. В. Поленина. – М., 1998.

[2] О правах ребенка.: Конвенция ООН // КонсультантПлюс : справочная правовая система / разраб. НПО «Вычисл. математика и информатика» / http://www.consultant.ru.

bring its national legislation in accordance with this international act. A special monitoring mechanism is being introduced – the United Nations Committee on the Rights of the Child and gives it high authority. The Convention on the Rights of the Child calls on adult children to build relationships on a different moral basis. Respect for opinions, opinions, and the personality of the child as a whole should be not only the norm of universal culture, but also the rule of law.

In the scientific literature, a minor is considered to be a person who has not reached the age from which the law gives him the opportunity to fully realize his subjective rights and fulfill his duties. In accordance with Art. 1 of the United Nations Convention on the Rights of the Child, a child is recognized as a person under the age of 18.

Until recently, the situation of illegitimate and legitimate children was different in many countries of the European Union. However, the jurisprudence of the European Court of Human Rights has led states to amend national legislation to eliminate discrimination. So, earlier in France, when inheriting by law, illegitimate children could count only on half of the share that would be due to them if they were legitimate children. Moreover, the proportion of a legitimate child increased due to a decrease in the proportion of an illegitimate child. The legal status of illegitimate children changed in 2001 in connection with the entry into force of Law No. 2001-1135 of December 3, 2001, which equalized their rights with legitimate children.

European law recognizes a child as a person from the moment of birth. However, it does not prohibit states from considering a child a human being from the moment of conception, although the protection of an unborn child is not provided for in any international treaty, with the exception of the American Convention on Human Rights (Article 4 (1)).

European law, as already mentioned, provides for the right to respect for private and family life (Article 7 of the Charter of the European Union on Fundamental Rights and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

The European Union places its competence in resolving cross-border disputes arising in the area of family life, including the recognition and enforcement of judgments in member states.

The European Court of Human Rights and the Court of Justice of the European Community, when considering disputes, take into account the interests of children and their rights as provided for in the Charter, Conventions, Bis Brussels II and other normative legal acts establishing

children's rights, including such a right as the right to family life and the right of the child to have an opinion and interests.

European family law recognizes that often the rights of a child can contradict each other (for example, a child's right to respect for his family life may be limited in his interests, for example, if parents do not fulfill their parental responsibilities, etc.). Family law of European countries has developed tools and mechanisms to ensure the best interests of the child and his rights.

1. The right of the child to family education and communication with parents

States have positive obligations to ensure children's effective enjoyment of their rights to respect for family life. When considering any issues related to respect for the child's family life, judicial and administrative authorities should take into account his interests. The child's right to respect for family life is not absolute and is subject to restriction: in accordance with the law; the interests of a democratic society; national and public security; – the economic well-being of the country; prevent rioting or crime; to protect health or morality or to protect the rights and freedoms of third parties. European Union law regulates the procedural issues of the realization of the child's right to family education.

The jurisprudence of the European Court of Human Rights establishes that the state has negative and positive responsibilities for providing children with family education. The right of the child to family education consists of: – the right of children to know their parents and the right to parental care (cohabitation, care from parents)[3].

They are to some extent interdependent: the right of children to know their parents is often ensured through parental care. However, we are forced to ascertain the existence of situations when these rights are disconnected, for example, at the birth of a child by artificial reproduction or adoption.

The right to know one's parents becomes difficult to realize in case of separation of social and biological aspects of parenthood: in cases of adoption or the birth of a child by artificial reproduction.

On the one hand, the child himself is interested in obtaining information about biological roots: with the aim of forming an identity

[3] Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 5, 1950, Art. 8.

and understanding his personal history, gaining a more complete picture of his health, possible hereditary ailments and genetically caused diseases, and preventing blood marriages.

On the other hand, the child's social parents may be interested either in maintaining the secrecy of the circumstances of his appearance in the family, ensuring stability of relations and protecting the integrity of the family, or in not creating an atmosphere of tension within the family caused by the constant need to hide information.

You can talk about the interests of the biological parents of the child (who may both seek to learn about the fate of their offspring and prefer ignorance by creating a new family), the interests of the biological brothers and sisters of the child and others.

In 2006, the World Medical Association noted: "If a child is born through donation, it is necessary to encourage families to reveal the fact to the child, regardless of whether the domestic law gives the child the right to information about the donor. Keeping secrets within the family is difficult and may harm the child if information about the donor conception is revealed by chance and without proper support [4]".

The law governing relations related to the circulation of information on the origin of the child faces two tasks: firstly, to provide mechanisms and tools to hide to one degree or another the circumstances of the appearance of the child to the family, and secondly, to provide the child, as well as other interested parties, a certain autonomy and the ability to obtain information about the biological roots of the child. The solution to these problems occurs both at the international and national levels.

"A child is registered immediately after birth and from the moment of birth has ... as far as possible, the right to know his parents", proclaims Art. 7 of the United Nations Convention on the Rights of the Child.

The United Nations Committee on the Rights of the Child has repeatedly expressed concern about the lack of mechanisms in States to allow a child to receive information about their biological origin – in relation to situations of adoption[5], anonymous birth[6], and birth outside of

[4] Hodgkin, R., Newell, P. UNICEF Implementation Handbook for the Convention on the Rights of the Child. Geneva, 2007.

[5] Комитет по правам ребенка (КПР) § 52-53. Заключительные замечания: Бельгия: CRC/C/BEL/CO/3-4, 18 July 2010; КПР. Заключительные замечания: Новая Зеландия: CRC/C/NZL/CO/3-4, 11 April 2011; КПР. Заключительные замечания: Российская Федерация: CRC/C/RUS/CO/3, 23 November 2005.

[6] CRC. Concluding observations: Luxembourg: CRC/C/15/Add.250, 31 March 2005; CRC. Concluding observations: Luxembourg: CRC/C/LUX/CO/3-4, 29 October 2013.

marriage[7]. However, already in 1994, the Committee specifically addressed the problem of anonymous gamete donation, noting "a possible contradiction between the provisions of the Convention, which enshrines the right of the child to know their origin, and ... keeping the identity of the sperm donor secret[8]". Of great importance is also Art. 8 of the Convention on the Rights of the Child: ".. States parties undertake to respect the right of the child to maintain his or her identity, including citizenship, name and family ties, as provided by law, without unlawful interference." According to experts, "the concept of a child's identity" (children's identity) seeks to focus on the immediate family of the child, but along with this, it is increasingly recognized that children have an amazing ability to maintain multiple relationships.

For this reason, the best interests of the child and a sense of individuality can be protected without necessarily depriving him of information about his origin – for example, after being transferred to state care, "secret" adoption or anonymous donation of eggs or sperm, etc.[9] "

The importance of information on the biological origin of the child becomes one of the pressing issues of Council of Europe law, primarily in light of the development of the practice of the European Court of Human Rights in cases relating to situations of birth outside of marriage[10] or anonymous motherhood[11]. Analysis of existing practice allows us to draw the following conclusions.

The child's right to access information on origin is covered by Art. 8 of the Convention (at least as far as privacy is concerned)[12].

---

[7] КПР. Заключительные замечания: Сейшельские Острова: CRC/C/SYC/CO/2-4, 23 January 2012; CRC. Concluding observations: Israel: CRC/C/ISR/CO/2-4, 4 July 2013; CRC. Concluding observations: Tajikistan: CRC/C/TJK/CO/2, 5 February 2010.

[8] CRC. Concluding observations: Norway: CRC/C/15/Add. 23, 25 April 1994.

[9] Jäggi v. Switzerland: Application N 58757/00: Judgment of 13 July 2006. – C. 114.

[10] Mikulić v. Croatia: Application N 53176/99: Judgment of 7 February 2002. Mikuli; Odiévre v. France: Application N 42326/98: Judgment of 13 February 2003.; Shtukaturov v. Russia: Application N 44009/05: Judgment of 27 March 2008.

[11] Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012; Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).

[12] Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012; Mikulić v. Croatia: Application N53176/99: Judgment of 7 February 2002.; Odiévre v. France: Application N 42326/98: Judgment of 13 February 2003. Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000 / http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013); Shtukaturov v. Russia: Application N 44009/05: Judgment of 27 March 2008.

The European Court of Human Rights recognizes the possibility of restricting the child's right to access information about his or her origin (and more broadly, the child's right to respect for his private life) insofar as the restriction pursues legitimate goals. For example, in the case of anonymous motherhood, such goals may be to protect the life and health of the mother and child during pregnancy and childbirth, to reduce the risk of leaving the child in dangerous conditions, as well as the risk of clandestine abortions.

To limit the access of a child conceived with the help of donor gametes to information about its origin, justification could serve such purposes as protecting the health of the child (the mental health of a small child who is not yet ready to accept certain information), protecting the rights and freedoms of others (first of all, the right to respect for the private and family life of the biological and social parents of the child).

The European Court of Human Rights provides the national authorities with the choice of a specific legal mechanism for the child to access information about his or her origin. States have a certain margin of appreciation[13].

However, the discretion of states is limited by the need to achieve a fair balance of the interests of the entities involved. First of all, we are talking about the private interests of the child (obtaining information about the origin)[14] and his biological parents (maintaining anonymity)[15]. However, the interests of third parties may also be affected – the social parents of the child and their relatives, relatives of biological parents[16].

The boundaries of the state's discretion depend on the presence or absence of a European consensus on the right of the child to access information about his or her origin. In the Odiévre France judgment, the European Court of Human Rights emphasized that the participating

[13] Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012; Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).

[14] v. France: Application N 42326/98: Judgment of 13 February 2003; Shtukaturov Russia: Application N 44009/05: Judgment of 27 March 2008.

[15] Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012.

[16] Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).

States adhere to different, sometimes opposite, approaches to anonymous parenthood, and based on this, among other things, ruled that there are no violations of the European Convention in the actions of the French authorities[17].

Since the Odiévre judgment was issued, there have been major changes in practice and legislation, and at present, the conclusion that there would be no European consensus would not be so clear. Since 2003, laws have been adopted in many countries to increase the access of children conceived using assisted reproductive technologies to information on their origin: this includes European countries (Great Britain, Spain, the Netherlands, Norway, Portugal, Finland, Montenegro, Estonia) and countries outside of this region (Canada, New Zealand, Australian states New South Wales and South Australia)[18].

In ascertaining the presence or absence of a European consensus, the ECHR also takes into account the "soft law" of the Council of Europe[19]. In this regard, of particular importance are, for example, not only the recommendations already formulated in 2000 to ensure the right of adopted children to know about their origin at least from adulthood, and also to exclude from the national laws any conflicting provisions, but also later proposals to take into account the law "duly" "the child's interest regarding information about his biological origin, as well as ensure the right of children" to receive information about his biological/genetic origin in compliance with m of their best interests[20]. "Moreover, the child's right to know one's origin is already recognized in legally binding acts, such as the 2008 European Convention on the Adoption of Children.

The blanket restriction of the child's right to access information about his or her origin indicates a violation of Art. 8 of the European Convention, since the rights and interests of one subject – a child are

[17] Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).

[18] Кириченко К.А. Право ребенка на информацию о его происхождении: эволюция международно-правовых стандартов и перспективы развития российского права // Семейное и жилищное право. 2015. № 4. С. 10–13.

[19] Surrogacy: The Experience of Commissioning Couples / F. MacCallum [et al.] // Human Reproduction, 2003. Vol. 18. N 6. P. 1334-1342.

[20] Report on Principles Concerning the Establishment and Legal Consequences of Parentage – «The White Paper». Strasbourg, 23 October, 2006. URL: http://www.coe.int/t/e/legal_affairs/legal_cooperation/family_law_and_children%27s_rights/documents/CJ-FA_2006_4eRevisedWhitePaper.pdf. (05.08.2010).

completely blocked by the rights and interests of another subject – for example, an anonymous mother, on whose will the child's access to information depends entirely.

In the case of Odiévre, the European Court of Human Rights did not find a violation of Art. 8 of the European Convention, noting that the applicant was able to obtain certain information about her origin (a description of the appearance and lifestyle of each of the parents, information about their other children, etc.). However, considering the case of Godelli v. Italy, where the applicant was refused any information at all – either identifying or non-identifying – about her biological mother, the European Court of Human Rights acknowledged the violation, specifically emphasizing the difference between the applicant's situation and the situation of Ms Odiévre. The European Court of Human Rights concluded that the state was unable to balance the interests of the applicant and her biological mother, having completely blocked the applicant's right [21].

The issues of legal regulation of the right to communicate with parents are divided into two categories: the exercise of the right to communicate with a child in connection with the divorce of parents and communication in a broader sense. When determining the order of communication, it is necessary to establish a regular mode of communication, the order of direct and indirect contact.

The fundamental international document on children's rights, the 1989 United Nations Convention on the Rights of the Child (Clause 2, Article 10), establishes that a child whose parents live in different states has the right to support on a regular basis, with the exception of special circumstances, personal relationships and direct contacts with both parents.

However, it is well known how often a child is deprived of the opportunity to communicate with a parent living separately due to the fact that parents cannot agree among themselves, and a parent living with a child prevents such communication. It is often not possible to protect the rights of a child by legal methods, in particular, due to the inability to enforce a court decision on the exercise of the right of a separately living parent to communicate with his child, even when it comes to a decision of a Russian court. The problem becomes all the more intractable if the child and one of the parents are separated by state borders.

[21] Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012.

The past few years have shown that the severity of this problem is only growing, which is confirmed by numerous, sometimes scandalous, cases of parents abducting children from each other and high-profile lawsuits. Many of these situations do not have a legal solution. Unfortunately, most of all in such cases, children who are deprived of the opportunity to maintain contact with a living separately parent suffer, they move away from each other, at the risk of losing each other altogether.

The legal regulation of the child's right to communicate with parents is mainly regulated by: Bis Brussels II; European Convention on the Exercise of Children's Rights of January 25, 1996[22]. The objective of the European Convention on the Exercise of Children's Rights of January 25, 1996 is to ensure that their rights are in the interest of children and facilitate their implementation in family matters related, in particular, to parental responsibility, including questions of the place of residence of children and the right of "access" to the children. The European Convention on the Exercise of Children's Rights was adopted by the Council of Europe on 25 January 1996 and entered into force on 1 July 2000.

The Convention on Civil Law Aspects of International Child Abduction of October 25, 1980, which stipulates the obligation of States parties to take measures to combat the illegal movement and non-return of children from abroad (Article 11). The Convention of October 25, 1980, as follows from its preamble, is aimed at protecting children on an international scale from the harmful effects of their unlawful movement or detention, at establishing procedures to ensure their immediate return to their state of permanent residence, as well as protecting access rights.

European Convention on the Recognition and Enforcement of Decisions in the Field of Custody of Children and the Restoration of Custody of Children of May 20, 1980 (Luxembourg), prepared by the Council of Europe, adopted also prior to the conclusion of the Convention on the Rights of the Child, but proceeding from the same general principles , also regulates relations related to the illegal movement of children across the interstate border.

Directive 2008/52 / EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters (hereinafter referred to as the Mediation Directive).

[22] Европейская конвенция об осуществлении прав детей (ETS N 160) 25.01.1996) // КонсультантПлюс: справочно правовая система. URL: http://www.consultant.ru.

As an example of the realization of the child's right to communicate, the case "Kazim Görgülü v. Germany", which the ECHR considered in 2004, and the German Constitutional Court in 2004 and 2005, should be cited. This case became resonant, since the German Constitutional Court initially refused to comply with the decision of the European Court of Human Rights, believing that the European Court of Human Rights should take into account the national characteristics of Germany. In 1999, the applicant, a German citizen, and a Turk, by nationality, had an illegitimate son, whom his mother refused immediately after childbirth, passing him for adoption. The applicant about the birth of the child found out a few months later demanding the establishment of paternity.

In 2001, the court decided to transfer the child to his father (who had by then entered into Islamic marriage with another woman, a German citizen). However, the second instance court, having examined the complaint of the foster family and the guardianship authority, refused to transfer the child to the father. Moreover, the court even deprived the father of the right to see his son, citing the interests of the child himself (whom, incidentally, was called Christopher). In 2001, Mr. Gergülü filed a complaint with the German Constitutional Court, which refused to examine the merits of the complaint. In 2004, the European Court of Human Rights unanimously resolved the case in favor of the father, pointing out a violation of Art. 8 of the Convention. The European Court of Human Rights considered that the refusal to transfer a child to a father without a sufficient study of what is worse for the child – the immediate stress of separation from a foster family or the potential long-term effect of separation from a real father – violates this article of the Convention. The court also found that depriving a father of the right to see a child violates the same article of the Convention.

The Amtsgericht Wittenberg trial court again decided to transfer the child to the father, giving the father the right to see the child for 2 hours a week, until the court decision comes into force. The Court of Appeal in Naumburg (Oberlandesgericht Naumburg) first revoked the permission to see the child (June 2004), and then the decision to transfer the child (July 2004), concluding that when the decision was made, the lower court took into account only the interests of the father, and in fact, one should pay attention to the interests of the child. Three times the applicant appealed to the German Constitutional Court. In the last of its decisions, the Constitutional Court already rather annoyingly characterizes the actions of the rebellious court in Naumburg as "arbitrary" (willkürlich),

because the court not only did not take into account the decision of the European Court of Human Rights, but also acted directly contrary to the rules established by the European Court of Human Rights standards, and also in violation of the procedural law of Germany.

In January 2005, the case was transferred to another composition of the Court of Appeal in Naumburg. The court allowed the father to meet with the child for a limited time, but rejected the requirement to transfer the child to the father as “currently unjustified” (December 2006). The court found that the boy – who was already seven years old by that time – needed time to establish a closer relationship with his father. Subsequently, Gergul was given the opportunity of constant meetings with the child, and in 2008 he was able to take him to his family.

2. Child's right to name, the right of the child to express his own opinion, property rights of the child under family law, the right of the child to protect family rights

The name is an element of the status of persons that allows you to identify the child. The name of the child is recorded in the birth certificate or in another act of civil status by a person working in the administration. Parents, including unmarried parents, choosing the name of the child, are guided by the principle of freedom of choice.

In the countries of the European Union, special requirements may also be imposed on the name of the child, for example, in Germany, the name of the child must necessarily indicate his gender. Interesting are the legal acts of Belgium. So, this is the only country in which the provisions governing the status of a child “conceived during marriage by one of the spouses by someone other than her spouse” are preserved. Such a child cannot bear the name of his father, even if he recognized him. An illegitimate child must bear the name of his mother, while a legitimate child is the common name of the spouses, or one of them.

The European Court of Human Rights has found: 1è The state must protect the child from an improper, ridiculous or bizarre name. In some states, there are restrictions on the choice of the name of the child. So, since 2011 in New Zealand there is a list of 102 names that should not be given to children; the name also cannot consist of numbers or a single letter. In Italy, it is forbidden to call the boys Venus (in the translation "Friday").

The state has the right to maintain the national practice of naming if it is in the public interest. A situation may arise in which two interests

collide: private – the interest of the child, non-infliction of harm on the child by a ridiculous or bizarre name – and public – preservation of the linguistic and cultural identity of the state. For example, in the Johansson v. Finland case (complaint No. 10163/02), in 1999 the applicants had a son, whom they intended to give the name "Axl Mik", but this was opposed by the registration authority, who considered this name to be inconsistent with Finnish tradition. They unsuccessfully appealed the denial, citing the fact that the name Axl is common in Denmark and Norway, and is also used in Australia and the United States. It is pronounced according to the rules of the Finnish language and does not correspond to the Finnish tradition any more than the name Alf. In the Finnish population information system, at least three citizens with that name appear, and in addition, it is possible that the applicants may go abroad[23].

The Finnish Administrative Court of First Instance referred to the Law on Names, according to which a name that does not correspond to the practice of naming in a country can be allowed if a person has a relationship with a foreign state due to national, family relations or other special circumstances and the proposed name is consistent with the practice of naming existing in that state. The name may also be considered admissible for other valid reasons, however, the applicant's arguments are insufficient. The Supreme Administrative Court upheld the decision[24].

The European Court of Human Rights indicated that the name given by the parents to the child, whose registration was refused by the local civil registration authority due to the mismatch of its spelling in Finnish practice, has been used in the family since the birth of the child and did not cause any problems, and it's not very different from other names used in Finland, so the court has no reason to believe that the name invented by the parents could harm the child. The court also argued its position by the fact that the chosen name is easily pronounced, it is used in other countries (the name Axl given to the child by the child is common in Denmark, Norway, Australia, USA), by registering children before and after the dispute arises under the same name.

[23] Матвеева, М. В. Право на имя с позиций и практики Европейского суда по правам человека // Семейное и жилищное право. 2015. № 5. С. 10–12.

[24] Решении ЕСПЧ от 07.11.2006 по делу «Йохансон (Johansson) против Финляндии» (жалоба № 10163/02) // КонсультантПлюс: справочно-правовая система. URL: http://www.consultant.ru.

The European Court of Human Rights says that even if the name differs from the commonly used in the national language and is not in the dictionaries, then its different pronunciation and spelling cannot affect the rule of law or any public interest, unless otherwise proved, and the general ban on registration names not represented in the dictionary are hardly compatible with Art. 8 of the Convention, as well as with the reality of a wide variety of linguistic origin of names.

According to the position of the European Court of Human Rights, even if such a name, which can be interpreted as ridiculous or bizarre, was registered more than once and did not harm the name holders, the prohibition of such a name would violate Art. 8 of the Convention. If the name of the child does not affect the preservation of the cultural and linguistic identity of the country, then this name cannot be considered unsuitable for the child.

Family law of European countries proceeds from the fact that the opinion of the child, based on his age and maturity, has legal significance. This does not mean that the European Court of Human Rights and national courts are obliged to always make the decision requested by the child, the main thing is that the national courts and administrative authorities should provide the child with the opportunity to express it. If the functionals consider that the child's opinion does not reflect his interests, then the child's opinion will not be taken into account. For example, in one of the cases, a 14-year-old girl ran away from home in order to live with her friend. Authorities returned her to her parents. Considering the complaint, the European Commission explained: As a general provision, provided that there are no special circumstances, the obligation of children to live with their parents or otherwise be subject to social control is necessary to protect the health and morality of children, although from the point of view of each child, this may constitute an interference with his personal life ... the Commission considers that the interference with the aim of forcing her to return to her parents ... was aimed at ensuring respect for the life of her family, and it was also necessary to protect the health and morality of the girl within the meaning of paragraph 2 of the Convention[25].

For example, in the case of Sahin v. Germany, the applicant, the father of a child born out of wedlock, admitted his paternity in 1988 and

[25] Певцова, И. Е. Защита семейной жизни Европейским судом по правам человека // Юридический мир. 2014. № 8. С. 48–52.

visited the child until October 1990. After that, the mother of the child banned the applicant from any contact with him. After several interviews with the applicant, the child and the child's mother, the expert psychologist concluded that the father's access to the child did not meet the interests of the child himself. The expert psychologist additionally indicated that it would be undesirable for a child who was then about five years old to be asked to testify in court. The European Court of Human Rights has pointed out that it cannot be argued that the courts are always obliged to hear the child's testimony in court on the issue of dating the parent. The decision on this issue depends on the specific circumstances of the case, taking into account the age and level of maturity of the child. At the time of the consideration of the case, the child was about five years old – taking into account the methods used by the expert psychologist and her cautious approach to analyzing the child's attitude to the situation – we can assume that the court did not go beyond permissible discretion when he substantiated his decision with conclusions expertise. There was no reason to doubt the professional competence of the expert psychologist or the forms of conducting interviews with the child and parents[26].

An interesting case was Sommerfeld v. Germany (Sommerfeld v. Germany). The applicant, the father of a child born out of wedlock, acknowledged paternity in 1981 and lived with the mother of the child until 1986, when they separated. After that, the mother forbade the applicant any contact with her daughter. In June 1991, the court heard evidence from her daughter, who informed the court that she did not want to have contact with the applicant. In April 1992, the court ordered a psychological examination of the case and received its results. The expert psychologist's opinion was not in favor of the father's and his daughter's meetings, and after the hearings in June 1992, at which the child repeated his objections to his father's visits, the applicant withdrew his claim. However, the European Court of Human Rights indicated that the national court did not pay attention to the problem of pressure exerted on a child who opposed communication with his father, although psychological research showed that he sought communication[27].

The rights of the child, including property rights, are governed by the national legislation of each member state of the European Union.

[26] Постановление ЕСПЧ от 08.07.2003 по жалобе № 30943/96. URL: http://www.espch.ru/component/option,com_frontpage/Itemid,1.

[27] Постановление ЕСПЧ от 08.07.2003 по жалобе N 31871/96. URL: http://www.espch.ru/component/option,com_frontpage/Itemid,1.

So, for example, it was in France in 1792 that the document “Proclamation of the rights of the child” was prepared. There are special rules on parental authority over the property of a minor. According to Art. 382 of the French Civil Code, father and mother can manage and use the property of their child. Legal administration is jointly exercised by th father and mother if they jointly exercise parental authority, and in other cases, under the supervision of a judge, either by the father or mother on the basis of the provisions of the previous chapter. Legal use is associated with legal management: it is carried out either by the father and mother together, or by the father or mother, each of whom is entrusted with the management.

The right to use terminates: upon reaching the child 16 years of age or earlier, when he marries; for reasons that terminate parental authority, or for reasons that terminate legal control; for reasons that entail the repayment of any usufruct.

In accordance with Article 385-387 French Civil Code, this use entrusts the following duties: 1) the duties that lie on the usufructuary; 2) feeding, keeping and raising a child in accordance with his condition; 3) payment of debts burdening the inheritance received by the child.

As in the German Civil Code, France provides for the institution of civil property liability to minors. The issues of managing the property of a minor, including securities, are regulated in detail with a view to the most efficient use and enhancement of it.

An important institution of inheritance law aimed at protecting the property rights of minors is the institution of a mandatory share in the inheritance. It is provided for by French law. The essence of this institution is that, regardless of the contents of the will, certain categories of heirs, called necessary, reserve a certain share in the inheritance. FGK establishes the inability for a person under the age of 16 to dispose of property through a will (Art. 903 of the French Civil Code).

The European Convention on the Exercise of Children's Rights of 25 January 1996 is devoted to the protection of children's rights in this area, in particular in cases involving parental responsibility, including the right to communicate with parents. Its scope is the procedural rights of children under 18 years of age. It aims to ensure the rights of children in the interests of children and facilitate their implementation in family matters related, in particular, to parental responsibility, including questions of the place of residence of children and the right of “access” to children.

Procedural measures to ensure the realization of the rights of children consist of, according to the Convention, of: measures to ensure the rights of the child (the right to be informed if domestic law considers him to have a sufficient level of understanding, the right to apply for the appointment of a special representative if his interests in the course of the proceedings clash with the interests of carriers parental responsibility, and some other rights); regulating the role of courts in cases affecting the interests of the child (the courts must ensure, taking into account domestic law, that the child expresses his opinion, must act immediately, take his own initiative, etc.); determining the role of the representative of the child; Contributing to the provision and implementation of children's rights through national bodies that carry out the functions of developing legislation, preparing opinions, providing information, etc.

It also provides for the promotion of pre-trial methods for the settlement of disputes (Article 13) and the provision of legal assistance (Article 14). It is envisaged the creation of a standing committee that addresses issues related to the application of the Convention, its composition and functions.

The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement of Cooperation with respect to Parental Responsibility and Measures for the Protection of Children of October 19, 1996 establishes a delimitation of the jurisdiction of institutions of member countries with regard to the adoption of measures aimed at protecting the identity and property of a child, determining the law applicable such institutions, in the exercise of their authority, determine the law applicable to parental responsibility, ensure recognition and enforcement of child protection measures adopted in one of the countries party to the Convention, in other countries parties.

As follows from the preamble, the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation with respect to Parental Responsibility and Measures for the Protection of Children of October 19, 1996, it proceeds from the need to improve: the protection of children in international situations; overcoming contradictions between different legal systems regarding jurisdiction; applicable law; recognition and enforcement of child protection measures. The subject of regulation includes measures to protect children, applicable to the occurrence, implementation, termination or restriction of parental responsibility, as well as its transfer, to guardianship rights, including rights related to caring for a child’s personality (the right to determine the child’s place of

residence, the right of access, including the right to take a child for a limited period of time to a place different from his permanent place of residence, etc.), to guardianship (curatorship) and similar institutions, to the appointment and functions of any person or body bearing a response responsibility for the child, placement of the child in a foster family and similar institutions, control by authorized state bodies for the proper care of the child by persons responsible for him, to manage, preserve, manage the property of the child.

The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation with respect to Parental Responsibility and Measures for the Protection of Children of October 19, 1996 is wider than other conventions aimed at protecting the rights and interests of the child; it does not extend to the establishment and contestation of paternity, to decisions on adoption, determination of the name and surname of the child, alimony obligations, inheritance relations, social security, decisions regarding the right of asylum and immigration.

CONCLUSIONS

The basic rule is to determine jurisdiction based on the child's place of residence. However, along with the basic rule, other jurisdictions are allowed as an exception (based on the child's citizenship, location of his property, place of consideration of the case on divorce of the parents or other close relationship of the child with this state), if the competent authority, according to the Convention, considers that the authority of such another state in a particular case would better resolve the case in the interests of the child (Art. 8). In urgent cases, the necessary protective measures are taken by the authorities of the state in whose territory the child or his property is located (Article 11). Flexibility in resolving issues of jurisdiction is obviously consistent with current trends.

The issue of the law to be applied is resolved in the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation with respect to Parental Responsibility and Measures for the Protection of Children of October 19, 1996 in the same detail: firstly, the rules on the law to be applied when the exercise by the authorities of their jurisdiction in accordance with Chapter II of the Convention (Article 15), and secondly, the conflict of laws rules determining the law applicable in the establishment and termination of parental responsibility (Article 16) and in the exercise of parental responsibility tweenness (v. 17). The child's place of residence is used as the main criterion for determining the

applicable law. The reference to the conflict of law rule of another state provided for by the Convention shall also apply when that other state is not a party to the Convention (Article 20).

Recognition has been established in the participating countries of “measures taken by bodies of the Contracting State” (paragraph 1 of Article 23). As you can see, this refers to decisions not only of the courts, but also of administrative authorities. Refusal of recognition is allowed only in cases established by the Convention (clause 2 of article 23) if: 1) the decision was made by an incompetent (according to the Convention) body; 2) the child was deprived of the opportunity to be heard; 3) if it was not possible to be heard by a person whose “parental responsibility” was violated; 4) if the recognition is clearly contrary to the public policy of the requested state, taking into account the best interests of the child; 5) the decision is incompatible with the last measure adopted in the state of permanent residence of the child, subject to recognition in the requested state; 6) the procedure established by the Convention for cases of placement of a child, in particular in a foster family, has not been followed. The procedure for enforcing a decision is determined by the law of the requested state (paragraph 1 of article 26). In principle, the decision is not reviewed in essence (Article 27).

When considering issues related to the protection of the family rights of the child, the following principles must be observed: the principle of ensuring the best interests of the child; The principle of taking into account the views of the child.

SUMMARY

European norms and standards are based on the idea of the best safeguarding of the rights of the child: his survival, the ability to develop normally, be protected and have the opportunity (legal) to participate in society.

The concept of "minor" is defined legally, based on the psycho-physical and social qualities of the children of a particular nation, country and state. At present, both the national legislation of all countries and the norms of treaties, conventions and customs formally and legally quite fully record the totality of the rights, freedoms and legitimate interests of minors. However, the national and international practice of their implementation is full of violations of varying severity.

Existing national and international institutions and institutions for the protection of human rights in general, and the child in particular, are

capable of protecting a person, however, a number of extra-legal circumstances of a political, military, economic, environmental, geopolitical nature often interfere with this (they do not allow to deploy procedures for protecting human rights, especially minors).

REFERENCES

1. Декларация прав ребенка. Международные конвенции и декларации о правах женщин и детей: сборник универсальных и региональных международных документов / Сост. Л. В. Корбут, С. В. Поленина. – М., 1998.

2. О правах ребенка.: Конвенция ООН // КонсультантПлюс : справочная правовая система / разраб. НПО «Вычисл. математика и информатика». URL: http://www.consultant.ru.

3. Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 5, 1950, Art. 8.

4. Hodgkin, R., Newell, P. UNICEF Implementation Handbook for the Convention on the Rights of the Child. Geneva, 2007.

5. Комитет по правам ребенка (КПР) § 52-53. Заключительные замечания: Бельгия: CRC/C/BEL/CO/3-4, 18 July 2010; КПР. Заключительные замечания: Новая Зеландия: CRC/C/NZL/CO/3-4, 11 April 2011; КПР. Заключительные замечания: Российская Федерация: CRC/C/RUS/CO/3, 23 November 2005.

6. CRC. Concluding observations: Luxembourg: CRC/C/15/Add.250, 31 March 2005.; CRC. Concluding observations: Luxembourg: CRC/C/LUX/CO/3-4, 29 October 2013.

7. КПР. Заключительные замечания: Сейшельские Острова: CRC/C/SYC/CO/2-4, 23 January 2012; CRC. Concluding observations: Israel: CRC/C/ISR/CO/2-4, 4 July 2013; CRC. Concluding observations: Tajikistan: CRC/C/TJK/CO/2, 5 February 2010.

8. CRC. Concluding observations: Norway: CRC/C/15/Add. 23, 25 April 1994.

9. Jäggi v. Switzerland: Application N 58757/00: Judgment of 13 July 2006. – C. 114

10. Mikulić v. Croatia: Application N 53176/99: Judgment of 7 February 2002. Mikuli; Odiévre v. France: Application N 42326/98: Judgment of 13 February 2003.; Shtukaturov v. Russia: Application N 44009/05: Judgment of 27 March 2008.

11. Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012; Parliamentary Assembly of the Council of Europe.

International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).

12. Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012; Mikulić v. Croatia: Application N53176/99: Judgment of 7 February 2002.; Odiévre.

13. v. France: Application N 42326/98: Judgment of 13 February 2003. Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000 / http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).; Shtukaturov v. Russia: Application N 44009/05: Judgment of 27 March 2008.

14. Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012; Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. URL: http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).

15. v. France: Application N 42326/98: Judgment of 13 February 2003; Shtukaturov Russia: Application N 44009/05: Judgment of 27 March 2008.

16. Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012.

17. Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. / http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).

18. Parliamentary Assembly of the Council of Europe. International adoption: respecting children's rights: Recommendation 1443 (2000): adopted on 26 January 2000. – URL: http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta00/erec1443.htm. (29.11.2013).

19. Кириченко К.А. Право ребенка на информацию о его происхождении: эволюция международно-правовых стандартов и перспективы развития российского права // Семейное и жилищное право. 2015. N 4. С. 10–13.

20. Surrogacy: The Experience of Commissioning Couples / F. MacCallum [et al.] // Human Reproduction, 2003. Vol. 18. N 6. P. 1334–1342.

21. Report on Principles Concerning the Establishment and Legal Consequences of Parentage – «The White Paper». Strasbourg, 23 October, 2006 / http://www.coe.int/t/e/legal_affairs/legal_cooperation/family_law_and_children%27s_rights/documents/CJ-FA_2006_4eRevisedWhite Paper.pdf (05.08.2010).

22. Godelli v. Italy: Application N 33783/09: Judgment of 25 September 2012.

23. Европейская конвенция об осуществлении прав детей (ETS N 160) 25.01.1996) // КонсультантПлюс: справочно правовая система. URL: http://www.consultant.ru.

24. Матвеева, М. В. Право на имя с позиций и практики Европейского суда по правам человека // Семейное и жилищное право. 2015. № 5. С. 10–12.

25. Решении ЕСПЧ от 07.11.2006 по делу «Йохансон (Johansson) против Финляндии» (жалоба № 10163/02) // КонсультантПлюс: справочно-правовая система. URL: http://www.consultant.ru.

26. Певцова, И. Е. Защита семейной жизни Европейским судом по правам человека // Юридический мир. 2014. № 8. С. 48–52.

27.Постановление ЕСПЧ от 08.07.2003 по жалобе N 30943/96. URL: http://www.espch.ru/component/option,com_frontpage/Itemid,1.

Information about the author:
Hlynynaya K. M.
PhD in Law, Associated Professor
at the Department of Civil Law,
National University “Odessa Law Academy”
2, Academychna str., Odessa, 65009, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/69-86

CLAIM OF NORMS OF INTERNATIONAL LAW BY NATIONAL COURTS

Ivanchenko O. M.

INTRODUCTION

The problem of the interaction of international and national law is central to the theory of international law, since its research allows to reveal the essence of both legal systems, the basis of their existence and development. Their interconnection has grown so much in recent decades that in some cases, deciding which of the two systems is decisive in regulating any relationship is of great difficulty. Moreover, the question of how the norms of one system affect the formation and development of the norms of another becomes especially relevant. The resolution of these issues is decisive for the whole sphere of action, not only international but also domestic law.

In view of the comprehensive development of integration processes in the world, international law is a key element in the development of domestic legal systems. Achieving the goals of world security, peace and the interconnected development of states depends on the quality of the system of international and national (domestic) law.

International cooperation and its rapid development in various spheres of both public and public life make the use of the rules of international law by the states more and more necessary to coordinate their actions in different fields, including in the field of ensuring both international and national security of states. As noted by E.T. Usenko, many experts in the field of national law are increasingly working with categories of international law, and experts in international law with categories of national law[1].

Speaking about the correlation between international and national law, II Lukashuk noted that, as developing, international law strengthens interaction with national law and is determined by the internationalization of public life. At the same time, the interconnection and unity of the world require that the national political and legal systems of the world be built as

[1] Усенко Е. Т. Соотношение категорий международного и национального (внутригосударственного) прав. *Советское государство и право*. 1983. № 10. С. 45.

part of a single global system, to ensure interaction with each other and with the system of international relations as a whole. According to him, many internal problems depend on interaction with the external environment[2].

Currently, scholars take a different approach to the relationship between international and domestic law[3]. Some are defined by the category of relation, others by interaction[4].

The independence of these systems of law is determined by the subject composition, the object of regulation, the method of establishing mutual rights and obligations[5]. However, independence does not mean independence, the absence of any interdependence. These systems of law are closely linked.

Instead, the question of the relation, interaction, application, harmonization, application and application of international rules in national law has been covered in many studies by experts in the field of international law.

1. The main theoretical approaches to the impact of international law on national law and order

Among the doctrinal approaches to the correlation of international and national law, over the last two centuries, several generalized concepts have been elaborated, which are traditionally divided into the theories of monism and the theory of dualism. In turn, the monistic approach is divided into two opposing trends: the primacy of international law and the primacy of national law.

In 1899, the German researcher W. Kaufman, in his work "The Legal Power of International Law and the Relationship of the Legislature and State Bodies", laid out the basic principles of the theory of monism, which was subsequently developed by G. Kelsen. This theory assumes the existence of a single universal system of law, which covers the rule of law at different levels. All law develops within the so-called "basic norm",

[2] Лукашук И.И. Международное право. Общая часть : учебник. Москва : Норма, 2004. С. 224, 264–267.

[3] Блищенко И. П. Международное и внутригосударственное право. Москва : Госюриздат, 1960. С. 87.

[4] Международное право : учебник / отв. ред. Г.В. Игнатенко, О.И. Тиунов. Москва : Норма, 2006. С. 124.

[5] Шуміленко А. П. Міжнародні механізми імплементації норм міжнародного права у сфері боротьби з торгівлею жінками : автореф. дис. …канд.. юрид. наук : спец. 12.00.11. Одеса, 2010. С. 12.

which, in G. Kelsen's view, "is the introduction of fundamental circumstances of lawmaking and can be defined, in this sense, as a constitution in a legal and logical sense, as opposed to a constitution in the positive- the legal meaning of the word". International law has priority over other rules of law. It occupies the top of the normative hierarchical pyramid and determines the legal validity of other law and order. Law and order can only be based on international law, which is the legal basis of all subsequent acts of the state[6]. According to G. Kelsen, the correlation between the norms of international law and the norms of national law is similar to the correlation between national law and order and national norms of a corporation.

Asserting the primacy of international law, G. Kelsen views state sovereignty as the freedom of action of a state defined by international law. The international rule of law is based on the so-called "positive (virtually established) norm", which G. Kelsen[7] defines as follows: living in this territory and controlled by this government, constitutes a state (in the sense of international law)".

The opposite concept – the concept of the primacy of national law – was developed by German followers G. Hegel (Malberg, Eichelman, Simson, Zorn). For Hegel, the state was an absolute value over which no norms could stand. Malberg wrote: "The state adheres to the rules, guided by its own will, and international law and international society – anarchy, the order in which the state contributes, restricting itself". Continuing this view, A. Zorn said: "international norms are legal norms when they manifest themselves as an integral part of national law". The primacy of national law was followed by a number of pre-revolutionary n lawyers – NO Bezborodov, OO Eichelman, EK Simson, and also during the Soviet period developed by A. Ya. Vyshinsky. Today, this concept is rejected by the science of international law as essentially nihilistic, but in the practice of some states there are cases of recognition of the actual priority under national law.

The theory of dualism was created by the German scientist G. Trippel. The scientist has distinguished two main differences between international and national law: 1) subjects of national law are individuals, whereas subjects of international law are only states; 2) the source

---

[6] Кельзен Г. Чисте правознавство / пер. з нім. О. Мокровольського. Київ : Юніверс, 2004. С. 221.

7 Там само. С. 366.

of national law is exclusively the will of the state, while the source of international law is the general will of the states. According to Triple, in order for international law to be able to fulfill its task, it must constantly seek the assistance of national law.

The well-known Italian international lawyer A. Cassese holds the same opinion. Therefore, international law cannot function without the continued assistance, assistance and support of national legal systems.

The doctrine of dualism holds that international law does not depend on the will of a particular state, since it expresses the universal will of all states. Each State is bound to honor its international legal obligations. However, it is up to the state to determine how it will implement these obligations. In its legal system, it may even prioritize national law over international law. Of course, this may impose state responsibility, but this responsibility will be of a purely international legal character and will in no way be of legal value to the domestic legal system.

Among the new theories, the theory of harmonization proposed by the English professor J. Fitzmores in 1957, also known as the "Fitzmoris compromise", is worthy of consideration. He drew attention to the fact that the application of foreign law under national law is more or less similar to the application of international law in the national legal system, when foreign law is applied to the extent that it does not contradict national law of the state. It follows from Fitzmoris's theory that national judges cannot apply international law without the sanction laid down by national law. Similarly, international arbitrators and judges apply national law only to the extent that it does not contravene international law. In general, Fitzmoris believes, there is a tendency to harmonize national legal systems and international law. National lawyers, for example, interpret and develop national legal acts, taking into account the international obligations of their country, and international lawyers draft international legal acts, taking into account the specificities of national laws. On this basis, Fitzmaurice's theory is known as "harmonization theory".

The theories of monism and dualism are abstract, but very important in scientific terms. The choice between monism and dualism influences not only the understanding of the relation between international and national law, but also the understanding of the nature of international law (whether it is exclusively consensual, or creates a compulsory basis for all law and order), the nature of state sovereignty (whether it is absolute, or limited), the essence of the recognition of states (whether it is declaratory or constitutional), the place of the individual in international law (whether

he is a subject or object of international law). The dispute between monism and dualism is, in fact, not so much through the proof of the reality of the "direct effect" of international law, but rather through the interpretation of the fundamental principles of international law[8].

Thus, the nature of the influence of international law on national law in the doctrine and practice of international law has developed three classical approaches – dualistic theory and two varieties of monistic theory, under the influence or in the context of which a number of other theories have subsequently been developed.

One of the important practical aspects of the relation between international and national law is the question of the procedure for the fulfillment by the state of international contractual and customary obligations in its territory. The monistic concepts of the correlation of the two law and order presuppose the direct application of the rules of international law in the national legal system. Other conceptual directions explain differently the essence of the process of implementation of international legal norms in the national sphere. From the standpoint of modern international law, there is no doubt about the binding force of States on the generally recognized principle of "pacta sunt servanda", but it is generally accepted that the state, in accordance with its law, independently determines how it fulfills its international legal obligations.

2. Legal and technical aspects of entry into international law into national law and order

International law as a result of international law is a phenomenon of social reality. The last quarter of a century has clearly demonstrated the tendency for international and national law to converge against the backdrop of increasing integrative processes in the modern world. And the stronger the interdependence of states, the more important is the ordering factor in the system of international relations. Accordingly, the role of international law to ensure this order is growing. In this connection, it should be emphasized that international law does not support a certain socially necessary order of international relations, not some abstract and unchanging one, but rather a given one. In today's context, it is an order that ensures peace and cooperation. The new rule of law in the world requires the approximation of national legal decisions, on the one hand,

[8] Іванченко О. М. Співвідношення норм міжнародного і національного права : дис. … канд. юрид. наук : спец. 12.00.01. Одеса, 2011. С. 75.

and the formation of mechanisms for the development of concerted and joint decisions in the world community, on the other.

Among the many approaches to this issue are the following:

The mechanism of action of national law is not suitable for regulating international relations, international law is not capable of regulating national relations. In order to be able to regulate relations with the participation of individuals and legal entities, the rules contained in international law must be included in the legal system of the country in the order established by it. The process of entering international law into the legal system – "implementation", "transformation" – is a means of implementation.

When considering the problem of the influence of national law on international law, many such complex issues arise: analysis of the rules of national law in terms of their compliance with international law, the possibility of investigating national law as a major, preliminary or ancillary issue for an international court decision, the legal significance of national law law in international litigation and the fundamental question of the competence of international judicial institutions to resolve cases applying national law.

There are two opposing points of view in international law in this regard. Proponents of the dualistic theory of the relation between national law and international law believe that international judicial institutions have no right to apply national law in their decisions, because national legal acts in terms of international law are simple facts that have no legal value in international legal process.

On the basis of systematic unity, representatives of monistic theory have come to the conclusion that international courts are not only entitled, but in certain cases, bound to resolve issues of both international and national nature by applying national law.

An analysis of the theory and practice of universal judiciary on this issue leads to the conclusion that such international judicial authorities are incompetent to apply national law in the international legal process. National law cannot be a source of international law, since in the field of international law there is no subject of law that could be directed by national law.

There is also no substantive scope for national law in international relations. The rules of international law can only refer to elements of national law.

On the other hand, international judicial institutions are competent to use the provisions of national law in their decisions as an auxiliary instrument used as a legal fact.

An analysis of the practice of such international courts also indicates that international courts often have to study national legal instruments to determine the true intentions of the parties or to examine national law to determine compliance with international law. The State cannot evade the fulfillment of voluntary international obligations by reference to the provisions of national law.

States' obligation to align their national law with international law stems from the basic principles and rules of modern international law. International courts may consider the compatibility of national laws with international law and international obligations arising from applicable international treaties. However, such a study is only possible when the parties request an immediate inquiry into such a study, or when the international court concludes that the reason for the violation of international law lies in the implementation by the State of certain national legal acts [9].

The only legitimate result of a declaration of incompatibility of provisions of national law with international law is the state's international legal responsibility for failure to fulfill its voluntary international obligations, which was the cause of national law.

In making recommendations for the modernization of the legal and technical nature of the processes of harmonization and correlation of norms, it is very important to consider the constitutional, legal and judicial practice of individual states regarding the correlation of international and national law.

In the countries of "common law" national courts in the XVIII – XIX centuries. made decisions on the interaction between national law and international law. In the states of the Romano-German legal system, this problem is mentioned in national legislation, and, first of all, in constitutional law – from the second half of the twentieth century.

The process of implementation by the state of international legal obligations and harmonization of international law and national law is divided into: transformation, incorporation, reception, dispatch.

---

[9] Попович В. І. Імплементація норм міжнародного гуманітарного права у кримінальне законодавство України : автореф. дис. ... канд. юрид. наук : спец. 12.00.08. Львів, 2010. С. 8.

Researchers on the impact of international law on national point to the existence of contradictions in this issue. First, there is no consensus on the terminology used. For example, some authors refer to the "transformation" as the process of reconciliation. Others believe that transformation is only one way (amongst others) of implementing international law within the country [10].

There is also no consensus on the nature and scope of the transformation. Some include the notion of transformation of dispatch, ratification, publication of the treaty, the issuance of special laws, administrative orders[11]. E.T. Usenko refers to the transformation as "an objective phenomenon, which is expressed in various ways of fulfilling the international obligations of the state by issuing it national legal acts". Other researchers highlight along with the transformation and reference or point to the reception and transformation. [12]

According to the two systems of law, the main task is to align already established norms. The methods of harmonization of national legal acts with international legal include: sending, reception, parallel lawmaking, unification, transformation[13]. Scientists also introduce into scientific circulation the notion of "implementation" ("domestic-state implementation", "national implementation", "domestic-legal implementation". Also proposed to use the term "sanctioning." acquired the concepts of "harmonization" and "adaptation[14]".

It should be noted that, in a general theoretical sense, the diversity of thoughts on this problem is a natural state for science.

The term "transformation" is conditional, because in essence the rules of international law do not lose their inherent legal nature. Transformation is to ensure that the state fulfills its international obligations through its powers. If the wording of the law is consistent with the provisions of an international agreement, it is incorporation. If a national law states

---

[10] Шутак І. Техніко-юридичні методи узгодження національного і міжнародного права. *Вісник Національної академії прокуратури України*. 2009. № 1. С. 93.

[11] Левин Д. Б. Актуальные проблемы теории международного права. Москва : Юрид. лит., 1974. С. 92.

[12] Усенко Е. Т. Соотношение и взаимодействие международного и национального права и Российская Конституция. *Московский журнал международного права*. 1995. № 2. С. 16.

[13] Тихомиров Ю. А. Глобализация: взаимовлияние внутреннего и международного права. *Журнал российского права*. 2002. № 11. С. 5–6.

[14] Васильев А. М. О системах советского и международного права. *Советское государтво и право*. 1985. № 1. С. 70–71.

individually or collectively that in the case of differences between the rules of national law and the rules of international treaty, the rules of international law apply, this is a reference[15].

In the legal literature, there are several types or forms of transformation of international law into national law. ETUsenko believes that all types of transformation can be divided into two types: general and special. General transformation consists in the establishment by the state in national law of a common law that gives international legal norms the force of domestic state action. The special transformation is to provide the state with specific rules of international law of internal state status by reproducing them in the law textually or in the form of provisions adapted to national law, or by legislative harmonization of their application in another way[16].

Transformation can take place directly, which implies, for example, the application of international law within national law, when it follows from rules enshrined in the constitution or other normative legal acts that provide for the primacy of international law over national law. This form of transformation is called direct transformation. In particular, Article 9 of the Constitution of Ukraine states: "International treaties, the consent of which by which the Verkhovna Rada of Ukraine has been bound, are part of the national legislation of Ukraine[17]." Thus, their direct effect is sanctioned along with the current legislation of Ukraine.

International standards are based on international treaties, as well as international mechanisms designed to implement these standards at national and international levels.

It seems more appropriate to refer to the relation between international and national law through the category "interaction", since K. The category "relation" does not fully reflect the interdependence of international and national law. The connection between international and national law is manifested in the stages of law-making and enforcement, so the relationship between international and national law is more clearly manifested in the interaction rather than in the relation[18].

---

[15]Ануфриева Л. П. Международное частное право : в 3 т. Москва : БЕК, 2000. Т. 1: Общая часть. С. 218.

[16] Усенко Е. Т. Соотношение и взаимодействие международного и национального права и Российская Конституция. *Московский журнал международного права*. 1995. № 2. С. 16–17.

[17] Конституці України : прийнята на п’ятій сесії Верховної Ради України 28 червня 1996 р. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

[18] Лучинин А. Л. Особенности механизма имплементации европейского права : автореф. дис. ... канд. юр. наук : 12.00.10. Казань, 2006. С. 8.

The interaction of international and national law is interdependent, which means that the implementation of international law can not be done without the help of national law, as well as the latter has significant difficulties in functioning without the rules of international law. Turning to the issue of promoting the rules of international law and the implementation of national law, it should be noted that international law becomes a legal condition for the implementation of many rules of national law of the state.

The interaction of the normative component of international law with national criminal law occurs in ways that are determined by the national legislator, and the processes occurring in legal studies in different terms: "transformation", "implementation", "harmonization", "incorporation", "adaptation", " implementation".

The term "implementation" literally means "implementation in accordance with a specific procedure", "ensuring the practical result and actual implementation by specific means". The term implementation has been developed in international law and has become widespread in numerous UN General Assembly resolutions, in many international conventions and treaties. In the broadest sense, the implementation of international law is nothing more than a process in which the entities to which the rule is addressed act in accordance with its provisions. Often, States require additional legal and organizational measures to fully and fully implement international law. I.I. Lukashuk noted that "implementation of international legal norms is, as a rule, much more difficult and responsible than adopting them. The solution to this problem is possible only if there is an optimal mechanism of implementation as a certain set of legal and organizational means used by the subjects of international law at the international and national levels for the purpose of translating the prescriptions of the rules of international law. In most cases, the implementation of international law is the prerogative of sovereign states that use their domestic legal mechanism for this purpose.

According to some scholars, the implementation of international law into national law is a set of international rules governing the joint legal activity of subjects of international law aimed at achieving the goals set out in international obligations[19].

[19] Лукашук И. И. Международно-правовое регулирование международных отношений (системный подход). Москва : Междунар. отношения, 1975. С. 10, 16.

V. Ya. Suvorov states that "the term" implementation "has the right to exist as a synonym for the term" implementation ", that is, the implementation of rules in the practical activity of the state and other entities." [20] In turn, A.S. Hoverdowski by implementation means "purposeful organizational and legal activity of states, used individually, collectively or within the framework of international organizations, with a view to timely and complete implementation of their obligations under international law[21]." At the same time, SV Chernychenko believes that the term "implementation" can be used to refer to "the impact of international law on domestic relations through domestic law[22]".

The implementation of the rules of international law is nothing more than a process in which the relevant entities to which the rule is addressed act in accordance with its provisions[23]. Often, the state requires the adoption of additional legal and organizational measures to comprehensively and fully implement the rules of international law. In most cases, the implementation of international law is the prerogative of sovereign states that use their domestic legal framework for this purpose[24].

Researchers distinguish between two processes that differ in subjects, content of actions and outcome – international law and national implementation of international legal norms, which mediate two mechanisms of implementation, interacting and complementing each other: international legal mechanism of implementation and domestic – State mechanism for implementation of international law.

National law is the main instrument for the implementation of international law. The first legal stage in the process of implementation of international law is the reception by national law of the rules of international treaties. There are two main types of reception: general reception; partial reception. The general reception is the provision in the constitutions of states that international treaties are part of national law.

---

[20] Суворова В. Я. Обеспечение реализации договорных норм международного права (юридическая природа). *Советское государство и право*. 1991. № 9. С. 116.

[21] Гавердовский А. С. Имплементация норм международного прав. Киев : Вища шк., 1980. С. 63.

[22] Черниченко С. В. Международное право: современные теоретические проблемы. Москва : Междунар. отношения, 1993. С. 102.

[23] Курносова Т. И. Имплементация международно-правовых норм о военных преступлениях и преступлениях против человечности : автореф. дис. … канд. юрид. наук : спец. 12.00.08. Москва, 2016. С. 18.

[24] Буткевич В. Г., Мицик В. В., Задорожній О. В. Міжнародне право. Основи теорії : *підручник*. Київ Либідь, 2002. С. 435.

Partial (individual) reception can take the form of incorporation or transformation – a specific reference[25].

Incorporation is the incorporation into national systems of law of norms, which are perfectly identical to the norms of international law. In most cases, the said international legal act retains its form, name, though it acts as a law.

The rules of international law in the national sphere are implemented either indirectly or directly, that is, have direct effect. Thus, the 1949 Geneva Convention applies to such international treaties, a considerable number of rules of which have direct effect. At the same time, irrespective of the ways of implementation of international norms in the national system of law, a state is obliged to take the necessary measures to harmonize its domestic law with obligations under international law, namely – it must supplement, amend, repeal those national legal acts that prevent fulfillment of its obligations under international law. According to the UN Charter, its members have undertaken to "create conditions under which justice and respect for obligations arising from treaties and other sources of international law can be respected". In Art. 27 of the Vienna Convention on the Law of Treaties states that a party may not invoke the provisions of its domestic law as an excuse for not fulfilling the treaty[26].

The concept of implementation. The implementation of the rules of international law is a purposeful legal activity of the states, carried out individually, collectively or within the framework of international organizations with the aim of timely, comprehensive and full implementation of their obligations in accordance with international law. In case of implementation of international legal norms at the national level, additional national measures are needed to transform the goals set out in the norms of international law into real actions of legal entities and citizens under state jurisdiction.

Transformation is not only a reproduction, but also a revision of the rules of an international treaty in accordance with the general principles of national law. The legal result of transformation, in contrast to incorporation, is not only the addition of existing national law, but also the change of norms in accordance with the requirements of an international agreement.

[25] Устав Организации Объединенных Наций : принят 26.06.1945 г. URL: http://zakon.rada.gov.ua/laws/show/995_010 (дата звернення: 21.08.2016).

[26] Віденська конвенція про право міжнародних договорів : прийнята 23.05.1969. URL: http://zakon.rada.gov.ua/laws/show/995_118 (дата звернення: 20.20.2017).

Transformation refers to the process of bringing a national law into conformity with international law in order to enforce orders, permits and prohibitions established by international law. Transformation does not imply change of international norms. International norms, since their adoption, are valid only in the sphere of interstate relations, they do not change their nature and cannot change. In order to ensure the implementation of such norms, the State shall, if necessary, apply the necessary national legal norms[27].

Incorporation is a formal “incorporation” of the rules of an international treaty into the national law of the state. In essence, a new law or by-law is adopted that is completely identical to the international treaty – name, structure, wording, etc.

Legalization – the adoption of a special national act to ensure the implementation of state rules of international law. Such a national act does not follow all the external features of a relevant international legal act.

The term "dispatch" refers to an indication in national law that certain behavior of public authorities, officials, citizens is governed by general provisions or specific rules of treaties of international law. Departure, as an independent form of transformation, means the application, in accordance with the provisions of national law, of the rules established by international treaties or customs. However, national relations are governed not by the norm of international law but by the normative norms of a national legal act.

Referral is a formulation of a model of behavior in one system of law, in another system only indicates the source where the model can be viewed. As a result, the behavior model is one, and specific relationships and actors are different, which results in different rules and regulations.

Unification as a method of harmonization is a process of directional action to harmonize uniform provisions in international law and national law.

Transformation as a method of harmonization is the introduction of amendments, additions and clarifications to national legislation.

It is important to highlight the "transformational norm" – the rule according to which national law is harmonized with international law in order to implement the latter. Such rules include rules of national law which fix the priority of the rules of an international treaty over national

[27] Большой юридический словарь / под ред. А. Я. Сухарева, В. Е. Крутских. 2-е изд., перераб. и доп. Москва : ИНФРА-М, 2004. С. 354.

laws, and those which establish the obligation of the state to treat international treaties as part of national law [28.]

In turn, "harmonization" is the organizational and political activity of states and other entities to create common forms of regulations and implement them in accordance with the rules of both legal systems. Harmonization is a two-way process of bringing national law into line with international law. The essence of the process lies not only in the comparison but also in the consistent harmonization of international law and national law.

There is no universal rule in international law that requires the harmonization of national law with international law, but has become a standard rule that requires such harmonization. This provision is based on case studies of special issues, international and national jurisprudence.

Therefore, each sovereign state independently determines the order of interaction of its national law with international law. It is enshrined in national law, above all, by the constitutional norms that reflect the philosophy of the regime and the nature of the legal understanding of this society. In order to regulate in a state the relations contained in an international treaty, the rules must enter into the legal system of the state in due course. In national law, international treaties can act indirectly and directly. The indirect effect of the contract involves the issuance of acts that specify its provisions. With the direct effect of an international treaty, there is no need for such acts. On the basis of the above, it can be argued that in the relation of national and international law and law in general, the Constitution of Ukraine takes into account the monistic theory, since the Basic Law fixes the provisions for the incorporation of existing international treaties, the consent of which is provided by the Verkhovna Rada, as part of it, where the highest priority is the Constitution. Their implementation is envisaged in the manner established for the rules of national law.

CONCLUSIONS

The correlation between the rules of international and national law is defined as a complex historically formed relatively stable system of interaction, mutual influence and interdependence of different rules of socially significant behavior by the subjects of law. The interaction of

[28] Великий енциклопедичний юридичний словник / за ред. Ю. С. Шемшученка. Київ : Юрид. думка, 2007. С. 439.

national and international is a coordinated action of two legal systems, conditioned by the existence of common goals for them necessary for their mutual development, which does not exclude the possibility of their existence in common or separate spheres of activity. In addition, interaction is characterized by the mutual influence of these legal orders.

International law influences national law through harmonization and implementation mechanisms. Thus, the components of the interaction mechanism are the implementation mechanism and the coordination mechanism, which are implemented at the national level.

There are several models of the correlation of international and national law in the national legal system: according to the first model, the constitutions of states define the most general procedure for the correlation of international and national law, indicating that universally recognized principles and rules of international law are part of the national legal system; according to the second model, in the constitutions of the states, together with the general wording, specifies how the norms of international and national law are correlated with the legal force; According to the third model, only the norms of ratified international treaties are recognized as an element of the national legal system and no mention is made of the so-called generally recognized principles and rules of international law.

The most effective cognitive tool in the study of the relationship between international law and national law is the integrative concept of realistic positivism, according to which law is a regulatory and security system consisting of general rules (rules) adopted to ensure social stability, security, development and effective impact on public relations.

It seems that the existence of different models of correlation between the norms of international and national law in the national legal system is not a sign of any national identity of states. The reason lies more in the level of legal culture associated with different perceptions of international law as an integral part of national law. Unification in this direction is possible by formulating recommendations that are appropriate internationally.

SUMMARY

In theory, the application of international law in national legal systems is often explained in terms of the doctrines of incorporation and transformation. According to the incorporation doctrine, international law is automatically incorporated into national law ipso facto and may be

applied by national courts. The "doctrine of transformation", on the other hand, indicates that international law is not ipso facto part of national law, but becomes so only after the adoption of the relevant act at the legislative level. Traditionally, the doctrines of incorporation and transformation correlate with the theories of monism and dualism. Thus, according to the theory of monism, international law and national law are part of the same rule of law, and this is reflected in the fact that international law is automatically incorporated into national law. Dualism theory views international law and national law as two separate systems of law.

It can be concluded that, while the incorporation of international law into national court decisions is not yet a common practice, the globalizing world dictates the rules under which the interconnection of international and national law is being strengthened, and this requires judges around the world to study international law. and foreign jurisprudence and have taken it into account when resolving domestic legal disputes.

REFERENCES

1. Усенко Е.Т. Соотношение категорий международного и национального (внутригосударственного) прав. *Советское государство и право*. 1983. № 10. С. 45.

2. Лукашук И.И. Международное право. Общая часть : учебник. Москва : Норма, 2004. С. 224, 264–267.

3. Блищенко И.П. Международное и внутригосударственное право. Москва : Госюриздат, 1960. С. 87.

4. Международное право : учебник / отв. ред. Г.В. Игнатенко, О.И. Тиунов. Москва : Норма, 2006. С. 124.

5. Шуміленко А.П. Міжнародні механізми імплементації норм міжнародного права у сфері боротьби з торгівлею жінками : автореф. дис. …канд.. юрид. наук : спец. 12.00.11. Одеса, 2010. С. 12.

6. Кельзен Г. Чисте правознавство / пер. з нім. О. Мокровольського. Київ : Юніверс, 2004. С. 221.

7. Кельзен Г. Чисте правознавство / пер. з нім. О. Мокровольського. Київ : Юніверс, 2004. С. 366.

8. Іванченко О.М. Співвідношення норм міжнародного і національного права : дис. … канд. юрид. наук : спец. 12.00.01. Одеса, 2011. С. 75.

9. Попович В.І. Імплементація норм міжнародного гуманітарного права у кримінальне законодавство України : автореф. дис. ... канд. юрид. наук : спец. 12.00.08. Львів, 2010. С. 8.

10. Шутак І. Техніко-юридичні методи узгодження національного і міжнародного права. *Вісник Національної академії прокуратури України*. 2009. № 1. С. 93.

11. Левин Д.Б. Актуальные проблемы теории международного права. Москва : Юрид. лит., 1974. С. 92.

12. Усенко Е.Т. Соотношение и взаимодействие международного и национального права и Российская Конституция. *Московский журнал международного права*. 1995. № 2. С. 16.

13. Тихомиров Ю.А. Глобализация: взаимовлияние внутреннего и международного права. *Журнал российского права*. 2002. № 11. С. 5–6.

14. Васильев А.М. О системах советского и международного права. *Советское государтво и право*. 1985. № 1. С. 70–71.

15. Ануфриева Л. П. Международное частное право : в 3 т. Москва : БЕК, 2000. Т. 1: Общая часть. С. 218

16. Усенко Е.Т. Соотношение и взаимодействие международного и национального права и Российская Конституция. *Московский журнал международного права*. 1995. № 2. С. 16–17.

17. Конституці України: прийнята на п’ятій сесії Верховної Ради України 28 червня 1996 р. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

18. Лучинин А.Л. Особенности механизма имплементации европейского права : автореф. дис. ... канд. юр. наук : 12.00.10. Казань, 2006. С. 8.

19. Лукашук И.И. Международно-правовое регулирование международных отношений (системный подход). Москва : Междунар. отношения, 1975. С. 10, 16.

20. Суворова В.Я. Обеспечение реализации договорных норм международного права (юридическая природа). *Советское государство и право*. 1991. № 9. С. 116.

21. Гавердовский А.С. Имплементация норм международного прав. Киев : Вища шк., 1980. С. 63.

22. Черниченко С.В. Международное право: современные теоретические проблемы. Москва : Междунар. отношения, 1993. С. 102.

23. Курносова Т.И. Имплементация международно-правовых норм о военных преступлениях и преступлениях против человечности : автореф. дис. … канд. юрид. наук : спец. 12.00.08. Москва, 2016. С. 18.

24. Буткевич В.Г., Мицик В.В., Задорожній О.В. Міжнародне право. Основи теорії : *підручник*. Київ Либідь, 2002. С. 435.

25. Устав Организации Объединенных Наций : принят 26.06.1945 г. URL: http://zakon.rada.gov.ua/laws/show/995_010 (дата звернення: 21.08.2016).

26. Віденська конвенція про право міжнародних договорів : прийнята 23.05.1969. URL: http://zakon.rada.gov.ua/laws/show/995_118 (дата звернення: 20.20.2017).

27. Большой юридический словарь / под ред. А.Я. Сухарева, В.Е. Крутских. 2-е изд., перераб. и доп. Москва : ИНФРА-М, 2004. С. 354.

28. Великий енциклопедичний юридичний словник / за ред. Ю.С. Шемшученка. Київ : Юрид. думка, 2007. С. 439.

Information about the author:
Ivanchenko O. M.
PhD in Law, Associated Professor
at the Department of General Theoretical Jurisprudence,
National University “Odessa Law Academy”
2, Academychna str., Odessa, 65009, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/87-104

AREAS OF IMPROVEMENT OF PUBLIC ADMINISTRATION IN THE FIELD OF INTELLECTUAL PROPERTY IN UKRAINE

Khridochkin A. V., Kotukha O. S.

INTRODUCTION

The determination of priorities and perspectives, as well as the purpose, strategic directions and main tasks of further development of public administration in the field of intellectual property, in our opinion, should be based on the results of a careful analysis of the current state of affairs of the public administration entities in the implementation of public policy in the sphere of intellectual property. property and intellectual property. The latter is a decisive and inexhaustible resource of social, cultural and economic development of Ukraine and is an environment with internal unity, in which a set of different types of creative, intellectual activity of a person, covering different spheres of economic and social life is carried out, as a result of which intellectual property objects are created. whose rights are protected by current law and are inherently intangible. Therefore, the development of a strategy for the development of public administration in the field of intellectual property is a logical continuation of the process of improving the sphere of intellectual property in Ukraine, due to the need for radical changes aimed at the use of intellectual property as a strategic resource in the system of formation of national wealth and increase the competitiveness of the country development and integration of Ukraine into the international economic space. The National Intellectual Property Development Strategy specifies the main ways of realizing the conceptual ideas and views on the development of intellectual property in Ukraine, defined by the Sustainable Development Strategy "Ukraine-2020", the Concept of the National Targeted Economic Program for the Development of Industry for the period up to 2020, the Strategy of Information Society Development in Ukraine and the National Security Strategy of Ukraine. Thus, defining its own vector of further economic development in the modern geo-economic space in the harsh conditions of a market economy, Ukraine emphasized the innovative way, which is not only real for our country, but also practically the only possible one in modern conditions of transition of

developed countries from an industrial-type to a post-industrial economy. Moreover, we are convinced that it is no longer possible to ensure the competitiveness of the economy and the success of Ukraine on the innovative path of its development without a thorough understanding of the current state of such an influential factor of the economy as intellectual property.

1. Areas of improvement of the regulatory base of public administration in the field of intellectual property in Ukraine

The current reform of the intellectual property sector is certainly closely linked to the preparation of a new concept of legislation in this field. According to Art. 85 of the Constitution of Ukraine defining the principles of domestic and foreign policy of Ukraine, approval of national programs of economic, scientific, technical, social, national and cultural development, environmental protection falls within the competence of the Verkhovna Rada of Ukraine. Implementation of the principles of national policy, determined by the legislative body of Ukraine – implementation of internal and foreign policy of the country, development and direct implementation of national programs of economic, scientific, technical, social, cultural development, environmental protection, as well as the development, approval and implementation of other state target programs, ensuring the development and government support of the coutnry's scientific, technical and innovation potential in accordance with Art. 2 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" is one of the main tasks of the Cabinet of Ministers of Ukraine[1].

Particular attention is also drawn to the need to improve administrative and legal measures to regulate the field of intellectual property. Its basis in Ukraine is the current Code of Ukraine of Administrative Offenses (hereinafter – CUAO), as it is intended to protect the sphere of intellectual property from unlawful encroachments. At the same time, the effectiveness of the administrative-legal policy in the field of intellectual property should be based both on a perfect system of regulation of legal relations of intellectual property, and should be supplemented by the existing infrastructure of the national system of protection and protection of intellectual property in, including administrative and legal means.

[1] Про Кабінет Міністрів України : Закон України № 794-VII від 27 лютого 2014 р. URL.: http://www.zakon3.rada.gov.ua/laws/show/794-18.

Referring to the experience of foreign countries in this field, it should be noted that in some countries separate codified regulations have been adopted in the framework of public administration procedures in the field of intellectual property. In Ukraine, however, the debate on the feasibility of adopting a separate codified legislative act – the Intellectual Property Code, and the inclusion in it of rules on administrative liability for intellectual property offenses has recently received new impetus. The idea of the need to develop an Intellectual Property Code is usually explained by its authors by the fact that it is such a normative act that will help to regulate the relations that have actually developed in society (sometimes under the influence of certain random and even conjuncture factors) and properly construct their new elements. , and will help to address the challenges of legal regulation and facilitate the application of intellectual property law, since the internal logic of the new act will make it clearer and clearer[2]. In our opinion, there are great doubts about this. The problem is that the improvement of administrative law requires, first and foremost, compliance with the principle of continuity in administrative law – the use of previous legal experience and ensuring the availability of common features in legal rules, jurisprudence and doctrinal scientific provisions[3].

Thus, in our opinion, the inclusion of rules on administrative liability for infringements of intellectual property in the Intellectual Property Code proposed by some researchers is considered to be inappropriate and non-constructive. More justified is the traditional existence of a codified legal act containing all the rules on administrative liability.

Another topical issue of improving the state administrative and legal policy in the field of intellectual property is the unification and systematization of the relevant articles in the current Administrative Code. Numerous violations of systematic requirements in the current administrative legislation of Ukraine and the presence of numerous systemic contradictions in the experts have been repeatedly emphasized[4]. Ideally, the law on administrative responsibility should be logically

[2] Підопригора О. А. Чи потрібен Україні Кодекс про інтелектуальну власність? *Університетські наукові записки.* 2005. № 1-2. С. 75–79. С. 76.

[3] Муза О. В. Проблеми розвитку адміністративного права України: ревізія системи галузі. *Наукові записки Інституту законодавства Верховної Ради України.* 2017. № 1. С. 65–70. С. 66.

[4] Демченко В. О. Проблемні аспекти систематизації джерел адміністративного права в Україні. *Міжнародний науковий журнал «Інтернаука».* 2018. № 7(1). С. 98–101. С. 99.

complete, consistent, internally unified and integral system of norms and institutions, built and functioning on common principles and common principles, but in reality, domestic law is still far from this ideal. A striking example of the deficiencies in the legislature's systematic and systematic approach, both at the stage of development and adoption of the Code of Administrative Offenses (1984), and during its subsequent amendments, is the legislation on liability for offenses in the field of intellectual property. The rules on liability for administrative offenses in the field of intellectual property are found in three different chapters of the Code of Administrative Offenses (Chapter 6 “Administrative Offenses that Violate Property” (Art. 51-2 “Infringements of Intellectual Property Rights”), Chapter 9 "Administrative Offenses in Agriculture. Violations of Veterinary and Sanitary Rules" (Art. 107-1 ("Violations of Legislation on Breeding in Livestock") and Chapter 12 "Administrative Offenses in Trade, Catering, services, financial and business activities" (Art. 156-3 ("Violation of the requirements of the law on the prohibition of advertising and sponsorship of tobacco products") (in the part concerning intellectual property), 164-3 ("Unfair Competition"), 164-6 ("Filming and Distribution of Films without a State Certificate on the Right to Distribute and Display Films"), 164-7 ("Violation of the Conditions for Distribution and Display of Films Provided by a State Certificate for the Distribution and Display of Films I Films"), 164-8 ("Failure to Display National Movies Quotas Using National Screen Time"), 164-9 ("Illegal Distribution of Copies of Audiovisual Works, Phonograms, Videograms, Computer Programs, Databases") and 164-8 13 ("Violation of legislation governing the production, export, import of disks for laser reading systems, export, import of equipment or raw materials for their manufacturing")).

And here the question immediately arises: is it advisable to place corpus delicti of administrative offenses that have a common object of encroachment – public relations in the field of intellectual property – in different chapters of K CUAO UPAP? After all, the legislator separated the chapters in the Special part of the CUAO on the basis of generic objects of unlawful encroachment, placing administrative and legal norms in different chapters on the basis of the criterion of homogeneity (similarity, similarity) of those social relations that are subject to administrative offenses. And, despite the fact that we have already proved the homogeneity of the intellectual property relationship, we have added that all intellectual property objects, despite the existing distinct

differences between them, are united by a number of common features. First, the legal regulation of the process of creation and use of intellectual property is carried out on the basis of a single regulatory act – the book of the fourth Civil Code of Ukraine. Second, Chapter 35 of Book Four of this Code sets out the common principles and rules for the creation and use of intellectual property by all entities. Third, this legal act establishes a set of property and personal (non-property) rights that are largely similar to intellectual property objects. Fourth, property rights can be transferred to third parties on the basis of similar in title and content of the contracts (license agreement, commercial concession agreement, etc.). That is why we believe that based on the systematic approach to the legislation on administrative liability, it would be correct to place those articles that provide for administrative liability for intellectual property offenses in one structural unit – a separate chapter of the CUAO[5].

The analysis of the structure of the elements of the Code of Administrative Offenses allows to conclude that the legislator considers as the generic object of offenses in the field of intellectual property relations of property (Chapter 6), relations in agriculture (Chapter 9) and relations in the field of trade, catering, and services, in the field of finance and entrepreneurship (Chapter 12). However, none of the aforementioned chapters of the Special part of the Administrative Code is capable of fully integrating all objects of administrative offenses in the field of intellectual property. However, despite its dual nature, intellectual property is a single entity. Its constituent elements in the form of the results of intellectual creative activity are common, characteristic only of intellectual property, peculiarities. First of all, it is the intangible nature and the impossibility of its physical embodiment. This property determines that intellectual property right is a value precisely because of its exclusiveness, which should mean the principle of the attribution of this right to only one person or to several persons clearly defined in accordance with the law. In this regard, the administrative legislation in the field of intellectual property should aim, first and foremost, at ensuring the exclusiveness of intellectual property rights. The social detriment of the latter's infringement must be anticipated irrespective of the set of specific intellectual creativity results stipulated by civil law.

[5] Хрідочкін А. В. Публічне адміністрування у сфері інтелектуальної власності : досвід Європейського Союзу. *Наукові записки Львівського університету бізнесу і права. Серія економічна. Серія юридична.* 2018. Випуск 19. С. 251-256. С. 253.

Thus, in our opinion, the system and structure of the Special part of the current Administrative Code does not allow to combine the administrative offenses in the field of intellectual property in one of the existing chapters of the Administrative Code without violating the principle of systematic placement of administrative and legal norms.

Certainly, the integration of norms is not capable of eliminating all the difficulties, since there are also problems that, as the practice shows, usually come to the fore – problems related to the personality of the enforcer. But this does not mean that, since there are enforcement problems, the law should not be improved. After all, to achieve a truly effective result of improving the administrative and legal protection of intellectual property, just combining the relevant articles of law in a separate chapter will not be enough. The new structural element of the Code of Administrative Offenses should be based on the current concept of intellectual property protection and have an appropriate structure that meets the today requirements.

As for the place of this chapter in the structure of the Special part of the Code of Administrative Offenses, we believe that it should be placed under Chapter 6 (“Administrative Offenses that Affect Property”). This is due to the dual nature of the results of intellectual creative activity, as well as to the sequence of placement of the Institute of Intellectual Property in the Central Committee of Ukraine, which is manifested in the fact that Book 3, entitled "Intellectual Property Law and Other Property Rights", is the next book. property". Based on the above, in our opinion, the best way to consolidate the rules establishing administrative responsibility for offenses in the field of intellectual property would be the following: the addition of the Special part of the Code of Administrative Offenses by Chapter 6-1 ("Administrative Offenses in the Field of Intellectual Property") administrative offenses:

Article 51-4. Violation of copyright and related rights.

Article 51-5. Violation of intellectual property right to scientific discovery.

Article 51-6. Violation of intellectual property right for invention, utility model, industrial design, layout of integrated circuits, rationalization proposal.

Article 51-7. Violation of intellectual property rights on a variety of plants and breeds of animals.

Article 51-8. Violation of intellectual property rights to trade secrets.

Article 51-9. Violation of intellectual property rights on the trade name, trademark and geographical indication of the origin of the goods.

Separate scientific studies should be devoted to the development of the dispositions and sanctions of these articles.

Thus, in our opinion, the main measures to improve the regulatory framework of public administration in the field of intellectual property should include the development of a long-term strategy for the development of intellectual property in Ukraine and the elimination of conflicts between the conceptual apparatus and the content of the rules of administrative law and other branches of law economic and administrative) in matters of legal protection of intellectual property.

2. Areas of improvement of the institutional base of public administration in the field of intellectual property in Ukraine

The next area of further development of public administration in the field of intellectual property, in our opinion, is to improve its institutional base. Today, it includes government bodies, institutions and structures endowed with direct and indirect functions and responsibilities in the field of intellectual property, and the judiciary[6]. It should be noted that the constant reforms of the system of public administrations in the field of intellectual property, which have occurred over the last decade, have become one of the most negative factors, which not only contributed to, but also significantly impeded the process of development of the sphere of intellectual property in our country. country and greatly complicate its protection.

In Ukraine, there has traditionally been a three-tier institutional framework for public administration in the field of intellectual property (the ministry – the central executive authority of the relevant sectoral competence – state structures subordinate to it). The effective functioning of such an institutional framework has proved difficult in practice.

In order to create a modern system of public administration in the field of intellectual property, Ukraine has chosen the way to build a two-tier system, which has already proven effective in many countries of the world. It envisages the implementation of the concept of the corresponding single state body for public administration of sectoral competence. But the formation of this system in Ukraine began with the

[6] Дергачова В. В., Пермінова С. О. Інтелектуальна власність: навчальний посібник. Київ : НТУУ «КПІ», 2015. 416 с. С. 215.

liquidation in 2017 of the State Intellectual Property Service (hereinafter referred to as the SIPS) of Ukraine and the transfer of its powers to "Ukrpatent" – in fact, one of the structures of the SISI subordinate to Ukraine. And the decision to exercise these powers can only be taken as part of the negotiation process with the International Bureau of the World Intellectual Property Organization, as it is based on an international agreement, which has been rethought by years of active negotiation. In addition, many of the functions defined by the concept for a new body (for example, the invalidation of intellectual property rights in the pre-trial order) are completely new to Ukrainian law and, accordingly, do not contain any regulatory basis.

It is clear that the liquidation of the SIPS not only did not complete the process of establishing a two-tier institutional framework for public administration in the field of intellectual property, but also raised a number of issues without which the creation of a modern system of public administration in the field of intellectual property is impossible. Therefore, the scope of the powers of this state-owned enterprise is limited by the issues of acquisition and registration of intellectual property rights, and outside its competence there is a rather large range of issues that does not allow it to be recognized as the sole body of intellectual property. Meanwhile, the sphere of intellectual property is one of the key elements of ensuring the economic development of the country[7]. At the same time, its effectiveness depends to a large extent on active international cooperation and the stability of the national patent office's approaches to the basic issues of protection and protection of intellectual property. Unfortunately, the concept proposed by the Ministry of Economic Development of Ukraine envisages a classic reform for Ukraine: to liquidate the existing state body and create a new one in its place. As practice shows, such reforms are delayed in time, and the expected positive results are either not achieved at all or are only partially achieved. The problem is compounded by the fact that, in the case of intellectual property, such experiments are very dangerous and have the potential to cause negative consequences for the economy, in particular, the country's investment attractiveness.

[7] Хрідочкін А. В. Особливості публічного адміністрування правовідносин у сфері інтелектуальної власності в Україні на сучасному етапі. *Правові реформи : міжнародний і український досвід : матеріали міжнародної науково-практичної конференції, м. Дніпро, 24–25 листопада 2017 р.* Дніпро : Дніпровський гуманітарний університет, 2017. С. 123–126. С. 124.

It is important to confirm the appropriate administrative and legal status of a single intellectual property body for its tasks, functions and powers. In particular, as the single intellectual property body, a new entity in the field of public administration is called upon to pursue international cooperation in the field of intellectual property and to represent Ukraine's interests in this field in international organizations. The task of this body should be to train representatives in the field of intellectual property (patent attorneys), to improve their skills and to improve the skills of other professionals in the field of intellectual property, as well as employees of the judiciary and law enforcement agencies. He is tasked with determining the requirements for obtaining the status of an intellectual property representative (patent attorney), defining and approving the procedure for passing patent examinations and listing the questions for qualifying examinations (attestation), determining the amount of the fee for attestation, approving the oath text or revocation of a certificate of the right to pursue the activities of intellectual property representatives (patent attorneys), issuing a duplicate thereof. It is as a single intellectual property body that the public administration entity should participate in the implementation of state policy in this area and the preparation of information, education and training materials, conducts educational activities to raise awareness and respect for intellectual property, the development of social culture in this society , in the creation of centers of invention together with the central body of executive power, which provides for the development and implementation of state policy in the field of education and science, in the anizatsiyi contests and inventions, including children, students and young people and in training on intellectual property. Its tasks should be to carry out scientific and technical examination of applications for intellectual property objects, legal examination of documents concerning the entry into the state registers of information on intellectual property objects protected in the territory of Ukraine, research related to the protection of other objects intellectual property and other results of intellectual creative activity (domain names, genetic resources, traditional knowledge, folklore, etc.), as well as certification of representatives in intellectual affairs Second property (patent attorneys). Among the tasks of a single intellectual property body, methodological, methodological and informational assistance to central executive bodies, law enforcement agencies on protection and protection of intellectual property rights, scientific institutions, educational institutions, other physical and legal entities

should be given a high priority. issues related to the legal protection, commercialization and protection of intellectual property rights, as well as the administration of state registers of intellectual property objects, the state register of representatives in the cases of intellectual property (patent attorneys) of Ukraine, entry of information into them, provision of extracts and extracts, issuance of security documents.

Therefore, a single intellectual property body and a central executive body that provides for the formation and implementation of national intellectual property policy should ensure interaction and coordination of activities for the stable development of the national intellectual property sphere, protection and protection of the interests of its subjects.

Taking into account the place of a single intellectual property body in the system of public administration entities, its structure should be built, the important elements of which should be recognized by the councils (scientific-advisory and supervisory), the chamber (appellate), commissions (attestation, appellate and commission on coordination of questions on insertion of a mark containing the official name of the state "Ukraine" in the trade mark (mark for goods and services)) and service (internal audit). Thus, the Scientific Advisory Board of a single intellectual property body shall become a consultative advisory body, the order of organization and activity of which shall be determined by a provision approved by that body. It is created to address the problematic issues of the practice of applying the legislation in the field of intellectual property and to develop and submit to the sole body of intellectual property appropriate recommendations (proposals for improvement of current acts of the legislation in the field of intellectual property and draft normative legal acts developed by the sole body of intellectual property; application of international and national legislation in the field of intellectual property, methodological recommendations grants on specific issues of scientific and technical examination of applications for intellectual property and legal examination of documents submitted to the national intellectual property body for submission to the state registers of information about objects of intellectual property and intellectual property rights, as well as information, educational and training materials developed by a single intellectual property body).

The structural unit of the national intellectual property body should be the Court of Appeal, whose task will be to consider objections, statements and other matters within its competence.

The Attestation Committee of a single intellectual property body is formed in order to determine the level of professional qualification

of persons who have expressed their intention to acquire the right to occupy the activity of an intellectual property representative (patent attorney).

The Appellate Committee of a single intellectual property body shall be formed in order to consider the complaints of patent attorneys against decisions of the certification committee.

The Single Intellectual Property Committee on the coordination of questions on the introduction of a designation containing the official name of the state "Ukraine" in the trade mark (mark for goods and services) should become an advisory body of a single intellectual property body and be formed on a parity basis from representatives of the respective central executive bodies government, a special-status state body (the purpose of which is to ensure the state protection of competition in business and in the sphere of state x Procurement), the Presidential Administration of Ukraine, a single body of intellectual property, specialized scientific institutes (centers) of the National Academy of Sciences of Ukraine and national sectoral academies of sciences of Ukraine (if any) and a specialized media.

The Internal Audit Service should be an independent unit of a single intellectual property body that conducts an internal audit of its activities and reports to the Supervisory Board.

The appropriate administrative and legal status of a single intellectual property body places high requirements for its personnel, first of all expert, because it must have the necessary knowledge to carry out scientific and technical and (or) legal expertise and to provide an opinion on the investigated issues. His professional duties will include conducting a full study and providing a reasoned and objective conclusion based on the results of scientific and technical or legal expertise, in the manner prescribed by the laws on protection of intellectual property rights and rules approved by the central executive body. that provides for the formation and implementation of state policy in the field of intellectual property. It should be entitled to a clear definition of job responsibilities and appropriate working conditions and logistical support, as well as remuneration, depending on the position occupied, the results of employment, seniority in the national intellectual property body and / or in the field of intellectual property, the presence of a scientific degree, academic title.

Thus, the simplification of the institutional system of public administration in the field of intellectual property in Ukraine is on the one hand a positive phenomenon, and on the other – the constant reformation

of the administrative sphere creates additional problems related to the establishment of work and interaction of these structures, creation of appropriate personnel, development and continuity of professional knowledge and skills, transparency of public administration in the field of intellectual property, which in turn directly affects the system protection of intellectual property in Ukraine and gives offenders new opportunities to commit offenses in this area with impunity.

3. Areas of improvement of the infrastructure base of public administration in the field of intellectual property in Ukraine

A promising and significant direction for the further development of public administration in the field of intellectual property is, in our view, the improvement of its infrastructure base. The fact is that the functioning of the intellectual property sphere is characterized by a wide range of different activities[8]. However, an effective and balanced monitoring system has not yet been established[9]. On the one hand, there are modern tools for detailed monitoring of individual activities, such as patenting of intellectual property and protection of their rights, and on the other hand, monitoring of the use of intellectual property objects, achieved economic impact, impact on the strengthening competitiveness, conflict situations related to the use of intellectual property objects, the level of counterfeiting and piracy is not a sign of regular action and is fragmentary. Often, information collected by one institution may not always be accessible to other institutions. Such information does not always have quantification and evaluation.

Generalized statistical indicators of receipt of applications for intellectual property for the whole period of existence of the system of monitoring of the sphere of intellectual property (1992–2018) are as follows. Of the total number of applications submitted, 21.0% are applications for inventions, 13.7% are for utility models, 60.7% are for signs for goods and services, 4.6% are for industrial designs, 0.007% are for indications of origin goods. More than 70% of the total number of applications for inventions were submitted by national applicants, and

[8] Бабець І. Г., Мойсеєнко І. П. Інтелектуальна власність : навч. посіб. Львів, 2015. 158 с. С. 58.

[9] Косенко О. П. Моніторинг комерційного потенціалу об’єктів інтелектуальної власності з використанням тангенціальної функції економічного ефекту. *Теоретичні і практичні аспекти економіки та інтелектуальної власності.* 2014. Вип. 1(2). С. 49–55. С. 51.

about 30% by foreign applicants. The largest number of applications from foreign applicants (almost 70%) is submitted from the USA, Germany, France, Switzerland, the United Kingdom and the Russian Federation.

Inventions and utility models remain the main source of technological innovation in Ukraine, so monitoring the patenting processes of these intellectual property objects is of particular interest because it reveals industry priorities for the activities of different categories of business entities. This information can be used in research, analysis of innovation processes, investment attractiveness of Ukraine, etc. The number of applications for inventions and utility models for the whole period of monitoring system operation exceeded 247 thousand. More than 80% of the total were submitted by national applicants. Between 2004 and 2018, the most active national applicants were applicants for higher education and science, who submitted more than 50% of the total number of applications for inventions and utility models (legal entities), and applicants – individuals – 37.7%.

In today's market economy, information on the protection of trade marks, including trademarks (trademarks for goods and services), is relevant for assessing the competitive environment and is of interest to both the national economy and foreign investors. According to statistics, the largest number of applications is submitted to this intellectual property object (60.7%). Out of their total number of applications, foreign applicants make up 47.7%, with over 70% of such applications filed under the Madrid International Registration System (it significantly facilitates the registration of trademarks (goods and services marks)). The largest number of applications for registration of marks from foreign applicants is submitted from the USA, Germany, Switzerland, France and the Russian Federation.

During the whole period of functioning of the domestic sphere of intellectual property, more than 36 thousand agreements on the disposal of intellectual property rights were entered into state registers (20.4% – agreements on the issuance of a license for the use of intellectual property objects, 76.1% – contracts ownership transfer, 5.2% of "open" licenses for inventions and utility models). Of these: 15.5% for inventions, 5.3% for utility models, 5.1% for industrial designs, and 74.1% for trademarks.

According to the Law of Ukraine "On Copyright and Related Rights" a copyright subject for certification of a copyright (copyright) for a published work or a fact, date and date of publication of a work or contracts concerning the author's right to a work, in any time during the copyright term may register its copyright in the relevant state registers.

Between 1995 and the end of 2018, over 70,000 copyright certificates were issued for the work. Since 2002, when the registration of contracts related to the author's right to the work began, and by the end of 2018, more than 3,000 such contracts have been registered. The Register of Software Manufacturers and Distributors from 2003 to 2018 contains information on over two thousand manufacturers and distributors.

It is difficult to overestimate the presence and role of the creator in creating not only intellectual property as such, but also in the existence of the sphere of intellectual property in general. The development of national creativity has no prospects, unless there is a process of training specialists capable of creative work, and the author is not guaranteed a remuneration for his personal creative work. Therefore, an important task of improving the infrastructure of public administration in the field of intellectual property is the training and dissemination of knowledge in the field of intellectual property, organized and implemented by the state. This activity is aimed at enhancing the understanding by Ukrainian society of the need for the legitimate application of intellectual property rights. We believe that the proper application of such rights will ensure the development of the economy, it will be worthy to stimulate creative activity and innovative process for the benefit of the whole country. This activity is aimed at forming the necessary level of knowledge and nurturing respect for intellectual work and its results, which are embodied in the objects of intellectual property, as well as for informing the society about possible losses and existing threats to the well-being and health of the people containing counterfeit and pirated goods.

To raise awareness and develop the high culture of the general public in the field of intellectual property, it is necessary to inform the general public and business circles about the role and importance of intellectual property in order to increase interest in the creation and proper use of intellectual property objects, increase the competitiveness of enterprises, economic, social and cultural development of the country. There is a need to disseminate and promote knowledge of intellectual property law, the importance of protecting and enforcing intellectual property rights for various categories of users of intellectual products, and providing access to information and knowledge in the field of intellectual property through modern media, information and communication technologies[10].

[10] Інтелектуальне право України : підручник / за заг. ред. О. С. Яворської. Тернопіль : Підруч. і посіб., 2016. 608 с. С. 222.

The urgent task is to take measures aimed at increasing the interest and awareness of the young students, the importance of intellectual property in solving pressing problems of society (introduction of environmental innovations, protection of traditional knowledge and folklore, etc.) and organizing activities to attract attention to the sphere of intellectual ownership of pupils, development of creative activity of young generation by stimulating research and innovation activity among pupils. Institutions of intellectual property right creators, intellectual property representatives and valuers of intellectual property need support.

In order to foster respect for intellectual property, it is advisable, in our view, to develop an appropriate policy for the development of creative activity of children, youth and youth through the preparation of information and training materials to raise awareness, respect and develop the culture of society in the field of intellectual property and improve educational programs for students and students and predicting in them information about intellectual property and its role in the socio-economic development of society. It is necessary to promote the introduction of courses on invention as electives in school education programs and to determine the discipline of "Intellectual property" as compulsory for studying in all higher education institutions of Ukraine. Support is also needed for conducting summer intellectual property schools based on leading national universities, conducting competitions on intellectual property, and facilitating the opening of intellectual property training courses in Ukraine based on leading national universities[11]. It is not superfluous to carry out specialized information campaigns aimed at the target audience (students of schools, students, educators, entrepreneurs, consumers, representatives of the public sector, judicial and law enforcement agencies) with the aim of informing about the negative effects of counterfeiting and piracy and piracy intellectual property, as well as the perspectives and benefits provided through creative activity, protection and introduction of intellectual property.

Legal rules in the field of intellectual property are intended to protect intellectual products, inventions, newly created utility models from misuse, to provide a worthy evaluation of the investment in the invention or development of the work of an individual or labor collectives.

[11] Орлюк О. П. Захист прав інтелектуальної власності в контексті європейської інтеграції. *Вісник Національної академії правових наук України.* 2016. № 3. С. 58–74. С. 60.

According to the regulation of intellectual property relations, the right of its owner to own, use and dispose of it shall be enshrined. On the other hand, an important part of the regulation of intellectual property relations is the provision of opportunities for its commercialization, that is, the introduction into economic circulation and profit from this.

CONCLUSIONS

Determination of the purpose, strategic directions and main tasks, priorities and prospects of further development of public administration in the field of intellectual property should be based on the results of a careful analysis of the current state of both the activity of the public administration entities in the implementation of state policy in the field of intellectual property and the intellectual sphere itself. property. The effectiveness of the implementation of public administration tasks in the field of intellectual property depends on internal factors, favorable opportunities, as well as threats that can adversely affect its development and depend on the effects of external factors. Strategic directions for further development of public administration in the field of intellectual property in Ukraine should focus on solving the following three complexes of basic problems of public administration in the field under study: regulatory problems (it includes national legislation, as a set of legal provisions, on the basis of which entities are public administrations create the proper conditions for the acquisition, implementation, protection and protection of rights arising from various types of intellectual creative activity members of the public), problems of the institutional base (public administration entities, endowed with appropriate powers in the field of intellectual property in order to solve a wide range of problems in the provision of legal protection, management, implementation and protection of intellectual property rights) and problems of the infrastructure base (elements and relationships that ensure and maintain at the appropriate level the functioning of the intellectual property sector, as well as the users of that sphere). In particular, the mechanisms for acquiring legal protection of intellectual property by improving the examination of applications for intellectual property at the level of the leading patent offices in the world and improving the methodological support for examination of applications for intellectual property are required. There are also a number of issues involved in creating the right conditions for the commercialization of intellectual property items.

SUMMARY

The article presents a theoretical generalization and new solution to the scientific problem of determining the nature and features of the system of public administration in the field of intellectual property in Ukraine. The author has formulated Specific proposals for strategic directions of further development of public administration in the field of intellectual property in Ukraine. The following three complexes of basic problems have been emphasized: the problems of the regulatory, institutional and infrastructure base of public administration in the field of intellectual property. The necessity of systematization of the national legislation on administrative liability for intellectual property offenses has been emphasized by combining the respective warehouses of administrative offenses in a separate chapter of the current Code of Administrative Offenses. The need to improve the institutional base of public administration in the field of intellectual property in the direction of realization of the concept of creating a single body of intellectual property in Ukraine has been argued. The priority of the task of improving the infrastructure of public administration in the field of intellectual property by intensifying the activities on the dissemination of knowledge in the field of intellectual property, fostering respect for intellectual property has been substantiated.

REFERENCES

1. Бабець І. Г., Мойсеєнко І. П. Інтелектуальна власність : навч. посіб. Львів, 2015. 158 с.

2. Демченко В. О. Проблемні аспекти систематизації джерел адміністративного права в Україні. *Міжнародний науковий журнал «Інтернаука».* 2018. № 7(1). С. 98–101.

3. Дергачова В. В., Пермінова С. О. Інтелектуальна власність: навчальний посібник. Київ : НТУУ «КПІ», 2015. 416 с.

4. Інтелектуальне право України: підручник / за заг. ред. О. С. Яворської. Тернопіль : Підруч. і посіб., 2016. 608 с.

5. Косенко О. П. Моніторинг комерційного потенціалу об’єктів інтелектуальної власності з використанням тангенціальної функції економічного ефекту. *Теоретичні і практичні аспекти економіки та інтелектуальної власності.* 2014. Вип. 1(2). С. 49–55.

6. Муза О. В. Проблеми розвитку адміністративного права України: ревізія системи галузі. *Наукові записки Інституту законодавства Верховної Ради України.* 2017. № 1. С. 65–70.

7. Орлюк О. П. Захист прав інтелектуальної власності в контексті європейської інтеграції. *Вісник Національної академії правових наук України.* 2016. № 3. С. 58–74.

8. Про Кабінет Міністрів України : Закон України № 794-VII від 27 лютого 2014 р. URL.: http://www.zakon3.rada.gov.ua/laws/show/794-18.

9. Підопригора О. А. Чи потрібен Україні Кодекс про інтелектуальну власність? *Університетські наукові записки.* 2005. № 1-2. С. 75–79.

11. Хрідочкін А. В. Особливості публічного адміністрування правовідносин у сфері інтелектуальної власності в Україні на сучасному етапі. *Правові реформи : міжнародний і український досвід : матеріали міжнародної науково-практичної конференції, м. Дніпро, 24–25 листопада 2017 р.* Дніпро : Дніпровський гуманітарний університет, 2017. С. 123-126.

12. Хрідочкін А. В. Публічне адміністрування у сфері інтелектуальної власності : досвід Європейського Союзу. *Наукові записки Львівського університету бізнесу і права. Серія економічна. Серія юридична.* 2018. Випуск 19. С. 251–256.

Information about the authors:
Khridochkin A. V.
PhD in History, Associate Professor,
Head of the of General Legal Disciplines Department
of the Dnipro Humanitarian University
35, Yermolovoi str., Dnipro, 49033, Ukraine
Kotukha O. S.
Candidate of Law, Professor,
Dean of the Faculty of Law
of the Lviv University of Trade and Economics
10, Tuhan-Baranovskoho str., Lviv, 79005, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/105-122

GENERAL DESCRIPTION OF INFORMATION RELATIONSHIP IN ADMINISTRATIVE LAW

Korniyenko M. V.

INTRODUCTION

The study of information relations, which are governed by the rules of administrative law, has always been a daunting task. It was complicated even more when the actual change in the socio-political system began to take place in the state. Destructive social foundations that existed for decades, are subjected to revision of immutable in the recent past ideological postulates, formed new management schemes of relations, through which realized the generalized information needs of society. All this requires a new thorough study of information relations subject to administrative regulation, the need to outline their characteristic properties.

In the legal doctrine at the time two main (and opposite) views on the interpretation of legal relations and actual social relations, which are the subject of legal regulation, were formed. As part of the first approach, legal relations are equated with social relations, almost identical with them. So, V.S. Afanasyev, A.P. Gerasimov, V.I. Hoyman argue that the legal relationship, being at the same time social relations, objectively arise and exist to the law in the form of social interaction of their participants.

The position of scientists of the second group, including A.B. Vengerov, P.M. Rabinovich, O.F. Skakun, V.M. Khropanyuk is not only the opposite, but also more common in comparison with the position of the representatives of the first group of scientists. Its essence can be formulated with such a thesis: public relations in no way equal to the legal relationship. The idea of the adherents of this concept is expressed in the fact that the concept of "legal relationship" and "social relations" are not identical. Public relations is a primary category that is wider than the category of "legal relations", which is considered as one of the types of social relations, however, not all of those that arise in society, but only those that are regulated by law.

We believe that the circle of social relations really turns into legal relations – both at the scientific and theoretical level – in connection with the expansion of the scope of their legal regulation in society.

1. The essence and peculiarities of information relations that are subject to administrative-legal regulation

Modern domestic scientists propose a variety of definitions of administrative-legal relations and their characteristic features: public relations in the sphere of public administration, whose participants are the bearer of rights and freedoms regulated by the norms of administrative law[1]; as a result of the influence of administrative and legal norms on the behavior of subjects of the sphere of public administration, as a result of which between them there are established legal ties of state power[2]; as a system of rights and obligations of executive bodies, officials and employees, citizens and other entities, as well as the interrelation between them as a result of the exercise of state executive power and responsibility in the field of public administration[3].

The content of these options, which characterize the features of the relations of administrative law, indicates their unconditional, organic connection. They have a unified conceptual basis, proposed by Yu.M. Kozlov. The basis of significant features of administrative-legal relations are six decisive features. The first concerns the sphere in which the administrative law relations arise (arise). The second determines the obligatory presence as one of the parties of the body, endowed with power and administrative powers. The third one points to the conditions of the mentioned relations. The fourth feature defines the nature of the relationship between the participants in these social relations. The fifth concerns the issues of liability to the state for violating the requirements of administrative law. The sixth determines the procedure for resolving disputes between the participants in administrative-legal relations.

It seems expedient to pay attention to the extent to which information relations arranged by the rules of administrative law coincide with the administrative, which information circulation is regulated or should be regulated by these norms. Thus, G.M. Lynnyk outlines the main features of administrative legal relations in the information sphere: they arise, change, cease only if there is an

---

[1] Доповідь про стан інформатизації та розвиток інформаційного суспільства в Україні за 2013 рік. URL.: http://www.dknii.gov.ua/sites/default/files/stan_informatyzacii_20132.pdf.

[2] Залізняк В. Удосконалення інформаційного законодавства України : методологічні засади. *Інформаційне право*. 2010. № 2. С. 59–60. С. 59.

[3] Панова І. В. До проблем правотворення в інформаційному праві. *Правова інформатика*. 2015. № 1 (45). С. 35–40. С. 37.

appropriate administrative norm; one of the subjects of legal relations is the holder of the power of attorney, namely: state authorities, local self-government bodies, their officials and officers, and other entities exercising executive power, including delegated powers; the existence of mutual subjective rights and legal obligations, provided by the state; clear, personalized relationship; the will of at least one of the subjects of administrative law; limited sphere of existence, namely the sphere of public-legal relations (state and self-government); arise, change and terminate in connection with the receipt, use, distribution and storage of information; the information component of administrative legal relations can play both a decisive role and an auxiliary role; the priority of information rights, freedoms and legitimate interests of man and citizen in the field of public administration.

Agreeing with the thesis that the administrative-legal forms can acquire different types of social relations, first of all, public-managerial relations[4], information relations in administrative law can be considered as the result of the regulatory influence of the administrative-legal norm on public information relations, as a result of which they turn into informational administrative legal relationship.

Concluding the analysis of the characteristic features of the administrative-legal relations, one can confidently state that the development of information technologies and the constant change in the organizational foundations of the activities of the state administration make updating the domestic administrative law. Therefore, the content of the characteristic features may acquire new features that will reflect the results of further transformation of administrative-legal relations.

The peculiarity of information relations subject to legal regulation is that they are at the crossroads of public and private law and are steadily serving as the subject of scientific work of specialists from the constitutional, administrative, financial, civil and other branches of law. This is contributed by many factors. First of all, this is the significance of information relations for the state and society, as well as the permanent (permanent) reformation of the information social sphere, which directly affects the development of the state. The considerable interest of scholars is due to the availability of information relations in various spheres of public life.

[4] Адміністративне право України: акад. курс : підручник. У 2 т. Т. 1. Загальна частина / за ред. В. Б. Авер'янова. Київ : Юрид. думка, 2004. 584 с. С. 177.

Lawyers, considering the issues of information relations subject to legal regulation in various branches of law and life spheres, try to outline their specifics and features in a certain subject area. In our opinion, the necessity of properly studying the genesis of the essence and the definition of the concept of "information legal relations" in scientific doctrine is due to the role played by the legal relationship in the process of legal regulation of various social relations. The preliminary analysis of scientific legal sources, which in one way or another reveals this category, allows us to speak about the lack of a clear, understandable and qualitative interpretation. In particular, there is clearly a lack of consensus on the notion of "sphere of public relations", in which the administrative-legal regulation of information relations takes place. There is also a tendency to mix these concepts (in particular, "information relations" and "information legal relations", "administrative-legal regulation of information relations" and "administrative and legal regulation of information legal relations", etc.), resulting in further confusion between constructions.

In general, the allocation of information relations as independent was based on the fact that information relations arise in connection with information processes, have a social content – serve social goals, express and reflect certain social interests that arise between social groups. The main factor that led to the allocation of information legal relationships from the system of legal relations, V.P. Gorbulin and M.M. Bichenok called the emergence of a system of commercial distribution of information and a system of specialized, created to meet the public needs of organizations that form a special branch of the economy, which led to the emergence of a special branch of social relations[5].

The state of uncertainty in information relations subject to legal regulation is largely due to a different approach to terminology and to the personal view of the subject of research. In our opinion, this issue can be solved by establishing what these information relationships are – "private" or "public-law" When it comes to public relations, it can be argued that they are within the scope of public administration and governed by administrative law, is its subject.

What information relations are subject to administrative regulation? To answer this question, first of all, let's decide what features are inherent in public-legal relations. Give them. The notion of "public" (from the

[5] Горбулін В. П., Биченок М. М. Проблеми захисту інформаційного простору України : монографія. Київ : Інтертехнологія, 2009. 136 с. С. 61.

Latin social, folk) should be understood as "open", "vowel", "social". As V.M. Bevzenko, regarding the publicity of legal relations, we can say that these relations, which arise, spread, or may spread to society as a whole or to a significant part of it, and because of this, have a general significance, universal nature[6].

Another sign that allows us to conclude that the public nature of information legal relations is the presence in such relations of such an element as a legal obligation, which, according to A.I. Elistratov, is in any circumstances available as part of public legal relations. It should also be added that the legal obligation is prescribed by law in order to ensure the achievement of a specific social and public result:

- satisfaction of legal interests or the creation of certain benefits (privileges) for a significant number of participants in public relations. These interests are heterogeneous and often contradict each other (interests of the state – interests of the territorial community, interests of the territorial community – interests of the concrete person, etc.). Legal interest can be defined as an endeavor to provide benefits that are of general social significance, that is, the benefits that are important not to one person but to a significant number of people;

- assistance in realization and protection of subjective rights, freedoms, interests by physical and legal persons. For example, according to the norms of the Law of Ukraine "On access to public information", information managers are obliged: to determine the special places for the requesters to work with documents or their copies; have special structural subdivisions or appoint responsible persons to provide applicants with access to information and disclosure of information; provide and disclose accurate, accurate and complete information, as well as, if necessary, verify the accuracy and objectivity of the information provided and update the disclosed information;

- performing public tasks and functions entrusted to a particular body, such as, for example, the protection of subjective rights, freedoms, interests, etc.

Part of modern scholars argues that for public-legal relations is characterized by an exclusively imperative method of legal regulation, and therefore these relations are formed on the basis of power-subordination. Quite often, the imperative method is manifested in the

[6] Бевзенко В. М. Сутність та поняття адміністративно-правового регулювання. *Вісник господарського судочинства*. 2006. № 3. С. 162–167. С. 163.

prohibition of certain actions. With this understanding of the method of legal regulation of public-legal relations, it is difficult to agree, since today these ties, unlike the period of Soviet statehood, arise, develop and cease also on a voluntary basis.

As repeatedly noted in the literature, the construction of "pure" branches of law is impossible. The subject of legal regulation, on the basis of which it was proposed to do, could not stand checking the realities of law-making, law enforcement and scientific activities. R.S. Melnyk, investigating the new subregistry of administrative law, says that quite often it is not primarily about the creation of new normative formations, but about the search for the most successful title (form) for existing ones.

Given the analysis carried out it is possible to conclude that the administrative law regulates public-legal information relations, which inherent in all the properties of administrative legal relations and which have their own distinctive features, separating them from civil law relations. Information relations in administrative law are regulated by the norms of administrative law public-law information relations, in which their parties (subjects) are interconnected and interact with the implementation of subjective rights and obligations established and guaranteed by the relevant administrative-legal rules.

On the basis of the above, we see it possible to distinguish the following features of information relations that are subject to administrative regulation:

- public-law information relations are always social relations regulated by the norms of public law, the main idea of which is to ensure harmony and agreement in society, balance of interests of the individual, collectives, communities and society as a whole, the stability of the state and its institutions, the stability of the foundations of economic and social development;

- public-law information relations arise and spread in a society or a significant part of it;

- in the public-legal information relations a legal obligation is carried out, which is carried out with the purpose of realization of general public needs: 1) satisfaction of legal interests in the information sphere; 2) assistance in the implementation and protection of subjective information rights, freedoms, interests; 3) execution of public (public, public) tasks and functions entrusted to a specific body; 4) implementation of auxiliary functions of a public nature aimed at ensuring the normal fulfillment by the subjects of the authorities of the main tasks;

- a participant in public-legal information relations, except for natural persons or legal entities, is necessarily a subject of authority, which in such legal relationships performs the legal duty entrusted to him/her;

- in the public-legal information relations of the continuous submission of the will of the subject of public authority does not exist, however, in the case of the emergence of legal relations of a public nature with this subject, the interested person (physical or legal) bears the obligation to adhere to the rules of law of certain rules of behavior.

2. Administrative and legal principles of information relations

Information relations regulated by administrative law are characterized by considerable dynamism and instability of legal regulation. By providing diverse social processes, individual groups of these relationships over time lose their relevance and undergo radical changes, such as administrative services, e-governance and e-democracy. Thus, constantly changing and adjusted, the system of public needs in the information sphere caused changes and adjustments of administrative law. It generates new or updated social relations in the power and management sphere – information relations, which have specific features and properties.

Creating the legal framework for information relations can be divided into several stages. The first (1991-1994) formed the foundations in the field of informatization. The second stage (1994-1998) was characterized by a change in the priorities from informatization to the development of information policy. The third stage, which continues to this day, is the stage of formation of the policy in the field of construction of an information society. The main tasks, ways of solving problems, tasks and functions of the authorities, mechanisms of interaction between them and society, citizens and business, as well as conceptual principles of the state policy in the field of informatization, development of the information society and e-governance are defined in a number of legislative acts such as : The Constitution of Ukraine, the Laws of Ukraine "On Information", "On the National Program of Informatization", "On Access to Public Information", "On Protection of Personal Data", "On Administrative Services", "protection of information in information and telecommunication systems", "On electronic document and electronic document circulation", "On electronic digital signature"; a series of international legal acts that led to the adoption of laws: the Declaration of Principles "Building the Information Society – A Global Task in the New

Millennium" of 12.12.2003, Directive 95/46 / EC of the European Parliament and of the Council "On the Protection of Individuals with Personal Processing" data and the free movement of such data "of 24 October 1995, Directive 97/66 / EC of the European Parliament and of the Council of ..." On the processing of personal data and the protection of the right to privacy in the private sector in the telecommunications sector", the Convention I on the protection of individuals with regard to the automated processing of personal data of January 28, 1981, etc.

We emphasize that there is still a whole range of unresolved issues of regulatory, organizational, technical and resource support for the development of the information society. Unfortunately, the sphere of informatization and information society develops rather slowly, not systematically, which leads to imbalance of the state of the domestic information society and the loss of Ukraine's position in world rankings.

The main reason for this state of affairs is the uncertainty of legal principles and organizational and technical decisions regarding the implementation of e-governance, the lack of a unified approach to the use of tools and mechanisms for organizing and coordinating the activities of state bodies in the field of information.

An important step in the regulation of relations for ensuring the preservation and protection of information in the field of migration was the Concept for the establishment of a unified information and analytical system for managing migration processes approved by the decree of the Cabinet of Ministers of Ukraine dated November 7, 2012 No. 870-p, which defines the ways and stages of creating a single information-analytical system of management of migration processes, the application of which is aimed at automating the activities of the State Migration Service and taking into account the best experience of the European Union system of state management of migration processes in accordance with the standards of the European Union.

An important stage in the regulation of relations in the field of personal data protection was the ratification by Ukraine in 2010 of the Convention on the Protection of Personal Data with regard to Automatic Processing of Personal Data and the Additional Protocol to the Convention on the Protection of Personal Data with regard to Automatic Processing of Personal Data in respect of Supervisory Bodies and cross-border data flows". The purpose of the Convention is to ensure, on the territory of the country, for every person, regardless of his/her nationality or place of residence, the observance of his/her rights and fundamental

freedoms, in particular his/her right to privacy, in connection with the automated processing of personal data relating to it.

In order to implement the provisions of the said convention at one time, the Law of Ukraine "On Protection of Personal Data" was adopted, which detailed the principles of regulating legal relations related to the protection and processing of personal data, and aimed at protecting fundamental human and civil rights and freedoms, in particular , the right to non-interference in privacy, in connection with the processing of personal data. The law provides for terms, in particular, "owner of personal data" and "personal data manager", "agreement of the subject of personal data", "processing of personal data", etc.

At the request of the provisions of the above-mentioned law, the sub-legislative legislative framework for regulation of relations in this sphere has also been modernized. Thus, the Order of the Ministry of Justice of Ukraine dated July 22, 2013 No. 1466/5 amended certain orders of the Ministry of Justice of Ukraine to improve the legal regulation in the field of personal data protection, in particular, the Typical procedure for processing personal data in the databases of personal data, approved by the order of the Ministry of Justice Of Ukraine dated December 30, 2011 No. 3659/5, as well as to the order of the Ministry of Justice of Ukraine dated July 8, 2011, No. 1824/5 "On approval of application forms for registration of personal data base and changes to the data of the States register of personal data and the order of their submission".

The State Program for the Promotion of Economic Development for 2013-2014, approved by the Resolution of the Cabinet of Ministers of Ukraine of February 27, 2013 No. 187, included: "Improvement of legislation to stimulate the development of the domestic IT industry, in particular, taxation of software product industry subjects", Which will ensure" the creation of domestic import-replacement software products or increase the volume of exports of not less than 3 billion hryvnias; an increase in the amount of revenues from the payment of a single contribution to the mandatory state social insurance during the first year by UAH 120 million, the next five years – by UAH 4274 million; accelerating the development of the software industry to 40-45 percent per year; an increase in the number of jobs each year by 35-40 percent (more than 20 thousand per year)".

The concept of the creation and functioning of the information system of electronic interaction of state electronic information resources, approved by the Cabinet of Ministers of Ukraine from September 5, 2012,

No. 634-p, identified as a problem that needs to be solved the fact that the only infrastructure of interagency information interactions of state bodies and business entities with the use of information technology is not created, and the Single Web portal of executive bodies, which should be the basis of the integrated system "E-Government" performs mostly presentation and information functions[7].

The basic document regulating activity in the field of providing administrative services is the Law of Ukraine "On Administrative Services" (of September 6, 2012 No. 5203-VI), which defines the legal framework for the realization of the rights, freedoms and legal interests of individuals and legal entities in the field of provision administrative services.

In order to enforce the above-mentioned law, state authorities have begun the formation of a legislative framework for the provision of administrative services, in particular, in electronic form. Approximately ten normative acts regulating the maintenance of the Register of Administrative Services, the Unified State Portal for Administrative Services, the activities of the centers for the provision of administrative services, etc., were adopted. The procedure for the provision by the authorities of the Pension Fund of Ukraine of services in electronic form, approved by the Resolution of the Board of the Pension Fund of Ukraine dated September 7, 2012, No. 16-1, determines the mechanism of provision by the territorial authorities of the Pension Fund of Ukraine services in electronic form, based on technologies of remote access and automated transmission and information processing. The following electronic services are provided:

1. Registration of users on a web-portal.

2. Access to the information on the web portal: a) for citizens and insured persons: 1) on the procedure for registration of citizens in the database of the web-portal; 2) the rights, responsibilities and responsibilities of the recipients of pension and other payments made by the Pension Fund of Ukraine; 3) on the procedure for obtaining and using a pension certificate; 4) about the conditions, the procedure for appointment, recalculation and payment of pensions, etc.; 5) samples of applications, complaints, requests for information, other documents

[7] Концепція створення та функціонування інформаційної системи електронної взаємодії державних електронних інформаційних ресурсів. *Офіційний вісник України*. 2012. № 67. Ст. 2753.

necessary for the appointment and recalculation of pensions, transfer from one type of pension to another, changes in the way of payment of pensions, payment of burial assistance, etc.; 6) on the rights, duties and responsibilities of insured persons; 7) on the procedure for obtaining and using the certificate of compulsory state social insurance; 8) on the procedure for the reception of citizens in the territorial bodies of the Pension Fund of Ukraine on the principle of "single window".

3. Access for citizens, insured persons and insured persons, including individuals – entrepreneurs and persons who provide themselves with work independently, to information on the state of the information about the insured person, pension payments, processing of the report filed electronically.

4. Interaction of citizens, insured persons and insured persons, including individuals – entrepreneurs and persons who provide themselves with work independently, with territorial bodies of the Pension Fund of Ukraine on the following questions: 1) filling in forms of application, complaints, requests in electronic form; 2) I will consider applications, complaints, requests submitted electronically; 3) filing requests for the paperwork of certificates and other documents received by the applicant during a personal appeal to the territorial bodies of the Pension Fund of Ukraine; 4) preliminary record for admission in its territorial body.

5. Obtaining other necessary reference information.

Thus, we can talk about the substantial modernization of the administrative and legal principles of regulation of information relations, in particular, regarding the formation and implementation of a national policy on the development of the information society, informatization and e-governance, which allows to realize a significant number of tasks of further socio-economic and political development of Ukraine, harmonious joining the world information community.

In accordance with the Concept of State Information Policy, in recent years significant modernization of the legislative framework for the formation and implementation of the national policy on the development of the information society, informatization and e-government, which allows to realize a significant number of tasks of further socio-economic and political development of Ukraine, harmonious entry into the world informational community.

3. Genesis of information relations in administrative law

With the development of information technology, information has become the most expensive resource. To facilitate the search, exchange and processing of information humanity began to use personal computers connected to the Internet. Computerization and Internet have affected almost all aspects of human activity: from contracts to personal relationships, from purchasing goods through online stores to training. Computers have greatly simplified the work of the person, performing the machine work for her. The World Wide Web has reduced the time to search for the necessary information by using the search engines of the services that search for a user-specified query. Global informatization and computerization have led to the rapid development of a software market that provides both search and information protection.

Ukraine has been actively involved in the global process of creating an information society open to the public, in which everyone will have the opportunity to express their opinions freely and be heard. The four documents adopted on the outcome of the World Summit on the Information Society (Geneva Declaration of Principles, the Geneva Action Plan, the Tunis Commitment, the Tunis Agenda for the Information Society) call on the world community to build an information society focused on people's interests, open to all, in which everyone could create, access, use and share information and knowledge.

Each state social system had its own characteristics, its values, which are determined primarily by the material and spiritual needs of man. Each stage of human development is characterized by its special properties, which flow into the general norms of behavior, relationships and values. Some criteria for evaluating this or that phenomenon are formed[8]. Humanity has come to the necessity of forming a new outlook, to the fact that it is necessary to rethink some values, that is, a new outlook is formed.

Consciousness as a system includes various forms of reflection of social relations: political, legal, ethical, philosophical, religious. All forms of social consciousness are interdependent and have a mutually influential influence on one another. In turn, justice constitutes a relatively independent sphere (area) of consciousness: social, group, individual. It reflects the legal validity in the form of knowledge about the right,

[8] Баранов О. А., Жиляєв І. Б., Семенченко А. І. Українське інформаційне право на початку XXI століття. Інформатизація та відкритість влади як засоби демократизації суспільства. Київ : Либідь, 2003. С. 88–100, с. 97.

comprehension of what is the right, what it was and what it should be (relation to future law), as well as in the form of legal guidance of behavior as a reaction to the assessment of the current law, the work of law enforcement agencies.

Thus, legal consciousness is defined as a system of ideas, ideas, emotions and feelings that express the attitude of the individual, group, society to the current, past and desired law, as well as to the activity related to the right.

In the structure of the person's legal conscience, each of the functions corresponds to the following blocks: 1) legal knowledge; 2) legal assessments; 3) legal guidelines.

Law affects the legal consciousness by the fact that it is the most important source of its formation, transformation and development. The content, direction of this influence are not clear and depends on the quality of legislation, its compliance with real needs, and the level of work of the state apparatus.

Along with legal awareness, the legal culture has a significant influence on the development of administrative and legal foundations. We will analyze the concept of legal culture within its influence on the development of information relations in order to formulate its own definition in accordance with the objectives of the diploma research. As you know, culture is a common way of human existence, its activities and the objective result of this activity. The products of culture are the notion of good and evil, customs, tools, means of communication, etc. Culture – a phenomenon of socio-normative, and its norms – historically primary, the basis of all other normative systems: religion, morality, aesthetics, law. Right, as morality and religion, is an institution of culture, determined by its content.

Close interaction and interrelationship manifest between legal and moral culture. The legal culture consists of a series of interrelated elements.

1. The level of legal consciousness and legal activity of citizens – is expressed in the degree of assimilation of rights by citizens, officials, the focus on observance of prohibitions, the use of rights, performance of duties.

2. Status of legal practice: a) the level of law-making activities and the state of law; b) the level of judicial, law enforcement and state of law practice.

3. Regime of law and order – the state of actual ordering of social relations, settled by means of legal means, the content of which is a set of lawful actions of legal actors.

Particular attention in the development of the information society should be paid to the advance development of fundamental and applied research and science-intensive technologies, the development of the domestic programming industry, infrastructure of production of information and communication technologies. The need for a skilled approach and a rapid response to dynamic changes in the conditions of social life determines the separation of information relations, which are regulated by administrative law and determines the appropriate public administration, which requires a reassessment of the complex of tasks that need to be addressed.

The Cabinet of Ministers of Ukraine defined the plan of measures for the formation of the information and analytical system of state authorities in full time, although some concrete steps were taken: the draft Concept for the formation and functioning of the information and analytical system of state authorities and local self-government bodies was elaborated; A technical task has been prepared for system creation; The draft of the first stage of such a system for the President of Ukraine, the Secretariat of the Cabinet of Ministers of Ukraine, the Office of the National Security and Defense Council, a number of ministries and state committees has been developed.

Even before the expiration of the time allocated for the implementation of the measures, the specified resolution (and in general the idea of an integrated information and analytical system) was abolished.

The "E-Ukraine" project, which was supposed to be implemented in the test mode at the end of 2010, and from the first quarter of 2011 – to industrial exploitation, is limited to ensuring protection of the interaction of state authorities with each other. The developers of the tasks of the National Informatization Program for 2010-2012 state that the document "focuses on the creation and implementation of integrated projects that will form the modern information infrastructure of the state. Necessary constituent components of the state integrated information and analytical system are: subsystem of inter-departmental electronic document circulation; subsystem of monitoring of the socio-ecological and economic situation; automated government subsystem; a subsystem containing the geoinformation base of the territory; a subsystem that provides electronic interaction between citizens and organizations with

power structures, in particular, the automation of the provision of public services and the receipt of reporting.

The contradictory situation is that "today, in the context of the development of the volume of social functionality that the system performs, and new forms of development in which the system level of the software becomes relatively autonomous from the hardware level, the systems cease to be closed, separated from the social context. Sophisticated systems that only exchange e-mails with the outside world are no longer needed by anyone."[9]

Creation of the automated system "Single window of submission of electronic reporting" resulted in the emergence of new information legal relations in the government, in particular, the mechanisms of electronic interaction between the controlling bodies of state power and reporting entities are regulated through the introduction of unified standards for the process of submission, processing, use and storage of reporting, proper regulatory, methodological, organizational and technological support for the interaction of the participants in the process of submission of the electro Noah statements.

For the development of information legal relations in the state administration, the creation of the Unified State Portal for administrative services played a significant role. The only portal became the official source of information on the provision of administrative services in Ukraine.

The only state portal of administrative services provides: access to information about administrative services provided to the subjects of treatment; access to information about centers and entities providing administrative services; search by keywords in the fields of description of the administrative service; classification and search of services for life situations and categories; the submission by electronic means of applications and other documents to be submitted by subjects to be completed and submitted for reception of an administrative service; submission of on-line applications for administrative services; introduction of a fixed fee for the provision of administrative services using electronic payment systems; tracking the stages of passing documents on the provision of administrative services; tracking visit statistics; protection of data from unauthorized access, destruction,

[9] Цимбалюк В. С. Інформаційне право (основи теорії і практики) : монографія. Київ : Освіта України, 2010. 388 с. С. 248–249.

modification and blocking by means of implementation of organizational and technical measures, means and methods of technical protection of information; delimitation and control of access to the information on the portal, in accordance with the powers of users; representation of the structure of information resources and Ukrainian-language interfaces, understandable for users[10].

As a conclusion, it can be noted that today state regulation in the field of information and communication technologies is one of the priority directions of the state's activity, which, in its turn, causes the emergence and dynamic development of information relations in the field of public administration. Evolution of these relations allows to distinguish the following trends: information presence and provision of services to organizations and the population using information and communication technologies, including through websites; introduction of information and communication technologies in all spheres of state administration, including electronic interaction between authorities, with organizations, citizens – "e-government" and "electronic democracy"; the transformation of public administration, where information and communication technologies are one of the main catalysts of the transformations of the public sector.

Conclusions and further researches directions. Paramount role in determining the nature of information relations in administrative law belongs to their actors. Such parties are the administrative law actors, that is, the media provided by the administrative-legal norms of rights and obligations that can implement these rights, and the duties assigned to perform. Thus, information relations in administrative law are always of a public-power nature.

Further evolution of information technologies requires finding rational strategies for their development and management of this process, in particular, the stability of the work of state administration will not only intensify the use and dissemination of information technology in their activities, but also achieve the balance of information provision in the new environment. The organization of fundamental and applied scientific research in the field of information activity, in particular, the development and implementation of the latest information and communication

[10] Пилипчук В. Г., Брижко В. М. Проблеми становлення і розвитку інформаційного законодавства в контексті євроінтеграції України. *Інформація і право*. 2011. № 1(1). С. 11–19. С. 12.

technologies, promotion of the development of information technologies and their implementation, providing access to world information scientific sources, will provide the basis for further genesis of information relations in the administrative law.

Priorities of the legislative provision of the development of information relations in the administrative law should be oriented towards the development of programs for the development of the information sphere. Priority is given to ensuring wide access to the network information technology of the private sector, which requires certain political, legal, economic and organizational conditions: the development of the scientific and technical base of information technology, the training of skilled personnel in this field, information security, the elimination of the lack of information and information services (especially in the legal field), etc.

SUMMARY

The article deals with theoretical comprehension and complex solution of the problems of administrative and legal regulation of information relations in Ukraine. The conceptual apparatus of this problem and the approach to formation of updated information relations, which are regulated by means of administrative law of Ukraine, have been improved. The formation and development of administrative-legal regulation of information relations has been considered, their essence and features have been determined. It has been noted that administrative law regulates public-legal informational relations, which possess all the properties of administrative legal relations and have their own distinctive features. The subject structure of information relations in administrative law, the characteristic of the object of information relations in the public area, the content of information relations in the administrative law has been disclosed. The foreign experience of legal regulation of information relations has been generalized, the possibilities of its use in Ukraine have been determined, in particular the application of the monitoring system and information and analytical support. Proposals and recommendations for improvement of the legislation in this area have been formulated.

REFERENCES

1. Адміністративне право України: акад. курс : підручник. У 2 т. Т. 1. Загальна частина / за ред. В. Б. Авер’янова. Київ : Юрид. думка, 2004. 584 с.

2. Баранов О. А., Жиляєв І. Б., Семенченко А. І. Українське інформаційне право на початку XXI століття. Інформатизація та відкритість влади як засоби демократизації суспільства. Київ : Либідь, 2003. С. 88–100.

3. Бевзенко В. М. Сутність та поняття адміністративно-правового регулювання. *Вісник господарського судочинства*. 2006. № 3. С. 162–167.

4. Горбулін В. П., Биченок М. М. Проблеми захисту інформаційного простору України : монографія. Київ : Інтертехнологія, 2009. 136 с.

5. Доповідь про стан інформатизації та розвиток інформаційного суспільства в Україні за 2013 рік. URL.: http://www.dknii.gov.ua/sites/default/files/stan_informatyzacii_20132.pdf.

6. Залізняк В. Удосконалення інформаційного законодавства України : методологічні засади. *Інформаційне право*. 2010. № 2. С. 59–60.

7. Концепція створення та функціонування інформаційної системи електронної взаємодії державних електронних інформаційних ресурсів. *Офіційний вісник України*. 2012. № 67. Ст. 2753.

8. Панова І. В. До проблем правотворення в інформаційному праві. *Правова інформатика*. 2015. № 1 (45). С. 35–40.

9. Пилипчук В. Г., Брижко В. М. Проблеми становлення і розвитку інформаційного законодавства в контексті євроінтеграції України. *Інформація і право*. 2011. № 1(1). С. 11–19.

10. Чубарук Т. В. Конституційні засади правового регулювання інформаційної сфери. *Правова інформатика*. 2010. № 3(27). С. 61–65.

11. Цимбалюк В. С. Інформаційне право (основи теорії і практики) : монографія. Київ : Освіта України, 2010. 388 с.

Information about the author:
Korniyenko M. V.
Doctor of Law, Professor,
Professor of the General Legal Disciplines Department
of the Dnipro Humanitarian University
35, Yermolovoi str., Dnipro, 49033, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/123-139

LEGISLATIVE REGULATION OF PUBLIC SERVICE RELATIONS IN UKRAINE AND OTHER EUROPEAN COUNTRIES: A COMPARATIVE ASPECT

Lehka O. V., Blinova A. A.

INTRODUCTION

The establishment of Ukraine as a sovereign, independent and democratic state makes it possible to constantly improve the efficiency of the civil service system. Today, no developed legal country can do without the functioning of a well-functioning, highly professional public service, which will contribute to the approval of Ukraine's innovative model of economic and social development, increasing the efficiency of the use of the intellectual potential of the country, all its human and natural resources. Successful implementation of state political, social and economic tasks depends on how well it will be organized in the state, how competent, conscientious and professional the official duties of civil servants will be performed.

The development of the constitutional foundations of civil service in Ukraine is connected with the adoption of laws and other normative acts regulating the entire spectrum of public relations in our state on the creation of organizational, social, economic and legal conditions for the realization of the right of citizens to civil service, the definition of priority areas in this activity, a systematic approach to the creation of legislation that should constitute the institution of civil service, the range of public bodies and officials who have the right to regulate.

The works of V.B. Averyanov, G.V. Atamanchuk, V.D. Bakumenko, M.M. Bilinskaya, Yu. Drozda, A.P. Zapadinchuk, A.Y. Obolensky, Y.Y. Kizilov, V.K. Mayboroda, V.M. Soroko, V.M. Ryzhikh, V.P. Tymoshchuk; the legal basis for public service can be traced in the works of N.G. Nizhnyk, S.D. Dubenko; the theoretical foundations of the career were studied by I.G. Suray and V.B. Vizirov. However, despite the presence of scientific developments of these scientists, as well as taking into account significant changes in domestic legislation, the problem of personnel policy of the civil service in Ukraine in the context of its adaptation to the existing European models remains very relevant today.

Today, according to Y.P. Bityak: "The problems of increasing the prestige of public service, reducing the dependence of civil servants on the political situation in the country remain unresolved until the end ... overcoming the insufficient level of professionalism and legal culture of employees, the imperfection of the personnel training system. It is also important that the state, each agency, its structural subdivision have a clear idea of the number of specialists in the perspective of their development for their training in certain professions".

Ukraine, continuing its strategic course on joining the European community, should study and, if necessary, implement the standards of legal regulation of personnel policy in the civil service, which are generally accepted in Europe, taking into account national traditions, as the construction of a modern law-governed state is our main domestic political priority. It is the civil service that should ensure the legitimacy of political decisions that are made; the integrity of the state as an institution; and the implementation and observance of the Constitution of Ukraine.

M. Kanavets notes in this regard that the legislation should establish a system of public service, which provides for equal access to public service and the right of public servants to promotion in accordance with the principle of equal opportunity and approach to appointment and work, as defined in the ILO Convention of 27.06.1978 № 151 "On the protection of the right to organize and the procedures for determining the conditions of employment in the public service».

In addition, an extremely complex problem and an urgent task, A. Zapadinchuk emphasizes, is the systematization of legislation on public service, which will reduce the role of those legislative acts that are purely declarative in nature, do not affect the processes taking place in the public service as a whole, and in the process its passage, in particular, does not meet the requirements, and also that the codification of legislation on public service will allow to unite new and systematize existing norms, to overcome contradictions and inconsistencies between it and release the regulatory framework of the outdated rules and will promote consistency of legal acts, development of the civil service and improve the efficiency of administrative reform laws. This lawyer believes that at the present stage, to further reform the public service, improve its passage, it is advisable to develop a Civil Service Code.

Now in the legislation of Ukraine the civil service and its passage are regulated by the Constitution of Ukraine, laws, decrees of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine and other public

authorities. The basic requirements for improving the quality of civil service in the context of administrative reform are set out in the Concept of Administrative Reform and have been implemented in the current Act "On civil service". Among the main ones are: the updated classification of public bodies and public positions; competitiveness, objectivity, transparency, and transparency in the recruitment and promotion of civil servants; legal protection, political neutrality; motivation, stimulation, encouragement of civil servants; responsibility of civil servants; improvement of personnel management.

In order to effectively implement the new model of civil service and the Law of Ukraine dated December 10, 2015 № 889-VIII "On Civil Service" by the National Agency of Civil Service (hereinafter – the Transfer) in cooperation with international experts, in particular with experts of the SIGMA program, the adoption of all by-laws defined by this law, among which is ensured: Regulations on the Commission on the Supreme Corps of the Civil Service, the procedure for holding a competition for public service positions, standard requirements for persons applying for public service positions of category "A", the procedure for determining special requirements for persons who apply for public service positions of category "B" and "C", the procedure for certification of persons applying for entry into the civil service in the state language of fluency in the state language, the standard procedure for holding the fathers In June 2016, the Commission for the Supreme Corps of the Civil Service began its work.

As we can see, the new Law of Ukraine "On Civil Service" to a certain extent has resolved the issue of professional development of the public administration, the formation of a qualitatively new corps of civil service. The Law of Ukraine "On Civil Service" 2015 also had a significant impact on the legal status of civil servants, establishing new requirements for entry into the civil service, their rights, and limitations. This Law, continues his thought Y. Kizilov, provides for the modernization of the civil service, a significant change in its system, the development of new mechanisms and a new procedure for the passage of public service and requires their regulatory and legal regulation

We would like to note that the process of Ukraine's European integration is accompanied by the approximation of Ukraine's government institutions to the EU standards, which, in turn, highlights the need to study the experience of civil service in other countries. The following principles are the basis for reforming and modernizing the civil service, as

well as improving its performance in most countries: democratization of public administration and public service; orientation to the average citizen, who, as a client of public services, is a consumer of public services; orientation to the end result; profitability of management.

Given the fact that in most countries of the world civil service reform began in the 70-80s of the last century and today they have some positive experience, we consider it appropriate in this study, to improve the existing mechanisms of civil service in Ukraine, to analyze the European experience in legislative regulation of civil service, to carry out a comparative aspect with the legislation of Ukraine, and provide suggestions on the possibility of its implementation in domestic legislation.

Public servants in most countries include both officials and technical support personnel involved in the exercise of public authority, as well as employees, including teachers in public educational institutions, workers in public enterprises and public utilities. Broadly speaking, "civil servants" or "public sector employees" are defined as any person who is paid from the federal, state or local government budget. In some countries, public servants make up the majority of agents employed by public authorities, in others, they make up only a small proportion of the staff of public authorities. This can be explained by fundamental differences in the concepts of public service, developed taking into account historical traditions, political, economic and social conditions under which the reforms took place. Therefore, the concept of a public servant is not identical in different countries.

According to paragraph 2 of art 1 of the Law of Ukraine "On Civil Service", "a civil servant is a citizen of Ukraine, who holds the post of civil service in a body of state power, other state body, its apparatus (secretariat), receives wages from the state budget and carries out the powers established for this post, directly related to the performance of tasks and functions of such a state body, as well as adheres to the principles of civil service".

There are four types of state posts in Ukraine: a) political positions; b) administrative positions; c) judicial positions; d) patronage positions. Of these four types of public positions, only administrative positions confer the status of a public servant on the person who performs it

1. The main principles and models that form the basis for the organization and functioning of the public service

Today, taking into account the reform of public service in accordance with European standards, it is important to begin the analysis of legislative regulation from the basic principles that are the basis for the organization and functioning of public service in the countries of the European Union, which are common to all EU member states, regardless of the characteristics of their national systems and determine the standards of civil service in the EU countries. These include reliability and predictability; openness and transparency; a responsibility; effectiveness and efficiency. It should be noted that civil servants, in the process of serving, are legally obliged to adhere to these principles, provided by independent control bodies, the justice system and comprehensive control by parliament .

Article 4 of the current Law of Ukraine "On Civil Service" provides that civil service is carried out in compliance with the following principles: rule of law, legality, professionalism, patriotism, virtue, efficiency, ensuring equal access to public service, political impartiality, transparency, stability.

As we can see, there are certain similarities between the principles of civil service of Ukraine and those of the European Union countries.

As for the models of public service, unfortunately, there is no unambiguous view among jurists today. Thus, some scientists believe that in European countries there are three main models of public service: career service (France, Germany, Denmark, Spain, Bulgaria, Cyprus, Romania, Slovakia, Slovenia), official service (Sweden, the Netherlands, Estonia) and mixed service (Italy, UK, Latvia, Lithuania, Malta, Poland, Hungary, Czech Republic). However, it should be noted that in practice, in pure form, none of these European countries today have a particular model of public service, as each of the dominant models has elements of the other.

V. Grinenko divides modern models of public service into:

a) open (or official) – the Anglo-Saxon model of public service – a relatively decentralized open model, which is implemented in the UK, USA (staff mobility and competitiveness, personnel selection system based on free access based on university a diploma and an independent competition in the form of interviews or examinations (written, oral), wages are determined mainly by the results of the work of an official, fairly strict control by civil society);

b) closed (or career) – a civil service model inherent in the countries of continental Europe (Germany, France, Japan. It is characterized by a hierarchical system of personnel selection; elite features in the system of training senior managers; high social status; wages are set depending on the position and seniority in public service).

V. Bakumenko distinguishes between four models:

1) Centralized closed model in unitary state conditions (French Republic);

2) a relatively decentralized and closed model in the context of federalism (Federal Republic of Germany);

3) A relatively decentralized open model in a unitary state (United Kingdom of Great Britain and Northern Ireland);

4) Decentralized open model in a federalist environment (United States of America).

Other lawyers define three dominant models: English (provides for a combination of business and public administration), German (the basis of training is legal education, complemented by training and education in the system of professional development for civil servants at the secondary and lower levels) and French (provides for a public-centralized system of training of a small, highly qualified elite, which is provided by the National School of Public Administration)[1].

D. Bossart and K. Demmke celebrate the existence of a mixed model. Their position is that only the countries themselves can determine the appropriateness and purposes of special legislation on public service and its organization, that is, the fact that they wish to establish a public service, demonstrates its necessity since no State can function without public administration.

Thus, we can conclude that it is practically impossible to classify Ukraine into any specific system by a certain criterion. In our opinion, the model of professional development of civil servants in Ukraine should be defined as a mixed one, as it consists of elements of continental, open and official models.

2. Features of the public service in some European countries

The standard for the organization and implementation of public service relations and public service is the *French* civil service, the legal

[1] Конституции зарубежных государств / под ред. Н. А. Крашенинниковой, О. А. Жидкова. М.: Норма, 2011. 624 с.

basis for the training of civil servants is the General Statute of the civil service. Civil servants in a given country have the right to join political parties and to stand for election without resigning from office. It should be noted that the civil service organization of the country combines the system of recruitment (persons working on an hourly basis and under contract) and the system of career (officials who work in the civil service on a permanent basis. They are divided into categories "A", "B", "C", "D").

For comparison, Article 6 of the current Law of Ukraine provides for the division of civil servants into three categories: "A", "B", "C".

Public servants in *Germany* include persons employed in the public administration system (officials, employees, workers). Officials, employees, and workers are differentiated according to the criterion of performing management functions. Their legal status is determined by the nature of their relationship with the state and is expressed in the order of employment, service, remuneration for it, the rights and obligations imposed on them. Germany is characterized by three types of legal status, which differ in the level of legal protection and the scope of functional duties of a civil servant: 1) preparatory service – subject to successful passing of the employee is allowed to draw up a "career exam"; 2) testing service – appointments to the post. Enhanced legal protection, which makes it impossible to release a civil servant without the circumstances provided for by law; (3) Public service itself – lifelong appointment of civil servants who at the time of appointment have reached the age of 27. This status is characterized by a high level of legal security and is, in essence, a public-law relationship.

This three-stage system of public service guarantees the involvement of the staff itself, as well as the full readiness of such employees to perform their duties. Also, this procedure guarantees the involvement in public service of persons who are interested in their careers in this area. In our opinion, this positive experience can be implemented in the legislation of Ukraine.

It should be noted that in Germany there is no institution of personnel reserve, here an appropriate career structure has been developed, which ensures the promotion of all specialists worthy of this promotion. The specific career direction is determined by the rules of the career structure, examination, and education.

In *Italy,* there is a clear distinction between public servants and employees of public institutions. They are divided into permanent (personnel) and temporary (employees by agreement). The Italian public service includes diplomats, prefects, police officers, and speakers, who hold

senior management positions in public administrations at the public level. Political and bureaucratic positions are also separated. In particular, ministers, deputy ministers, and their advisers are political posts, and therefore the change of government leads to the dismissal of these categories of employees. Somewhat below the hierarchical structure, there is a category of civil servants who are not related to the political situation, so their position does not depend on the change of representation in power. They are dismissed from their posts when serious offenses have been committed.

As far as employees of public agencies are concerned, they are considered to be civil servants only formally, since their official activity is largely determined by collective agreements concluded between agencies and trade unions. It should be noted that employees (officials) are divided into administrators, specialists, executives, auxiliary and special staffs.

In *Poland, the* peculiarities of the civil service are that the civil service corps includes only those positions that are under the authority of the Prime Minister. For example, ministers, state secretaries, alternates, governors and their deputies belong to the political sphere and are not included in the civil service. The Public Service Corps is divided into two categories: public service employees working based on an employment contract and public servants working on the basis of appointment. Staff members who have entered the civil service for the first time must complete a preparatory service, the period of which does not exceed 4 months and ends with an examination.

In Hungary, there are five categories of civil servants (public agents): civil servants, employees, workers, and a very heterogeneous fourth category, the status of which is defined by separate normative documents. Civil servants are persons entrusted with the functions of management, decision-making, development, and implementation of particularly important documents or tasks within the public administration, as listed in the appendix to the law. This staff represents only 12% of the total number of civil servants.

In Ukraine, in comparison with other countries, civil servants are only those who work in public authorities and perform the functions of the state.

The principle of equal opportunities and approaches to employment is provided for in the International Labour Organization Convention of 1958. On discrimination (section "Recruitment and employment"). It should be noted that the Joint ILO Public Service Committee attaches particular importance to the application of this principle in all matters relating to recruitment, training and career development in the public

service. This principle has been confirmed by most European countries in their constitutions, laws, and regulations. The principle of equal access is also enshrined in the Constitution of Ukraine.

3. Selection of candidates for public service

Let's briefly analyze the selection of candidates for public service. Competitive appointments are the main means of filling vacant posts. The independence and impartiality of the competition committee is the key to fair competition for a vacant position in a state body. The most independent, according to legal scholars, are competitive commissions of the Anglo-American legal system (Great Britain, Ireland).

A competitive commission, which holds a competition for vacant positions, independent of candidates, political power and heads of services, which offers vacant positions for filling. The highest collegial bodies (councils, commissions) for civil service issues are established for the selection of senior civil servants.

The competition procedure in European countries has the following stages:

1. Public announcement of the next call for proposals for certain posts.

2. Contest of documents (selection of candidates meeting the established and announced requirements according to the submitted documents).

3. Conducting an exam.

4. Deciding on a recommendation for certain positions.

Establishing the results of the tests is the prerogative of the competition commissions, which select: up to three persons (Poland); one or more candidates (Estonia, Latvia) draw up a list of applicants in order of the places they took during the competition (Czech Republic).

The actual tender process varies considerably not only from country to country but also from one service to another. Competitive procedures in the EU countries are classified by:

1) by the degree of admission of candidates:

– Opened (specific to countries belonging to the post system). Public servants are appointed on the terms of a fixed-term contract. They are promoted through a new competition or at the discretion of the authorities and managers, but in any case, there is no automatic promotion;

– Closed (typical of countries belonging to the career system). Only a person with the status of an employee or a preparatory service can be a candidate. In countries belonging to the career system, holding a

permanent position means virtually indefinite employment, provided that the function is performed successfully;

– Mixed (some posts may be claimed by any person, including those outside the public service, and some posts may be claimed in the case of existing public service experience;

2) by stages of the career (preparatory service (practice), an appointment to the permanent public service position, promotion);

3) legal consequences (only the right to take up a public service post, the right to take up a particular post, the content of the competitive procedure);

4) on the content (contests: based on documents (education, experience, available characteristics); mixed contests (contain elements of both the above-mentioned procedures).

In Germany, for example, to be eligible for a permanent position in the apparatus, candidates must draw up two state exams before an independent jury of university officials and professors. The interview is crucial for the appointment. In Austria, the procedure has three stages: (a) public announcements of vacancies with requirements for candidates; (b) written exams; and (c) interviews. Written exams and interviews are common in the UK. In France, written anonymous examinations are held first, followed by oral examinations (assessing the general culture of the candidates, their specialized knowledge and their ability to express themselves logically). In the United States of America, there are two main forms of selection for public positions: open (for competitive positions) and closed (for so-called foreign service, forestry, and postal services, special services, police, health care). The examination takes place in three stages: general intellectual preparedness, the ability to clearly express thoughts in English by writing a short work on a certain topic, professional and functional suitability. Only then will the interview and special situation tasks be carried out.

In Hungary, civil service selection is carried out through interviews (publication of vacant positions, the holding of competitions is not provided for by law). By the way, according to lawyers, Hungary is the only country that has made an attempt to raise the civil service to the world standards and has prepared the basis for taking into account the training in a promotion.

In our opinion, the experience of Canada, where the best candidate is selected not automatically but meets the conditions (requirements) of the position, is quite effective.

Thus, summing up that the main purpose of legal regulation of competitive procedures is to minimize the influence of subjective factors on the choice of the most worthy candidates for civil service positions.

It is worth noting that according to paragraphs 1, 2 of Article 22 of the Law of Ukraine "On Civil Service", civil servants are appointed to the post only on a competitive basis. The competition is conducted taking into account the level of professional competence, personal qualities, and achievements of candidates for the vacant position. Competitions, as in European countries, are divided into open and closed (paragraph 4 of the Act provides that public service positions related to state secrets, mobilization training, defense, and national security may be held in a closed competition).

To ensure transparency in the organization of the competitive selection process for civil service positions, Ukraine has created a web portal for civil service vacancies (https : // career.Gov.Ua). Information on the announcement of competitions for vacant positions in the civil service and the results of the competitions is posted on the website (www.nads.gov.ua). In order to ensure the determination of the optimal number of civil servants, taking into account the functions and organizational structure of public administration bodies, optimization of the number of employees of public administration bodies in 2016 in the test mode was launched the portal of automated data collection regarding the quantitative composition of civil servants (ksds.nads.gov.ua).

4. Advanced training of civil servants

One of the best in Europe is considered to be the *French* management training system. Despite the number of institutions and decision-making centers in the field of training, the French system of training for public servants is holistic rather than costly and quite effective. Among its positive aspects is a well-balanced understanding of the tasks, in particular: decentralization and territorial organization of public services, communication, in-depth knowledge and understanding of the need for cooperation with the institutions of the European Community, high-quality human resources management and orientation to environmentally friendly innovations. Among the disadvantages, which, in principle, are inherent in all closed systems, are the low level of mobility, which is compensated by a high social status and a rigid mechanism of progressive wages, which, as a consequence, sometimes leads to a decrease in the level of communication and basic social benchmarks.

M. Minenko refers to the main forms of advanced training of civil servants in France: 1) improvement measures aimed at maintaining or improving professional qualities, ensuring the fitness of employees to changes in technology and administrative structures, cultural, economic and social changes and the transformations that arise from them; 2) preparations for competitions organized for public servants who already hold a position for professional exams and competitions whose purpose is to change the rank of corps; 3) leave, the maximum duration of which is three years, but it can be divided and provided only for training with the consent of the state, provided that the agent has worked for at least three years in the administration. An employee who took advantage of such leave agrees to remain in the public service for a period three times the amount for which he received previous payments. In France, civil servants do not spend their own money on advanced training, also, they receive cash compensation for expenses and relocation. The financing of various continuing education activities is entrusted to ministries.

The *German* continuing education system also applies to closed systems. It includes both national structures (Federal Academy of Public Administration, Ministry of the Interior, Federal Higher School of Public Administration and Academy of the German Civil Servants' Union) and the relevant state higher education institutions. At the regional level, advanced training is provided mainly by training institutes.

The advantages of the German management training system are the clear balance between theoretical knowledge and practical skills that a public servant receives during training. At the same time, a significant drawback is the orientation of the system of education to the legal orientation: if a candidate for the position of the highest category has no legal education, within two years he is retrained in special educational institutions in the direction of "lawyer".

There are two groups of further education forms in Germany:

- The first (ensuring the appropriate level of qualification of the employee is mandatory for all professionals recruited)

- The second (adaptive) one, which involves training (adaptation) of employees to changes, i.e. training is aimed at maintaining or upgrading the skills acquired and providing the necessary knowledge for qualified work.

More than 190 training programs in this area have been developed to effectively upgrade the skills of *United States* civil servants.

In *Poland, an* important element of the professional training system is trainings: central training is planned, organized and managed by the head of the civil service; general trainings – by the office of the General Directors; training on individual professional development programs for the members of the civil service corps are coordinated by the office of the General Directors in coordination with the member of the civil service corps and work in this office; specialized training is organized by the office of the General Directors and are conditioned

The National School of Public Administration in Poland is a key institution in the system of professional training of civil servants with an interdisciplinary training program. Graduates are automatically admitted to the civil service and also have the opportunity to choose a position from among those envisaged by the Prime Minister for graduates. The National School of Public Administration is engaged in the professional development of persons already working in public administration authorities. The training courses are addressed to carefully selected groups of trainees. KSAP organizes various seminars and training courses, which include learning a foreign language, studying legislation, international and European relations, economics, etc.

In Ukraine, the level of professional competence of civil servants is promoted during service, and professional development is carried out at least once every three years. All this is done at the expense of the state budget and other sources, not prohibited by law, in educational institutions, institutions, organizations, regardless of the form of ownership, which are entitled to provide educational services, including abroad. Scientific and methodical support is provided by the National Academy of Public Administration under the President of Ukraine – a higher education institution with special training conditions, determined by the Cabinet of Ministers of Ukraine (Art. 48).

CONCLUSIONS

An analysis of the legal regulation of civil service in Ukraine, today, indicates that the current state of the legislation of Ukraine on public service, despite a significant number of regulatory acts governing work in this direction, is not completed, but needs constant updating, development new mechanisms and a new order of civil service and, accordingly, requires their settlement in accordance with the current Law of Ukraine "On civil service".

States such as France and Poland may be the most promising for learning and borrowing good practices. Formation of a hierarchical

system of personnel selection, their high moral and ethical level with a high social status and continuous professional development from the moment of setting the goal – to become a civil servant – until the end of a career with a single centralized policy-making system, with the quick training of the lowest-level specialists with highly specialized skills and a verified system of elite training of highly qualified specialists who will be able to work effectively on responsible position x, will create a powerful foundation for the institution of public service with sufficiently flexible functional capabilities in the field and a sufficient level of decentralization.

The positive experience of Germany, in particular, the existence of a preparatory service institute, is a prerequisite for theoretical and practical preparation for staying in all positions, which are typical for that professional direction, he chose to implement in the national legislation as well. It is advisable to borrow from English practice to check candidates' compliance with job requirements. This is the responsibility of a special independent body, the Commission. The Administration may only appoint candidates who hold a commission certificate. This, in our opinion, reduces the possibility of corrupt, friendly and other actions in the formation of the civil service corps.

In the process of reforming the legal framework of the civil service, it is necessary to use a systematic approach, to consider the civil service as a tool for effective management. This determines the main tasks of the civil service – to achieve stability of the foundations and integrity of the state, to ensure the effectiveness of the activities of public bodies, further democratization of the methods of formation and activities of public authorities, the creation of social, legal and other conditions necessary for the effective work of civil servants.

The European experience shows that the success of positive social and economic transformations directly depends on the effectiveness of the state policy in relation to the professional development of public administration personnel and civil servants, as well as on the political responsibility of the government for the modernization of the system of professional training of civil servants, taking into account the requirements of modern times.

Priority areas for further reform and improvement of legal regulation should be given:

- implementation of positive European experience of effective mechanisms, standards and procedures for personnel management in public service;

- introduction of objective criteria for evaluating the performance of civil servants (in most European countries, not only formal performance of official duties and comparison of such performance with the overall performance of the authority, but also the degree of loyalty of the employee, inclination or lack of exposure to corrupt acts, professional development and social behavior of the employee)

– Improving the mechanisms of:

a) The accountability and accountability of public servants;

b) specifying the legal liability for certain types of offenses;

c) performance assessment and evaluation of civil servants, in particular with regard to the procedure of formation of subjects conducting an assessment of employees' performance and forms of performance evaluation (oral, written, combined). In Ukraine today, the main emphasis in the assessment of employee performance is on certification, which is not always an effective and objective criterion for the assessment of work as a whole and is mostly formal. To this end, it is advisable to introduce other tools to assess the knowledge and performance of civil servants.

In addition, we consider it expedient to amend the current Law of Ukraine "On Civil Service", in particular, in the part concerning the requirements of the educational and qualification level of civil servants classified as "B" (paragraph 5, part 2, Article 20 provides for the availability of higher education only for the junior bachelor's or bachelor's level and fluent command of the state language, but there are no requirements for the professional level and, accordingly, the length of service).

SUMMARY

Ukraine, continuing its strategic course of joining the European community, should study and, if necessary, implement the standards of legal regulation of personnel policy in the civil service generally accepted in Europe, taking into account national traditions. In order to improve the existing mechanisms of civil service in Ukraine, this article analyzes the European experience of legislative regulation of individual stages of civil service: highlighted the main problematic issues in this direction; identifies the features of the basic concepts and forms of the European experience in training civil servants of certain countries in terms of selection, competition and advanced training of civil servants, is the basis for further improvement and development of the civil service institution in Ukraine; clarified the conceptual positions of jurists on the principles and models of civil service; the priorities of the European experience in training personnel in relation to

Ukrainian conditions are theoretically substantiated, taking into account the experience of France, Germany, Poland; a comparative aspect was implemented with the current legislation of Ukraine and proposals were made on the possibility of its implementation in domestic legislation.

REFERENCES:

1. Бакуменко В. Д., Гогіна Л. М., Кравченко С. О. Європейські орієнтири адміністративного реформування в Україні: монографія. К.: НАДУ, 2005. 172 с.
2. Битяк Ю. П. Пріоритетні напрями забезпечення ефективного функціонування публічної служби в Україні. *Теорія і практика правознавства.* Вип. 1(7). 2015.
3. Боссарт Д., Деммке К. Державна служба у країнах-кандидатах до вступу в ЄС: нові тенденції та вплив інтеграційного процесу. К.: Міленіум, 2004. 128 с.
4. Глєбов Г. О. Організація державної служби: європейський досвід. *Правові новели*. 2014. № 1. С. 71–76.
5. Гриненко В. Професійне навчання вищих керівних кадрів для державної служби в зарубіжних країнах. *Вісник УАДУ*. 2005. № 3. С. 162.
6. Дрозд О. Ю. Актуальні питання державної служби в деяких країнах Західної Європи. *Науковий вісник УжНУ*. Серія: «Право». 2016. № 40. Т. 2. С. 13–17.
7. Dubowik A. Organizacja i struktura służby cywilnej w świetle ustawy z 2008 r. Warszawa: PiZS, 2009. T. 6. S. 13.
8. Западинчук О. П. Формування та розвиток інституту державної служби в умовах адміністративної реформи в Україні: автореф. дис.. … канд. наук з держ. упр.: 25.00.03. Дніпропетровськ, 2007. 20 с.
9. Канавец М. В. Реформирование института публичной службы: современные подходы и зарубежный опит. Чернигов, 2015. Вып. 2. С. 28–39.
10. Кізілов Ю. Ю. Зарубіжний досвід проходження державної служби та можливості його використання в Україні в умовах адміністративної реформи. *Аспекти публічного управління*. 2016. № 6-7. С. 57–65.
11. Кізілов Ю. Ю. Правове регулювання проходження державної служби в Україні в умовах адміністративної реформи. *Державне управління та місцеве самоврядування.* 2016. Вип. 2. С. 137–142.

12. Конституции зарубежных государств / под ред. Н. А. Крашенинниковой, О. А. Жидкова. М.: Норма, 2011. 624 с.

13. Корж І. Добір кандидатів на державну службу: порівняльний аналіз. *Право України*. 2007. № 3. С. 84–89.

14. Нечухрана Ю. Особливості оцінки результатів практичної діяльності персоналу державної служби в деяких країнах Європейської співдружності. *Економіка та держава.* 2012. № 7. С. 112.

15. Початкова підготовка та безперервне навчання державних службовців у Франції: Франція в Україні (Посольство Франції в Україні). [Електронний ресурс]. URL: www.ambafrance-ua.org.

16. Про державну службу: Закон України від 10 грудня 2015 р. № 899-VIII. Офіційний вісник України. 2016. № 3. Ст. 149. [Електронний ресурс]. URK: http://zakon. rada.gov.ua.

17. Прокопенко Л. Публічна служба в країнах ЄС. [Електронний ресурс]. URL: www.vidr.dp.ua/zbirnik/20009-01/ProkopenkoStat.pdf.

18. Розвиток ефективності і професіоналізму у державній службі. К.: Вид-во УАДУ, 2000. 82 с.

19. Службова кар'єра державного службовця: теорія та правове регулювання [Електронний ресурс]. URL: http://mydisser.com/en/avtoref/view/6997.html.

20. Стандарти європейського врядування: навчальний посібник / І.А. Грицяк, О.Ю. Оржель, С. М. Гладкова. К.: НАДУ, 2011. 184 с.

21. Тимощук В. П. Публічна служба. Зарубіжний досвід та пропозиції для України / В. П. Тимощук, А. М. Школик. Київ: Конус-Ю, 2007. 735 с.

Information about the author:

Lehka O. V.
Doctor of Law, Associate Professor,
Head of the Department of Criminal-Law Disciplines of the Dnipro Humanitarian University
35, Yermolovoi str., Dnipro, 49033, Ukraine

Blinova A. A.
Candidate of Law, Associate Professor,
Head of the Department of Civil Law Disciplines
of the Dnipro Humanitarian University
35, Yermolovoi str., Dnipro, 49033, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/140-158

BODIES OF STATE EXECUTIVE SERVICE AS PARTICIPANTS OF ENFORCEMENT PROCEEDINGS

Makushev P. V., Lemekha R. I.

INTRODUCTION

The set of accumulated scientific concepts, practical recommendations and proposals for regulatory acts governing enforcement proceedings led to the reform of 2016, which became the starting point for the formation of a mixed system of enforcement in Ukraine. The fundamental reform of the system of enforcement of judgements in Ukraine consists in the following major changes: enforcement of judgements rests with public and private executors; introduced a Unified Register of Debtors and a Unified Register of Private Performers; the debtor is obliged to pay a down payment for acceptance of the enforcement document for enforcement; when opening enforcement proceedings, no time is given for the debtor's independent (voluntary) execution of the decision; the executor, when opening the enforcement proceedings, is obliged to immediately seize the debtor's property (funds); upon the opening of enforcement proceedings, the executor obliges the debtor to file a declaration of income and property; the determination of the value of the property of the debtor should be made by mutual agreement of the debtor and the debtor, if such agreement is not reached, then the valuation entity – the entity is involved for the valuation of the property; realization of debtor's property is carried out at electronic auctions; the terms of committing significant enforcement actions have been changed; the Law on Enforcement Proceedings excludes the provisions on control over the legality of enforcement proceedings by the governing bodies of the State Executive Service (hereinafter – SES); The Law of Ukraine “On Bodies and Persons Exercising Enforcement of Judgments and Decisions of Other Bodies”, unlike the Law of Ukraine “On State Executive Service”, which has lost its validity, does not contain a number of rules that determine the structure of SES bodies, competence of bodies. on the organization of its activities, the requirements for the heads of the structural bodies of the SES, and the order of appointment and dismissal of employees of the SES bodies in fact narrowed to a primitive reference to the Law of Ukraine "On Civil Service". These amendments should provide an effective mechanism for swift and complete

implementation of judgements, including through the unloading of SES bodies, as well as affect the modern understanding of the enforcement procedure and the enforcement process.

1. The essence of the legal regime of enforcement proceedings and guarantees of human rights observance

To find out the essence of the legal regime of enforcement proceedings and the enforcement process, let us consider scientific concepts for understanding the term "regime". The Explanatory Dictionary provides a general understanding of the term "regime", namely: 1) government, mode of government; 2) accurately established routine of life, work, rest, etc.; 3) a system of rules, laws, introduced to achieve the goal; 4) conditions of activity, existence[1].

In the field of administrative law, this concept of administrative and legal regime is specified by various scholars. The peculiarity of the administrative-legal regime is manifested in the special order of the emergence and formation of the content of the rights and obligations of participants in administrative-legal relations and their implementation, the presence of specific sanctions, special means of their implementation, as well as in the operation of uniform principles, general provisions, which apply to the relevant set of legal rules.

The definitions of the administrative-legal regime provided by different scholars distinguish its various features, which can be summarized as follows: 1) determined by special rules of law of the behavior of individuals and legal entities; 2) forced detailed regulation of the activity of government bodies and public organizations; 3) introducing additional rules or removing them from binding legal rules; 4) establishment of special control over the proper observance of the rule of law in the area of the special regime and establishment of some restrictive measures[2]; 5) the goal is to establish optimal relations in a specific area that ensures the security of the individual, society and the state; 6) the legal entities are legally unequal in their status; 7) consists of a mechanism of autonomous, interconnected and interacting elements; 8) provides dynamics of administrative and legal relations.

---

[1] Великий тлумачний словник сучасної української мови / уклад, і голов. ред. В.Т. Бусел. Київ : Перун, 2003. 1440 с. С. 1021.

[2] Авторгов А. Державна виконавча служба – псевдореформа та реформа. Юридична газета. 2005. № 23(59). С. 195.

The main elements of the administrative-legal regime include: 1) a method of legal regulation, which in administrative law is based on a centralized means and an imperative type of regulation and is expressed in the legal inequality of legal entities; 2) specific administrative and legal means of establishing and forms of the emergence of rights and obligations, methods of legal influence, protection of rights, procedural and procedural forms, etc., which include acts, complaints, official or functional subordination, control or supervision, administrative coercion, protocols, resolutions, petitions, administrative responsibility, etc.; 3) principles, general provisions of administrative law, such as participation of citizens in the management of public affairs, protection and protection of human rights and freedoms, interests of the state; exercise of powers by the authorities within the limits established by the Constitution and in accordance with the laws of Ukraine; accountability, control, accountability of the executive authorities and their officials to the society for their activities, etc.; 4) the peculiarity of administrative legislation, which is characterized by the presence of a large number of legal norms regulating a considerable volume of various social relations related to public administration; 5) establishment along with the general legal regime of intra-branch legal regimes: secrecy regime, customs regime, state border regime, free economic zones regime, mode of carrying out certain types of business activities, passport regime, etc.[3]

In our view, the enforcement procedure and the enforcement process cannot be fully characterized as administrative-legal regimes, since there are enough indications of a dispositive method of regulating relations in this area.

Considering our own conclusions, we consider it possible to identify the following features of the legal regime of the enforcement procedure: 1) it is established and provided by the state for the purpose of realization of public and private interests; 2) predominantly enshrined in the rules of administrative law and procedural branches of law; 3) provides an objectively necessary and public interest model of functioning and development of administrative and legal relations in the area of enforcement of the authorized bodies' decisions; 4) is fixed, maintained and ensured by a combination of administrative, organizational and

[3] Адміністративне право України : підручник / Ю.П. Битяк, В.М. Паращук, О.В. Дьяченко та ін. ; за ред. Ю.П. Битяка. Київ : Юрінком Інтер, 2005. 544 с. С. 269–270.

logistical means as defined by the law on enforcement proceedings; 5) the obliged entities are the debtor, the debtor, the SES in the person of the public executor or the private executor. The legal regime of enforcement proceedings as part of the enforcement process is endowed with similar features, but differs in scope of implementation.

Elements of the regime of the executive process, in our opinion can be considered: 1) the purpose of the installation – timely, complete and impartial fulfillment of decisions; 2) the object of regulation is the public relations that arise in the process of fulfillment of decisions; 3) the mechanism of legal influence, consisting of both legal (norms of law, legal facts, acts of implementation, etc.) and non-legal (legal consciousness, legal culture, legal precedents, principles, etc.) means; 4) a special legal toolkit for ensuring the administrative and legal regime. In our view, executive proceedings, being part of the executive process, have similar elements in their structure, but with regard to adjusting the purpose, which is narrowed down to timely, complete and impartial fulfillment of decision in a particular executive case.

We consider it possible to define the legal regime of the enforcement process as the legal form of functioning of public relations in the area of fulfillment of decisions with obligatory participation of the collector, debtor, state or private executors, which are ensured by a set of methods and methods of regulation of activity of the respective entities, thus creating an appropriate level dynamics of these relationships in space and time and timely, complete and impartial fulfillment of decisions is achieved.

Considering the logic of the interconnection of the enforcement process and enforcement proceedings, we propose to define the mode of enforcement proceedings as a legal form of functioning of public relations in the area of fulfillment of decisions in a particular case with the participation of certain collector, debtor, public or private executors, who are provided with a set of methods and methods these subjects, thus creating an appropriate level of dynamics of these relationships in space and time, aimed at timely, complete and impartial execution of specific decisions.

The legal regime of executive law can be defined as the legal form of functioning of relations, which are formed in the sphere of the executive process, which are provided by a special combination of legal methods, types and methods of legal regulation, which create the appropriate level of dynamics of these relations and with the aim of timely, complete and impartial fulfillment of decisions.

In the explanatory dictionary the term "mechanism" is defined as: 1) the internal structure, the system of something, 2) the set of states and processes that make up a certain phenomenon. In administrative scientific concepts, the legal mechanism is most often explored. Ya.V. Gretza, studying the legal mechanism for the realization and protection of the rights and legitimate interests of the subjects of tax relations, insists that it is a set of legal means by which each subject exercises its legal capabilities, eliminates those negative conditions that may cause harm practical implementation of the possibilities, the legal position is restored in case of violation of subjective law[4].

To identify the static and dynamic characteristics of the concept of "mechanism", it is necessary to listen to the point of view of V.V. Konoplyov, who compares the mechanism of control and control itself, states that the difference between them is that the control mechanism characterizes the basic principles of the control system, in particular its purpose, principles, tasks, functions and methods, i.e. control in statics, then the control process characterizes its dynamics, namely its system of stages[5]. At the same time O.V. Negodchenko pays attention to the fact that the mechanism of organizational and legal support is defined as a dynamic system of legal forms, means and measures whose action and interaction are aimed at preventing or restoring human rights violations, which includes three elements: 1) protection of rights; 2) protection of rights; 3) legal assistance to the person[6].

Taking into account scientific theories and concepts regarding the concept, content and elements of mechanisms of different legal phenomena and institutions, we consider it possible to generalize the following features of the mechanism of fulfillment of decisions: 1) its content is constituted by legal means of influence; 2) the object of influence is the behavior of the collector, the debtor, the public or private

[4] Греца Я.В. Правовий механізм реалізації та захисту прав і законних інтересів суб'єктів податкових правовідносин : автореф. дис. на здобуття наукового ступ. канд. юрид. наук: 12.00.07; Ін-т законодавства Верховної Ради України. Київ, 2006. 20 с. С. 9.

[5] Конопльов В.В. Організаційно–правовий механізм підготовки та прийняття управлінських рішень в адміністративній діяльності органів внутрішніх справ : автореф. дис... д–ра юрид. наук: 12.00.07; Харківськ. нац. ун–т внутр. справ. Харків, 2006. 32 с. С. 13.

[6] Негодченко О.В. Забезпечення прав і свобод людини органами внутрішніх справ : організаційно-правові засади : автореф. дис. … д-ра. юрид. наук : 12.00.07 ; Нац. ун-т внутр. справ. Харків, 2004. 39 с. С. 17.

executors, other participants in the enforcement proceedings and other entities with which they interact, which is determined by the complex of their rights and duties; 3) the field of implementation is the social relations that are formed in the execution of authorized bodies decisions; 4) purpose – timely, complete and impartial execution of specific decisions; 5) has manifestations of a static set of elements of the system and dynamic implementation of their content; 6) its main elements are legal rules; legal facts; information environment; purpose and tasks; principles; subjects entering into the relationship, their subjective rights and legal obligations; objects that are subject to enforcement actions; executive cases, executive documents.

The mechanism of enforcement of decisions and the mechanism of enforcement proceedings whose implementation is aimed at timely, complete and impartial execution of specific decisions must, first of all, determine the guarantees of human rights in enforcement proceedings. In practice, the problems of implementing the above-mentioned guarantees of respect for human rights are identified. This is confirmed by the results of the questionnaire of citizens. Thus, while finding out the reasons for dissatisfaction of citizens with the actions of state executors, it was found that 76.7% of those who expressed a negative assessment mentioned the following reasons: unresolved issue (27%), partial resolution (30.4%), fact blatant reluctance to help or being rude on the part of the state executor (6.9%), unprofessionalism of the state executor (10.1%). 44% of the surveyed citizens found the DIA of Ukraine ineffective at the present stage, 36.9% satisfactory, and only 19.1% effective.

The results of the questionnaire indicate problems with the quality of communication with citizens and the performance of professional duties by public officials, as well as with respect for human rights in enforcement proceedings. The procedural mechanism for the realization and protection of the rights of citizens and organizations in enforcement proceedings characterizes the nature and nature of enforcement proceedings, and therefore the practice of implementing its elements needs improvement first.

2. Elements of enforcement proceedings and their implementation by the state executive service

The specificity of the legislation governing enforcement proceedings in Ukraine is that the Law of Ukraine on Enforcement Proceedings not only regulates issues related to the enforcement of judgements, but also establishes grounds for enforcement of other bodies' decision. According

to Art. 3 of this Law, in addition to judicial acts, the bodies of the state executive service may also be compulsorily executed by executive notaries, certificates of labor disputes commissions, resolutions of bodies (officials) authorized to hear cases of administrative offenses, decisions of public authorities, decisions of state authorities. use of religious buildings and property, decree of the state executor on recovery of the executive fee, costs of enforcement actions and imposition of a fine, decision of the European Court Human Rights with the specifications provided by the Law of Ukraine "On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights" and so on. Thus, the Law of Ukraine “On Enforcement Proceedings” is applied not only in the execution of court decisions but also in the fulfillment of decisions of other bodies, which makes it possible to conclude that the enforcement proceedings are aimed not only at the implementation of judicial acts as acts of justice, but also is a legal instrument for the ultimate implementation of decisions of other bodies, a universal mechanism for the exercise of state powers by the state, aimed not only at the exercise of judicial functions, but also at the protection of the rights and freedoms of the individual and the citizen in the broader context.

The Law of Ukraine “On Enforcement Proceedings” contains a set of universal procedures that are applied both in the execution of court decisions and decisions of other bodies. Most of the procedural mechanisms applied by the enforcement agent in the execution of court decisions are also applied in the fulfillment of decisions of other bodies. The system of enforcement procedures is thus independent in nature and cannot be regarded as part of civil procedural relations. The Law of Ukraine “On Enforcement Proceedings” has been amended several times since its adoption, enforcement proceedings have been improved, and today they are more effective than they were originally.

The study of the essence of the elements of enforcement proceedings in Ukraine will not be complete without defining the principles, (in particular, the principles of enforcement proceedings), that is, the basic principles of such activity. It should be noted that the enforcement process always consists of a sequence of actions of the state executor from the opening of the enforcement proceedings to its completion.

Opening of enforcement proceedings is a stage which involves actions of the state executor aimed at determining the grounds for initiating enforcement proceedings. The state executor shall, no later than the next working day from the day of receipt of the enforcement

document, issue a resolution opening the enforcement proceedings (Article 26 “Commencement of Compulsory Enforcement of the Decision” of the Law of Ukraine “On Enforcement Proceedings”). The executor shall start enforcement of the judgement on the basis of the executive document referred to in Article 3 of the Law of Ukraine “On Enforcement Proceedings”: 1) upon the claimant's application for enforcement of the decision; 2) at the request of the prosecutor in case of representation of interests of the citizen or the state in court; 3) if the enforcement document came from the court in the cases provided for by law; 4) if the enforcement document came from a court on the basis of a decision on the enforcement of a judgement of a foreign court (court of a foreign state, other competent authorities of a foreign state, which has jurisdiction over civil or commercial matters, foreign or international arbitration) in accordance with the procedure the law; 5) if the executive document was received from the National Agency of Ukraine for the detection, search and management of assets obtained from corruption and other crimes. The novelty of the current Law of Ukraine “On Enforcement Proceedings” is the payment of an advance payment.

Enforcement is the implementation by a state enforcement agent of measures to implement a prescription of a court act in the manner prescribed by law, with the payment of the debtor to the enforcement fee and the costs associated with carrying out enforcement actions. The enforcement of specific enforcement actions is influenced by the nature of the obligation itself, which is the subject of the enforcement. According to the results of the questionnaire of state executives, it was found that more often the enforcement of decisions is applied to such entities as: individuals – 40%, enterprises of private ownership – 12.5%, state enterprises – 11.0%, community companies, unions – 9.1%, officials – 6.1%, public utilities – 5.2% and others.

Depending on the type of obligation, the following enforcement measures may be applied: 1) monetary obligations – recovery of the debtor's property; requesting the collection of wages and income of the debtor – an individual; 2) material obligations – removal from the debtor and transfer to the collector of certain items specified in the judgement; 3) personal obligations – selection of the child; 4) the obligation of the debtor to perform certain actions (other than transfer of property or money) or to refrain from their implementation).

State executives testify that most often in their work they apply the following measures of enforcement of decisions: recovery of funds,

securities, other property (property rights), corporate rights, property rights of intellectual property, objects of intellectual, creative activity, other property (property rights) of the debtor, including if they are in other persons or belong to the debtor from other persons, or the debtor owns them jointly with other persons – 55,8%; requesting collection of salaries, pensions, scholarships and other income of the debtor – 22,9%; obliges the debtor to take certain actions or refrain from committing them – 20,9%; withdrawal from the debtor and transfer to the collector of the items specified in the judgement – 13,4%; prohibition of the debtor to dispose and / or use the property belonging to him on the property right, including the funds, or imposing the debtor's obligation to use such property on the terms determined by the executor – 8.0%; evictions and evictions of individuals – 6.5%; compulsory seizure and transfer of a child, making a date with her or eliminating obstacles in a date with a child – 5.2%; other coercive measures – 7.8%.

As a rule, the obligatory sign of the stage of enforcement of the judgement is its payment, which is assigned to the debtor as a person, who is obliged to perform certain act or refrain from executing it under the executive document. The costs of enforcement proceedings are the expenses of the SES bodies in organizing and executing enforcement actions to enforce enforcement of decisions. This concept has more financial and budgetary than procedural content, which confirms the provision that the costs of enforcement proceedings include the funds of the State Budget of Ukraine and the funds of enforcement proceedings, which are used in the manner established by the Cabinet of Ministers of Ukraine.

According to the results of the questionnaire of the state executors, it was found that the most common complications during the enforcement proceedings are: delay of the enforcement actions – 31.0%; return of the executive document to the court or other body (official), which issued it – 24,2%; termination of enforcement proceedings – 14.1%; clarification of enforceable decisions – 13.4%; deferral or installment, setting or change of method and procedure of execution of the judgement – 5.2%; wanted listings – 7.8%; etc.

From the practice of conducting enforcement proceedings, state executives have also identified a category of complications not defined by the Law of Ukraine “On enforcement proceedings”. Thus, according to the interviewed state executors, the most frequent circumstances and cases that complicate or exclude the execution of the decision: obstruction of individuals or legal entities in the execution of enforcement actions –

19.9%; late submission or non-submission of information at the request of the state executor – 17,9%; the absence of the property of the debtor, which by the judgement should be transferred to the collector – 16,2%; lack of sources of income and income by the debtor – 14,3%; debtor's difficult financial position – 10,1%; absence of the debtor at the place of registration and residence, not being able to establish his place of residence – 8.6%; temporary occupation of the territories of Ukraine where the debtor's property is – 4.1%; the illness of the debtor or his family – 3.7%; natural disasters, other emergencies – 3.4%, etc.

The termination of enforcement proceedings is the action of a state executor, which consists in the completion of enforcement actions in a particular enforcement proceedings, according to a specific enforcement document. The grounds for the termination of enforcement proceedings are defined in Art. 39 of the Law of Ukraine "On enforcement proceedings". By the end of the enforcement proceedings, they are divided into two groups. The first is the grounds for the seizure of the debtor's property, the other enforcement actions taken by the state executor, and other actions necessary in connection with the completion of the enforcement proceedings. The second group includes the grounds without these consequences.

In general, according to Art. 39 “Termination of enforcement proceedings” of the Law of Ukraine “On enforcement proceedings” enforcement proceedings shall be terminated in the following cases: 1) the court recognizes the refusal of the enforcer to enforce the court decision; 2) approval (recognition) by a court of a peace agreement concluded by the parties in the process of executing the decision; 3) termination of the legal entity – the parties to the enforcement proceedings, if the performance of its duties or requirements in the enforcement proceedings does not allow the succession, death, declaring of the deceased or the recognition of the debtor or the debtor unknowingly; 4) adoption by the National Bank of Ukraine of the decision on revocation of the banking license and liquidation of the debtor bank; 5) cancellation of the decision on the basis of which the executive document was issued, or the court's recognition of the executive document as non-enforceable; 6) the written refusal of the collector to receive the items withdrawn from the debtor during the execution of the judgement to transfer them to the debtor or the destruction of the thing to be handed to the debtor in kind or free of charge; 7) the expiry of the period provided by law for the respective type of recovery, unless there is a debt for recovery of the corresponding

payments; 8) recognition of the debtor bankrupt; 9) actual implementation of the full decision in accordance with the executive document; 10) return of the executive document without execution at the request of the court or other body (official), which issued the executive document, etc.[7]

The last stage of the enforcement proceedings is the final one. At this stage, the enforcement proceedings is being closed, the enforcement proceedings are terminated and the enforcement document is returned to the collector. At the final stage, the executor decides whether to close or terminate the enforcement proceedings, depending on the circumstances of the case.

Resolution on the termination of enforcement proceedings on the grounds provided for in part one of Art. 39 of the Law of Ukraine “On Enforcement Proceedings” shall be rendered on the day of the occurrence of the relevant circumstances or on the day the executor became aware of such circumstances. In the cases provided for in paragraphs 1-3, 5-7, 9-12, 14, 15 of the first part of this Article, the enforcement document shall be sent together with the decision on the completion of the enforcement proceedings to the court or other body (official) which issued it. The resolution on the termination of the enforcement proceedings on the grounds provided for in paragraph 4 of part one of this Article, together with the executive document, shall be sent to the authorized person of the Deposit Guarantee Fund of individuals. The resolution on the termination of the enforcement proceedings on the grounds provided for in paragraph 8 of part one of this Article, together with the executive document, shall be sent to the economic court, which adopted the judgement on recognition of the debtor bankrupt and the opening of liquidation procedure.

According to Art. 40. "Consequences of termination of enforcement proceedings, return of enforcement document" in case of termination of enforcement proceedings (except for the official announcement of the bankruptcy notice of the debtor and the initiation of liquidation proceedings, termination of enforcement proceedings under a court order made in order to secure a claim or take precautionary measures, and except in the case of non-collection of enforcement fees or costs of enforcement proceedings, non-collection of basic remuneration by a private contractor), return of executive documents mint to the court that issued it, arrest, imposed on the property (funds) of the debtor, is

[7] Про виконавче провадження : Закон України від 2 червня 2016 року № 1404-VIII. Урядовий кур’єр від 20.07.2016. № 134.

withdrawn, information about the debtor is excluded from the Unified Register of Debtors, other measures taken by the executor to enforce the judgement are canceled, as well as other necessary actions are taken in connection with the expiration enforcement proceedings.

3. Legal personality of the State Executive Service as a participant in enforcement proceedings

The study of the administrative and legal personality of the state executive service in the implementation of tasks of enforcement proceedings in the domestic legal doctrine is important for clarifying its legal nature, prerequisites for the emergence and directions of development in the context of the general development of domestic administrative legal science and the genesis of legislative regulation of compulsory fulfillment of decisions of courts and other bodies.

It should be noted that legal relations in the field of enforcement proceedings are the subject of scientific research in various fields of law, in particular: civil, economic, procedural and administrative, which allows to speak about the complex nature of such legal relations and the complex (multiple) nature of the relevant legal rules, but dominant there are administrative and procedural rules, which allows to consider the enforcement proceedings as an institution of administrative law.

The activity of the state executive service, as a realization of its administrative and legal status, is characterized by a diversity of relations. These relations have different directions, first of all, relations between employees of the state executive service and state bodies of executive power, as well as state bodies of other branches of power; secondly, between law enforcement officials and other law enforcement officials; thirdly, between executive service employees and various non-governmental organizations; fourthly, between employees of the state executive service and employees of local self-government bodies; the fifth between public executives and citizens.

The above mentioned groups of relations, to which state executives are currently involved, have some tension, which is manifested by the population's lack of confidence in the state executive service. Thus, according to the results of the questionnaire conducted by the author, it was found that in the process of interaction with SES employees, the citizens were mostly not satisfied completely – 46.7% of the respondents answered, 30% were not satisfied, and only 23.3% were completely satisfied with the interaction with the employees of the state executive

service. When finding out the reason for dissatisfaction with the actions of state executives, it was found that among 76.7% of those who had a negative assessment, its reasons were: unresolved issue in 27%, resolving the issue partially in 30.4%, fact of the open a reluctance to help or rudeness by a state executive in 6.9%, not by professionalism of a state executive in 10.1%. At present, 44% of the polled found it ineffective, 36.9% satisfactory and only 19.1% effective regarding the effectiveness of SES activities.

The results of the questionnaire indicate problems with the quality of communication with citizens and the fulfillment of professional duties by public officials. The prestige of the staff of the executive service is also significantly diminished, due to the fact that it is not possible to execute the court or officials' decisions in due time, but also to protect the citizen's right. So according to the results of the questioning of citizens on the question: whose profession is a state executive prestigious? 48.1% of those surveyed said no, 24.9% had difficulty answering, and only 27% found the profession prestigious. A similar trend was found in the survey of SES employees themselves. For example, 36.4% of the surveyed public executives called their prestigious profession, 6.6% questioned this fact, and 57% of those questioned denied the prestige of the profession of state performer.

Based on the features of the state executive service and elements of its administrative and legal status, we propose our own formulation of the concept of the State Executive Service of Ukraine, namely, a state, structured, law enforcement body, which is part of the system of bodies of the Ministry of Justice of Ukraine and enforces decisions on the application of legal measures influence, in strict accordance with the law and in strict compliance with the order established by it.

As a participant in the SES enforcement proceedings, it is empowered to carry out enforcement actions, however, as we have noted in Section 1.3, the domestic legislator does not define them. Instead, foreign experience testifies to other legislation of the Russian Federation that resolves this issue in Art. 64 of the Federal Law of the Russian Federation "On Executive Proceedings" of October 2, 2007 № 229-FZ, there is an article entitled "Executive actions", which provides a list of enforcement actions. Thus, the Russian bailiff has the right: 1) to summon the parties to the enforcement proceedings (their representatives), other persons in cases provided for by the legislation of the Russian Federation; 2) to request the necessary information, including personal data, from

individuals, organizations and bodies located in the territory of the Russian Federation, as well as in the territories of foreign states, in the manner prescribed by the international treaty of the Russian Federation, to receive from them explanations, information, help; 3) carry out an audit, including verification of financial documents, on the execution of executive documents; 4) to give individuals and legal entities instructions on the fulfillment of the requirements contained in the executive documents; 5) enter into non-residential premises occupied by the debtor or other persons or belonging to the debtor or other persons for the purpose of executing executive documents; 6) with the permission of the senior bailiff in writing (and in the case of execution of the executive document on the eviction of the debtor or eviction of the debtor – without the said permission) to enter the premises occupied by the debtor without the consent of the debtor; 7) to seize the property, including cash and securities, to seize the said property, to transfer the seized and seized property for safekeeping; 8) to carry out property valuation in the manner and within the limits established by this Law; 9) involve for assessment of property of specialists who meet the requirements of the legislation of the Russian Federation on valuation activity; 10) to search the debtor, his property, to search the child independently or with the involvement of law enforcement agencies; 11) to ask the parties to the enforcement proceedings the necessary information; 12) consider applications and motions of the parties to the enforcement proceedings and other persons involved in the enforcement proceedings; 13) collect executive fees; 14) apply to the body that performs state registration of property rights and transactions with him, for registration in the name of the debtor of the property belonging to him in the cases and the procedure established by this Law, etc.[8]

The current legal status of SES bodies is determined by the Laws of Ukraine “On Enforcement Proceedings” of June 2, 2016 No. 1404-VIII, “On Bodies and Persons who carry out coercive enforcement of Judgments and Decisions of Other Bodies” of June 2, 2016, No. 1403-VIII, “On state guarantees concerning the enforcement of judgements[9]”; “On the enforcement of judgments and the application of the case law

[8] Об исполнительном производстве : Закон Российской Федерации от 02.10.2007 г., № 229-ФЗ. URL.: http://www.fssprus.ru/law7.

[9] Про гарантії держави щодо виконання судових рішень : Закон України від 5 червня 2012 року № 4901-VI. Голос України від 27.06.2012. № 117.

of the European Court of Human Rights[10]"; "On the introduction of a moratorium on the forced sale of property[11]". The resolutions of the Cabinet of Ministers of Ukraine of July 2, 2014 No. 228 "On approval of the Regulation on the Ministry of Justice of Ukraine[12]", "On approval of the Regulation on the procedure of auctions (public auctions) for the sale of pledged property[13]" and decrees of the President of Ukraine, for example, "On Approval of the Regulation on the State Executive Service of Ukraine" of April 6, 2011 No. 385/2011[14] also play an important role in the legislation governing enforcement proceedings.

A special place in the system of legal regulation of the activity of the state executive service belongs to the Orders of the Ministry of Justice of Ukraine: On approval of the Model Regulation on the management of the state executive service of the main territorial departments of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, in the regions, cities of Kyiv and Sevastopol of executive service of the main territorial departments of justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, in the regions, cities of Ki Eve and Sevastopol; On approval of the Procedure of interaction of the Ministry of Justice of Ukraine with the central bodies of executive power, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice of Ukraine; On approval of the Procedure for exercising control over the activity of employees of state executive service bodies, private executors; On approval of the Procedure for sale of seized property; «On approval of the Instruction on the organization of enforcement of decisions» from 02.04.2012 № 512/5; "On Approval of the Procedure for the Sale of Arrested Property" dated 29.09.2016 No. 2831/5; On approval of the Order of information interaction between the Unified State Register of Legal Entities,

[10] Про заходи щодо реалізації Закону України «Про виконання рішень та застосування практики Європейського суду з прав людини» : Постанова Кабінету Міністрів України від 31.05.2006 р. Офіційний вісник України. 2006. № 22.

[11] Про введення мораторію на примусову реалізацію майна : Закон України від 29 листопада 2001 року № 2864-III. URL.: http://zakon3.rada.gov.ua/laws/show/2864-14.

[12] Про затвердження Положення про Міністерство юстиції України : Постанова Кабінету Міністрів України від 2 липня 2014 р. № 228. Урядовий кур'єр від 11.07.2014. № 123.

[13] Про затвердження Положення про порядок проведення аукціонів (публічних торгів) з реалізації заставленого майна : Постанова Кабінету Міністрів України від 22 грудня 1997 р. № 1448. URL.: http://zakon4.rada.gov.ua/laws/show/1448-97-%D0%BF.

[14] Про затвердження Положення про Державну виконавчу службу України : Указ Президента України від 6 квітня 2011 року № 385/2011. URL.: http : // www.president.gov.ua/ documents/13356.html.

Individuals – Entrepreneurs and Public Formations and the Automated System of Enforcement Proceedings of 24.01.2017 No. 173/5; On approval of the Regulation on the automated system of enforcement proceedings No. 2432/5 of 05.08.2016; On approval of the Special requirements for the level of professional competence of state executives and heads of bodies of state executive service of October 21, 2016 No. 3005/5.

The clarifications of the Ministry of Justice of Ukraine, such as on enforcement of administrative offenses, play an important role; methodological recommendations in the field of enforcement proceedings: Methodical recommendations on state registration of ownership of real estate objects based on court decisions; Guidelines for entities entitled to obtain information from the Register of Real Estate Ownership; Guidelines on the definition of immovable property located on land plots, the ownership of which is subject to state registration; Explanation of the SES Department: on enforcement of decisions on recovery from debtor banks in case of appointment of temporary administration dated 19.05.2008 № 25-32/5; on the transfer of deducted amounts from 15.06.2008 № 5804-0-26-09-25; on the execution of writs of execution of compensation for losses caused by crime of April 16, 2009 No. 3308-0-26-09-25; on the establishment of a moratorium on the alienation of premises and property of mass media offices of 10.03.2009 No. 2115-0-4-09-25; on involvement of the witnesses in the enforcement actions dated 23.02.2009 № 25-32/175; on Budget Classification Codes 28.01.2009 № 25-32/121; on the transfer of penalties of January 29, 2009 No. 14666-0-32-08-25; on the sale of property by specialized organizations 26.02.2009 № 25-32/188, etc.

The above extensive system of normative legal acts regulating the activity of the state executive service shows that these normative acts are disparate in nature and deprive not only the specialist but also the professional to have a complete understanding of the process of implementation of decisions. We consider it necessary to codify the existing legislation governing enforcement proceedings and to implement the Code of Enforcement Proceedings, which provides for a separate section on the regulation of the legal status of the state executive service. The legal history we consider, the progressive international legal experience testify to a new leak in the history of domestic legislation governing enforcement proceedings, the formation of a mixed system of enforcement of decisions and the formation of a new concept of reform of the state executive service in Ukraine.

CONCLUSIONS

Elements of the execution procedure mode are: the purpose of the establishment is timely, complete and impartial fulfillment of decisions; the object of regulation – the social relations that arise in the process of fulfillment of decisions; the mechanism of legal influence, which consists of both legal (norms of law, legal facts, acts of implementation, etc.) and non-legal (legal consciousness, legal culture, legal precedents, principles, etc.) means; a special legal toolkit for ensuring the administrative and legal regime. In our view, executive proceedings, being part of the executive process, have similar elements in their structure, however, taking into account the adjustment of the purpose, which is narrowed down to timely, complete and impartial fulfillment of decisions in a particular executive case. Signs of the mechanism of enforcement of decisions are: its content are legal means of influence; the object of influence is the conduct of the collector, the debtor, the public or private executor, other participants in the enforcement proceedings and other entities with which they interact, which is determined by the complex of their rights and responsibilities; the sphere of implementation is the public relations that are formed in the fulfillment of decisions of the authorized bodies; purpose – timely, complete and impartial implementation of specific decisions; has manifestations of static on a set of elements of system and dynamic realization of their content; its main elements are legal rules; legal facts; information environment; purpose and tasks; principles; subjects entering into the relationship, their subjective rights and legal obligations; objects that are subject to enforcement actions; enforcement cases, enforcement documents; means of enforcement. The civil service regime in SES bodies is a type of administrative and legal regime of public service in Ukraine and has certain features: it is regulated by the rules of both administrative and labor law; the bureaucrats are state enforcers; contains increased demands on the intellectual, moral, cultural, professional and business qualities of the subjects of the regime.

SUMMARY

The article deals with theoretical substantiation of the place of enforcement proceedings in the modern system of law of Ukraine and the functions of the State Executive Service for the protection of rights of citizens and legal entities, as well as the interests of the country. The author has revealed causes of problem situations in executive proceedings and has proposed complex ways of their solution, which are

based on the structure of the modern State Executive Service, creation of theoretical bases of executive proceedings and introduction of appropriate amendments in the current legislation. The system and structure of the State Executive Service have been outlined. The principles, functions and powers of the state executive service in Ukraine have been clarified. Functional peculiarities of administrative activity of bodies of state executive service have been established. The content of the administrative and legal status of the state executor in the conditions of the mixed system of execution of judgements has been revealed. The content and peculiarities of information support of the activity of the state executive service in Ukraine have been studied. The legal bases of interaction of the State Executive Service in Ukraine with participants of public and private law have been defined. Theoretical approaches to determining the essence of control over the activity of state executive service bodies in Ukraine and its employees have been highlighted.

REFERENCES

1. Великий тлумачний словник сучасної української мови / уклад, і голов. ред. В.Т. Бусел. Київ : Перун, 2003. 1440 с.

2. Авторгов А. Державна виконавча служба – псевдореформа та реформа. *Юридична газета*. 2005. № 23(59).

3. Адміністративне право України : підручник / Ю.П. Битяк, В.М. Паращук, О.В. Дьяченко та ін. ; за ред. Ю.П. Битяка. Київ : Юрінком Інтер, 2005. 544 с.

4. Греца Я.В. Правовий механізм реалізації та захисту прав і законних інтересів суб'єктів податкових правовідносин : автореф. дис. на здобуття наукового ступ. канд. юрид. наук: 12.00.07; Ін-т законодавства Верховної Ради України. Київ, 2006. 20 с.

5. Конопльов В.В. Організаційно–правовий механізм підготовки та прийняття управлінських рішень в адміністративній діяльності органів внутрішніх справ : автореф. дис... д–ра юрид. наук: 12.00.07; Харківськ. нац. ун–т внутр. справ. Харків, 2006. 32 с.

6. Негодченко О.В. Забезпечення прав і свобод людини органами внутрішніх справ : організаційно-правові засади : автореф. дис. … д-ра. юрид. наук : 12.00.07 ; Нац. ун-т внутр. справ. Харків, 2004. 39 с.

7. Про виконавче провадження : Закон України від 2 червня 2016 року № 1404-VIII. Урядовий кур’єр від 20.07.2016. № 134.

8. Об исполнительном производстве : Закон Российской Федерации от 02.10.2007 г., № 229-ФЗ. URL.: http://www.fssprus.ru/law7.

9. Про гарантії держави щодо виконання судових рішень : Закон України від 5 червня 2012 року № 4901-VI. Голос України від 27.06.2012. № 117.

10. Про заходи щодо реалізації Закону України «Про виконання рішень та застосування практики Європейського суду з прав людини» : Постанова Кабінету Міністрів України від 31.05.2006 р. Офіційний вісник України. 2006. № 22.

11. Про введення мораторію на примусову реалізацію майна : Закон України від 29 листопада 2001 року № 2864-III. URL.: http://zakon3.rada.gov.ua/laws/show/2864-14.

12. Про затвердження Положення про Міністерство юстиції України : Постанова Кабінету Міністрів України від 2 липня 2014 р. № 228. Урядовий кур'єр від 11.07.2014. № 123.

13. Про затвердження Положення про порядок проведення аукціонів (публічних торгів) з реалізації заставленого майна : Постанова Кабінету Міністрів України від 22 грудня 1997 р. № 1448. URL.: http://zakon4.rada.gov.ua/laws/show/1448-97-%D0%BF.

14. Про затвердження Положення про Державну виконавчу службу України : Указ Президента України від 6 квітня 2011 року № 385/2011. URL.: http: // www.president.gov.ua/ documents/13356.html.

Information about the authors:

Makushev P. V.
Doctor of Law, Professor, Dean of the Law Faculty
of the Dnipro Humanitarian University
35, Yermolovoi str., Dnipro, 49033, Ukraine

Lemekha R. I.
Candidate of Law,
Associate Professor at the Department of Medical Law
of the Faculty of Postgraduate Education
of the Lviv National Medical University
named after Danylo Halytsky
69, Pekarska str., Lviv, 79010, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/159-175

PROBLEMS OF LEGAL REGULATION OF RELATIONS ON THE INTERNET

Mazurenko S. V.

INTRODUCTION

In today's context, there is a rapid growth of the global and Ukrainian segment of the global Internet information network, both in quantitative (number of operators and users) and qualitative (expansion of the range of services provided) in relation.

In Ukraine, the formation of a separate branch of legislation governing Internet relations is only just beginning. Existing jurisprudence relating to the use of the Internet cannot be called great, as long as the law enforcement activity of public authorities in this area is low.

Similar to the legal systems of other countries, including the United States and European Union countries, Ukrainian special legislation on the Internet is at its very beginning. However, it is largely possible to speak about the absence of an effective regulatory framework in this area, despite the existence of general rules of constitutional, civil and administrative law and a number of other legislative acts. The reasons for this are both insufficient theoretical elaboration of some fundamental regulations and subjective precautionary treatment of the Internet by law enforcement agencies.

However, the lack of legislation on the Internet, as well as the possibility of their effective application, adversely affects the development of public relations (for example, in the area of citizens' rights to information, prevention of dissemination of information that affects the honor and dignity of citizens, protection of intellectual property objects property, in other spheres of social and political life) not only in Ukraine but also abroad.

In this regard, the urgency of the issues chosen is that, having appeared more than fifty years ago, the Internet is still considered a "white spot" from the point of view of law. The constant increase in the number of subscribers, the increasing importance of information exchange through the Network, attract the attention of the public to the problems of regulation, elaboration of rules of fair, legal functioning of the Internet from the state side.

Today it is difficult to imagine the existence of human civilization without a world wide web. The Internet is the largest repository of publicly available data, the most up-to-date media, the territory of many e-shops, interest clubs and more.

The Internet has become a virtual space in which millions of network users enter into different relationships every day, unaware of it. The types of social relationships that emerge and develop on the Internet are as diverse as they are in the ordinary physical world. This situation makes it necessary to pay more attention to Internet relations.

Today in the scientific literature it is quite common to find the terms "Internet relations", "Internet legal relations", "legal relations on the Internet", "legal relations in the electronic sphere", "information legal relations on the Internet", etc. We believe that the most appropriate term is the term "Internet relations".

Public relations arising from the use of global computer networks are special informational relations aimed at organizing the movement of information in the society. Internet relations are conditioned by the information nature of communications in the information society, which can only be accessed through a computer connected to a computer network. The peculiarity of these relationships is also the presence of a technical component, information content, special subject composition. Internet relations are public relations that exist in electronic and digital form in cyberspace. It should also be noted that the subjects of these relations may be located in different countries, and their activities are governed by the laws of different countries. Internet relationships cannot exist without the use of information and telecommunications technologies and networks. These relationships are informative, that is, they are about information on the Internet.

1. The problem of identifying users on the Internet

With the development of the Internet and Internet relations, one of the most pressing problems has been the problem of identifying users on the Internet. This problem is multidimensional and has many manifestations.

The task of user identification does not lose its relevance due to the constant race of information security technologies and technologies of unauthorized access to information. The urgency of this task for the Internet is increasing through the use of unsecured data channels.

First of all, it should be noted that the issue of identification already arises at the stage of connection to the Internet. It is associated with a number of basic terms that characterize network relationships at the technical level and subsequently flow into the legal plane: account (an account usually contains the information required to identify the user when connected to the system, authorization and accounting information); domain (a means of identifying a resource area on the Internet); domain name (the name that identifies the computer or computers on the Internet); identifier (a unique combination of a user name and password to ensure his / her identification process); identification (matching the recognized object to its image) and the like[1].

The problem of identification on the Internet is not only a technical dimension, but also a social and legal dimension. D. Afanasiev focuses on the social dimension of such identification. According to the author with the spread of broadband networks and the advent of Web 2.0 technology, which is a modern concept of Internet development on the basis of collective content creation by any user of the network, the number of Internet users has increased and the software supporting group interactions has increased. The emergence of social networks on the Internet – that is, communities of people related to a common interest or business existing on the Internet, using specialized software services, websites, and portals to engage people in a group or group. Accordingly, there was a need to identify users of social networks[2]. However, without going into the specifics of such identification, it can be argued that the scientist speaks about the various social roles that users of the Internet and social networks can acquire (for example, a man can portray himself as a woman, a humane person chooses a mask of a cruel being, etc.). However, for the law, the complexities are quite different – the problem becomes relevant only when the rights of others or the law are violated. For example, when an account was stolen on a social network and the information is being distributed on behalf of that user that violates the rights of others. However, the owner (real) of this account does not know about it.

[1] Базові поняття і терміни веб-технологій / [А.В. Кільченко, О.І. Поповський, О.В. Тебенко, О.В. Тебенко, Н.М. Матросова]; Упорядник: Кільченко А.В. – К. : ІІТЗН НАПН України, 2014. – С. 21.

[2] Афанасьєв Д. Особливості ідентифікації суб'єкта інтернет-мережевих спільнот / Д. Афанасьєв // Науковий вісник Ужгородського національного університету. Серія : Педагогіка. Соціальна робота. – 2012. – Вип. 24. – С. 16.

For example, an identification problem may arise in the event of a breach of a contract concluded via the Internet. Thus, according to S.M. Zhutova, today the questions of the possibility of identification of the parties to a contract concluded electronically remain unresolved. It is possible to determine that the contract signed by those persons who have identified themselves on the Internet is possible only by means of an electronic-digital signature, which in modern conditions can also be forged[3].

Particularly urgent problem of identification of users on the Internet becomes in case of copyright infringement. The relative anonymity of Internet users is twofold. On the one hand, such activity contributes in some way to copyright infringement and other infringements. On the other hand, the question of the anonymity of Internet users must be considered in the light of the principle of proportionality between intellectual property rights and the right to freedom of expression, the right to respect for privacy and family life. In addition, the anonymity of connections does not interfere with publicly useful activities (such as the legitimate distribution of works).

A.S. Ogarkov notes in this context that "the most common ways of controlling access are powerless against sufficiently experienced users who easily find methods of circumventing such systems. Moreover, there are special services to help users hack into these controls and access resources that are not accessible to them[4]".

K.A. Zerov claims that the process of identification of a person who has committed copyright infringement for works published on the Internet has been divided into three scientific stages in foreign scientific literature.

The first stage involves the right holder (his representative) acting to identify and collect IPs and other information that will help identify the offender. To determine and collect the IP address of a copyright infringer in the field of P2P networks, copyright holders use the following methods:

1. indirect identification of users, which relies on a set of data on the money returned from the torrent tracker;

2. The direct definition is to connect via torrent tracker to users who distribute certain files and then share files with them.

---

[3] Жутова С.М. Особливості укладання угод через мережу інтернет / С.М. Жутова // Молодий вчений. – 2017. – № 11. – С. 877.

[4] Огарков А.С. Примусова авторизація в мережі інтернет / А.С. Огарков // / Вісн. Дніпропетр. нац. ун-ту залізн. трансп. ім. акад. В. Лазаряна. – Дніпропетровськ, 2011. – Вип. 36. – С. 189.

The second stage is to match the IP address to the designated subscribers (users) of individual Internet intermediaries. For example, in 2010, the Law on Telecommunications was amended in Ukraine, in particular to Part 2 of Art. 39: "Operators, telecommunication providers shall store and provide information about the connection of their subscriber in the manner prescribed by law [5]".

The third stage consists in informing or forwarding the claims to the persons about their copyright infringement and the possibility of filing (or filing directly) against them. This stage is the most difficult because it requires two components to be proven, namely: to establish a connection between the person to whom a particular IP address is delegated and the violation; Proof that the IP address was actually used in unauthorized distribution of works[6].

An important practical problem of identification of the offender is indicated by N. Razigraev. This problem is related to the definition of defendant in online disputes[7].

Thus, according to paragraph 13 of the Information Letter of the Supreme Economic Court of Ukraine "On some issues of the practice of application by the economic courts of information legislation" of March 28, 2007 No. 01-8 / 184, information about the owner of the website may be required from the Limited Liability Company Hostmaster, which currently administers the domain name registration and registration system and the address of the Ukrainian segment of the Internet. Following the implementation of measures related to the delegation of administrative rights, these functions should be performed by the Association of Enterprises of the Ukrainian Network Information Center "(hereinafter referred to as" UMIC")[8].

---

[5] Про телекомунікації: Закон України від 18.11.2003 № 1280-IV // Відомості Верховної Ради України. – 2004. – № 12. – Ст. 155.

[6] Зеров К.О. Ідентифікація особи, що здійснила порушення авторських прав на твори, що розміщені в мережі інтернет за допомогою p2P – мереж / К.О. Зеров [Електронний ресурс]. – Режим доступу: https://www.pdaa.edu.ua/sites/default/files/node/2793/identyfikaciyapoltavazerov.pdf.

[7] Разиграєва Н. Сучасний стан та новели захисту прав у мережі Інтернет / Н. Разиграєва [Електронний ресурс]. – Режим доступу: https://blog.liga.net/user/nrazigraeva/article/22013.

[8] Про деякі питання практики застосування господарськими судами законодавства про інформацію: Інформаційний лист Вищого господарського суду України від 28 березня 2007 року № 01-8/184 [Електронний ресурс]. – Режим доступу: http://zakon.rada.gov.ua/laws/show/v_184600-07.

According to Article 56, paragraph 3 of the Law of Ukraine "On Telecommunications", the administration of the Internet address space in the UA domain is carried out by a non-governmental organization formed by self-governing organizations of Internet operators / providers and registered in accordance with international requirements[9].

According to the decree of the Cabinet of Ministers of Ukraine of July 22, 2003 No. 447-p "On domain administration". UA", authority to manage the address space of the Ukrainian segment of the Internet, maintenance and administration of the system registry and system of top-level domain names". UA" carried out by OP "UMIC"[10].

In practice, a person who believes that his or her rights have been violated attempts to obtain information on the domain name registrant (proper defendant) through the WHOIS service. However, such information is often hidden in accordance with the Law of Ukraine "On Personal Data Protection[11]". Also, such persons independently attempt to send appropriate requests to OP "UMIC", and in return may also receive information that the relevant data are hidden domain name registrant in accordance with the Law of Ukraine "On Protection of Personal Data".

Therefore, persons interested in filing a lawsuit apply to the court for a statement of evidence and a statement of precautionary measures (requiring evidence). In addition, the party has the right after filing a claim to request the seizure of evidence.

Even more difficult is the problem of proving a crime through the Internet. Thus, according to V.A. One of the problems that a law enforcement officer faces in investigating crimes committed through the Internet is identifying a computer user of a network from whom criminal activity (cybercrime) was committed. IP-based identification errors (until recently, accounting was the primary method of identification) consist of transmission errors and computer usage errors. For example, when users work through the root server, the entire subnet behind it will, in most cases, have a single IP address. On the other hand, when working through

[9] Про телекомунікації: Закон України від 18.11.2003 № 1280-IV // Відомості Верховної Ради України. – 2004. – № 12. – Ст. 155.

[10] Про адміністрування домену «.UA»: Розпорядження Кабінету Міністрів України від 22 липня 2003 року № 447-р [Електронний ресурс]. – Режим доступу: http://zakon.rada.gov.ua/laws/show/447-2003-%D1%80.

[11] Про захист персональних даних: Закон України від 01.06.2010№ 2297-VI // Відомості Верховної Ради України. – 2010. – № 34. – Ст. 481.

a dial-up connection, the user will receive a new IP address, etc., each time the connection is made[12].

The task of identifying a device is usually solved using unique codes such as MAC or IP addresses on Ethernet networks or IMEIs in GSM networks. However, using a unique code answers the same question or not, but does not tell the exact type of device and how it is used by a specific user. In addition to identifiers, it may be possible to use additional information that is required when processing indirect features, based on the information received from the sensors of the device and as a result of the software running on the device. In this case, it means determining the type of user activity according to global positioning and gyro systems, as well as applying dynamic and static biometrics, such as, vein drawing on the palm, fingerprint, iris, geometry of the hand or face, 3B- skull projection, keyboard handwriting, ear shape, voice and any other distinctive feature can serve to identify a person with a biometric system.

The notion of the imprint of the device should be used in relation to the information remaining on the servers and other devices of registration, and the concept of the imprint of the person in the device to the information that indirectly characterizes the person by the information remaining in the device used by them. An example of a device's fingerprint is the entry in the server's log file, and the person's fingerprint information about the programs used, the time and duration of the programs, a set of used files and other resources.

A special place among the software in terms of the task of identifying the device is the browser, as a program through which the user accesses the majority of Internet-cookies. Cookies are used to identify cookies and installed fonts and plugins. When solving the problem of identifying using indirect attributes, the speed of changing the configurations of the hardware and software used by the user, as well as the biological rhythms to which the person is predisposed, should be considered. Dynamic human biometric characteristics change within six months. Static biometric features persist throughout life.

A file system footprint refers to information about the structure of the file system, not to obtain a mathematical convolution of data in the file system. Particular attention is paid to files older than a month that have not

[12] Світличний В.А. Від ідентифікації комп’ютера до ідентифікації користувача у мережі інтернет / В.А. Світличний // Актуальні питання діяльності правоохоронних органів у сфері протидії кіберзлочинності. – 2014. – № 3. – С. 151.

been modified during this time. They have sufficient stability to become an identifying feature for a while. It is suggested to use the file name, location, size, creation date and editing date to create a file system imprint.

User information consists of: days of the week, time of use, duration of software activity; recurring typographical errors, parasite words, typing errors; mouse or keyboard events.

The ultimate goal of the study of the task of identifying humans and devices is to build a recognizable, capable of satisfactorily accurate identification. The peculiarity of this device is a constant set of input values, which should be reflected in its internal structure.

Thus, one of the most difficult problems in Internet law is the problem of identifying a user of the Internet. It is of paramount importance when it comes to identifying the offender (not the place where the offense was committed). This identification alone is not enough through the use of an IP address, so additional evidence must be used to establish a causal link between the person to whom a particular IP address is delegated and the infringement.

2. The problem of legal liability of Internet service providers

Since the introduction of broadband Internet in Ukraine, the number of providers providing access to the network has increased hundreds of times. Each user needs a computer, a browser (web browser) and an Internet service provider to connect to the Internet.

An Internet service provider is a company that provides Internet access or an Internet service provider. One of the biggest problems with internet law is one of the biggest problems with internet law – the problem of liability. This responsibility can be diverse. [13]

For example, civil liability arises in the event of a breach of the Internet Service Provider Agreement. For example, SO Yemelyanchyk provides such a definition of liability in an Internet service contract as an obligation to pay a penalty or indemnification of damages and non-pecuniary moral damage or other measures of liability provided for by the contract or civil law, which are entrusted to the parties by Internet service contract for failure or improper fulfillment of its terms[14].

[13] Базові поняття і терміни веб-технологій / [А.В. Кільченко, О.І. Поповський, О.В. Тебенко, О.В. Тебенко, Н.М. Матросова]; Упорядник: Кільченко А.В. – К. : ІІТЗН НАПН України, 2014. – С. 25.

[14] Ємельянчик С.О. Договірне регулювання наданя послуг доступу в Інтернет: автореф. на здобуття наук. ступеня канд. юрид. наук: спец.12.00.03 / Сергій Олександрович Ємельянчик. – Х., 2013. – С. 13.

However, even here the problem is with the types of providers, because the provider can be a regular intermediary – which only provides access to the network, including end-user Internet connection, and can be a provider of information resources belonging to a third party and making them accessible (hosting – provider, content – provider). In addition, there is a so-called cache provider, which provides automatic interim temporary storage of material on the system or the Internet, controlled or managed by the provider[15].

Thus, the Internet access provider (Internet Service Provider) provides a technical base for accessing the Internet (cables, equipment, etc.), that is, creates a data transmission environment, and content providers provide the information content of the Internet (use content that contains objects copyright and related rights). The ISPs have nothing to do with the content process of filling electronic resources online and cannot monitor the extremely large amount of content generated by content providers.

The Law on Telecommunications of Ukraine uses the following terms: a telecommunications provider – an entity that has the right to carry out activities in the field of telecommunications without the right to maintain and operate telecommunications networks and to provide telecommunication channels. The right to such service is granted to a telecommunications operator – an entity that is entitled to carry out activities in the field of telecommunications with the right to maintain and operate telecommunications networks.

The question arises – in which case the provider – the owner of the information resource and information system is responsible for the actions of the persons who used the resources and systems specified?

There are three main approaches to this:

1. the provider is responsible for all user actions, regardless of whether he or she has the right to have knowledge of the actions taken,

2. the provider is not responsible for the users, if he fulfills certain conditions related to the nature of the provision of services and interaction with the subjects of information exchange and persons whose rights are violated by the actions of the users,

3. the provider is not responsible for user actions.

[15] Зеров К.О. Особливості відповідальності інтернет-посередників за порушення авторських прав на твори, розміщені в мережі Інтернет [Електронний ресурс]. – Режим доступу: http://aphd.ua/publication-159/.

According to T.V. Konnov, there are three types of responsibility of Internet providers in the world practice:

1. Strict liability for which the provider is responsible for all user actions, regardless of whether or not he knew of their actions. This approach is mostly applied in countries with authoritarian regimes where the Internet is subject to severe censorship (China, Belarus). An interesting aspect of such responsibility is the need to register (notarize) the creation of sites, the provision of services. A similar but somewhat different approach has been applied in the UK, which, according to the Defamation Bill, provides for providers to commit themselves to "effective control", and when they undertake such a commitment, they are strictly liability for copyright infringement by third parties. The disadvantages of such responsibility are the positive responsibility that the Internet service provider has to check the data with which it deals, and given the speed and volume of data transmission, it is almost impossible. In addition, it violates the privacy of individuals, and may be contrary to the basic principles of the rule of law, to be a tool for imposing censorship.

2. Differentiated liability for which providers are responsible for copyright infringement by third parties only if, after receiving information (complaint / appeal) about such infringement, within the timeframe specified by the law, they have not taken measures to remove such information from such resources. This approach is practiced, for example, in Sweden (Act on Responsibility for Electroinic Bulletin Boards). The problem with the use of such liability is that, at the request of individuals, providers, as practice shows, do not check completely remove legal content, not wanting to be responsible. In addition, the question arises as to how the author of a work (copyright object) can track every infringement that occurs on the Internet. And how much more realistic is it to protect a person's rights when it takes an average of seven days to delete a person's copyright infringement over which that information can be copied and misused many times over?

3. Establishing immunities for providers (essentially not a liability). When providers operate as "free harbors" according to OCILLA (The On-Line Copyright Infringement Liability Limitation Act). They are recognized as such provided that the information is not provided on their own initiative. And they are liable only in the aggregate of the following conditions: if they have received significant benefits from copyright infringement by third parties (significant benefit is an appraisal concept and is determined by the court in each case); if the providers knew, or

could have known about the commission of such violation (here, in essence, we again have the so-called "responsibility without fault", which places on the person). These categories are purely evaluative and often lead to abuse, given that providers are solely responsible for copyright infringement, such rules can be misused to protect their reputation, honor, dignity, etc. (in most countries of the world) the provision that any negative information is considered to be inaccurate unless the person who refers to it proves otherwise – is not valid). In particular, this type of liability can be effective only in countries with a precedent system, since the legislative enabling of such liability allows the courts to evaluate each individual case and, depending on the circumstances, determine its compliance with the criteria of liability[16].

In Ukraine, changes were recently made to Art. 40 of the Law on Telecommunications. According to her operator, the telecommunications provider bears the following property liability to consumers for failure to provide or improper provision of telecommunication services:

1) for not providing paid telecommunication services or providing them in the amount less than paid;

2) for the delay of transmission of the telegram, which led to its non-delivery or late delivery;

3) for unreasonable shutdown of final equipment;

4). for unreasonable reduction or change of the list of services;

5) in other cases – in the amounts stipulated by the contract for the provision of telecommunication services;

6) in case of failure within one day from the fixed moment of submission by the subscriber of a claim for damage to the telecommunication network, which made it impossible for the consumer to access the service or reduced to unacceptable values the quality of the telecommunication service, the subscription fee for the entire period of damage is not charged, and the telecommunication operator damage within five days from the fixed moment of submission by the subscriber of the relevant application pays the consumer a fine of 25 percent of the daily subscription fee for each day of exceeding this term, but not more than three months[17].

---

[16] Коннова Т. Відповідальність інтернет-провайдерів за порушення авторських прав третіми особами / Т. Кононова // Актуальні проблеми міжнародних відносин. – 2011. – Випуск 98. – С. 175.

[17] Про телекомунікації: Закон України від 18.11.2003 № 1280-IV // Відомості Верховної Ради України. – 2004. – № 12. – Ст. 155.

O. Matskevich draws attention to the problem of legal liability of providers for infringement of copyright and related rights on the Internet. The scientist draws attention to the fact that in determining the responsibility of the provider, one must proceed from the subjective composition of the offense:

1. violation committed by the provider;

2. The violation is committed by a user who has been granted access to the network.

In the first case, consider the following:

the violation is intentionally committed, and therefore the provider itself becomes the offender and must bear the statutory liability; violation committed accidentally (technical failure, error). In such a case, it may be compensation or other compensation for the damage caused by the contract. [18]

In the second case it is necessary to proceed from the following:

the provider was unaware of the breach and therefore cannot be held responsible for the commission of the other person; the provider knew about the violation but did not correct it. In determining the liability in this case, the existence or absence of a useful purpose and form of guilt should be considered.

If information that is detrimental to the business reputation of a business entity has been distributed on the Internet site (even if not registered as a media) and the court finds that such information is untrue, then according to the court decision, it must be denied on the same site in accordance with the requirements of the press law.

If the relevant information is disseminated in the form of messages not by the owner of the site, which is freely accessible, but by third parties, who are anonymous, then responsibility for such dissemination of information and damage to the business reputation of the entity has it is the owner of the site who is responsible for the fact that his activity created technological opportunities and conditions for dissemination of negative information that is untrue and violates the rights and legitimate interests of the person.

Due to the fact that the legislation does not clearly resolve the issue, the practice comes to the opposite conclusion. This situation leads to the

[18] Мацкевич О. Загальні підходи до визначення юридичної відповідальності провайдерів за порушення авторських і суміжних прав у мережі Інтернет / О. Мацкевич. // Теорія і практика інтелектуальної власності. – 2012. – №1. – С. 57.

need for a contractual settlement of issues of liability of the provider. However, contracts often state that the access provider is not responsible for the content transmitted by its networks and does not control the transmitted information; the access provider has the right to disconnect the subscriber from the network in cases where the provision of services may endanger the security of the network and/or third parties, or in the case of unlawful actions by the subscriber, as well as in case of non-compliance with the contract or violation of the current legislation of Ukraine. On the other hand, there is a problem with whether providers have the power to prevent an offense. In other words, whether there are grounds for granting the provider the right to disconnect the user, provided that the terms of the contract are violated or the grounds for such actions may be a court decision. Not resolved at the legislative level is the ability of the provider to restrict user access to the network in the case of receiving applications from third parties or in the case of self-detection of violations, as well as what should be understood as access restrictions.

Thus, the problem of provider liability is related to variations of this category of subjects of Internet law. Today there are three approaches to such responsibility: the provider is responsible for all user actions; the provider shall not be liable for the users if it fulfills certain conditions related to the nature of the provision of services and interaction with the subjects of information exchange and persons whose rights are violated by the users; the provider is not responsible for user actions. We believe that the Internet Service Provider, as a company providing access to the Internet, should not be responsible for the content of information contained on the Internet. In doing so, he is legally responsible for the quality of network access. Another situation is with the provider who owns the hosting, Internet resource. In Ukraine it is necessary to use the experience of foreign countries, where the responsibility of the provider is divided into strict, differentiated and immunities.

CONCLUSIONS

The fastest growing industries in the world include electronics, communications, communications, electronic media. This process is so rapid that sometimes the rules of law do not catch up with it. In particular, the legal relations between the processes of human interaction through electronic means of communication, when many actions are carried out not in the real world but in the virtual, are insufficiently developed. Very

often, these actions are outside the legal field: it can be argued that relationships on the Internet today are characterized by a set of loopholes in jurisprudence.

When transferring existing formed relationships governed by the rules of law to the Internet, they are transformed in such a way that the rules that governed them remain, at best, unnecessary due to the impossibility of their practical use.

The Internet needs specially designed legal frameworks that take into account the specifics of real legal relationships in the virtual world. The rules governing Internet relations, owing to the almost ten-year advance of the mass introduction of the Internet into everyday life, have already been largely drafted, however, attempts to directly transpose Western legal norms are inappropriate, because Western common law norms differ greatly from national norms. However, it is worth noting that the Ukrainian rulemaking in this area is quite active, a new kind of law has emerged – information law, several journals are published, theses are defended.

Today, there is no unity of scholars in defining the Internet. It is possible to distinguish a purely technical approach, according to which the Internet is a collection of networks; an information approach whereby the Internet is an information space, and others. We believe that today there is a need to integrate different approaches to the Internet and formulate a comprehensive definition of it. When doing so, it is imperative to consider its legal nature. The attributes of the Internet include mass, accessibility, openness, communicativeness, out-of-space, timelessness, regulatory and more.

Under internet relationships, we suggest understanding the relationships that are associated with the operation of the Internet. Internet – Legal relationships can be defined as public relations that are related to the functioning of the Internet, and members of which are linked by mutual legal rights and obligations protected by the state. The characteristics of Internet relations include the following: digital form, the distance of the subjects, the presence of entities that provide organizational and technical possibility of relations, the use of software, technical standards and protocols, self-regulation, technological complexity, technical, cultural and educational qualification. The subjects of Internet relations are Internet access service providers, information providers, users. The objects of Internet relations are any phenomena that are influenced by the subjects on the Internet. At present, there is no unity in isolating the

varieties of Internet relations. Subjects and objects can be selected as criteria. Highlight the general; organizational (managerial); informational; subject internet relationships.

SUMMARY

The article deals with the peculiarities of legal regulations on the Internet. One of the most difficult problems in Internet law is the problem of identifying a user of the Internet.

It is of paramount importance when it comes to identifying the offender (not the place where the offense was committed). In this case, identifying solely through the use of an IP address is not enough, so additional evidence must be used) to establish a causal link between the person to whom a particular IP address is delegated and the violation of rights.

Internet Service Provider have to do with variations of this category of Internet law entities. Today there are three approaches to such responsibility: the provider is responsible for all user actions; the provider shall not be liable for the users if it fulfills certain conditions related to the nature of the provision of services and interaction with the subjects of information exchange and persons whose rights are violated by the users; the provider is not responsible for user actions.

The Internet Service Provider, as a company providing access to the Internet, should not be held responsible for the content of information contained on the Internet. In doing so, he is legally responsible for the quality of network access. Another situation is with the provider who owns the hosting, Internet resource. In Ukraine it is necessary to use the experience of foreign countries, where the responsibility of the provider is divided into strict, differentiated and immunities.

REFERENCES

1. Базові поняття і терміни веб-технологій / [А.В. Кільченко, О.І. Поповський, О.В. Тебенко, О.В. Тебенко, Н.М. Матросова]; Упорядник: Кільченко А.В. – К. : ІІТЗН НАПН України, 2014. С. 21.

2. Афанасьєв Д. Особливості ідентифікації суб’єкта інтернет-мережевих спільнот // Науковий вісник Ужгородського національного університету. Серія : Педагогіка. Соціальна робота. 2012. Вип. 24. С. 16

3. Жутова С.М. Особливості укладання угод через мережу інтернет // Молодий вчений. 2017. № 11. С. 877.

4. Огарков А.С. Примусова авторизація в мережі інтернет // Вісн. Дніпропетр. нац. ун-ту залізн. трансп. ім. акад. В. Лазаряна. – Дніпропетровськ, 2011. Вип. 36. С. 189.

5. Про телекомунікації: Закон України від 18.11.2003 № 1280-IV // Відомості Верховної Ради України. 2004. № 12. Ст. 155.

6. Зеров К.О. Ідентифікація особи, що здійснила порушення авторських прав на твори, що розміщені в мережі інтернет за допомогою p2P – мереж / https://www.pdaa.edu.ua/sites/default/files/node/2793/identyfikaciyapoltavazerov.pdf

7. Разиграєва Н. Сучасний стан та новели захисту прав у мережі Інтернет / https://blog.liga.net/user/nrazigraeva/article/22013.

8. Про деякі питання практики застосування господарськими судами законодавства про інформацію: Інформаційний лист Вищого господарського суду України від 28 березня 2007 року № 01-8/184 // http://zakon.rada.gov.ua/laws/show/v_184600-07.

9. Про телекомунікації: Закон України від 18.11.2003 № 1280-IV // Відомості Верховної Ради України. 2004. № 12. Ст. 155.

10. Про адміністрування домену «.UA»: Розпорядження Кабінету Міністрів України від 22 липня 2003 року № 447-р // http://zakon.rada.gov.ua/laws/show/447-2003-%D1%80.

11. Про захист персональних даних: Закон України від 01.06.2010№ 2297-VI // Відомості Верховної Ради України. 2010. № 34. Ст. 481.

12. Світличний В.А. Від ідентифікації комп'ютера до ідентифікації користувача у мережі інтернет // Актуальні питання діяльності правоохоронних органів у сфері протидії кіберзлочинності. 2014. № 3. С. 151.

13. Базові поняття і терміни веб-технологій / [А.В. Кільченко, О.І. Поповський, О.В. Тебенко, О.В. Тебенко, Н.М. Матросова]; Упорядник: Кільченко А.В. – К. : ІІТЗН НАПН України, 2014. С. 25.

14. Ємельянчик С.О. Договірне регулювання наданя послуг доступу в Інтернет: автореф. на здобуття наук. ступеня канд. юрид. наук: спец.12.00.03 / Сергій Олександрович Ємельянчик. Х., 2013. С. 13.

15. Зеров К.О. Особливості відповідальності інтернет-посередників за порушення авторських прав на твори, розміщені в мережі Інтернет // http://aphd.ua/publication-159.

16. Коннова Т. Відповідальність інтернет-провайдерів за порушення авторських прав третіми особами // Актуальні проблеми міжнародних відносин. 2011. Випуск 98. С. 175.

17. Про телекомунікації: Закон України від 18.11.2003 № 1280-IV // Відомості Верховної Ради України. 2004. № 12. Ст. 155.

18. Мацкевич О. Загальні підходи до визначення юридичної відповідальності провайдерів за порушення авторських і суміжних прав у мережі Інтернет // Теорія і практика інтелектуальної власності. 2012. № 1. С. 57.

Information about the author:
Mazurenko S. V.
PhD in Law, Associated Professor
at the Department of Intellectual Property Law,
National University “Odessa Law Academy”
2, Academychna str., Odessa, 65009, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/176-194

PROBLEMS OF REFORMING UKRAINIAN FAMILY LAW IN THE CONTEXT OF EUROPEAN INTEGRATION AND RECODIFICATION OF THE CIVIL CODE OF UKRAINE

Mendzhul M. V.

INTRODUCTION

After execution of the Association Agreement with the European Union, Ukraine has committed to adjust its national legislation in accordance with the rules of the European Union. Therefore, one of the areas of reform – namely family law – is expecting its reform in order to comply with European standards. Moreover, as a result of the European integration of UKraine, the process of modernization of the Civil Code of Ukraine has been launched through its recodification. In this research we have analyzed the impact of the recodification of the Civil Code of Ukraine and the processes of unification of the European principles of family law on improving the Family Code of Ukraine.

1. Recodification of the Civil Code of Ukraine and the development of family law

Five years ago scholars mostly justified the need to modernize the Civil Code of Ukraine. At the moment they have intensified research on the problems of its recodification. This is confirmed by a series of recent articles by leading Ukraine scholars and presentations on the problems of recodification at the panel discussion ("Updating the Civil Law of Ukraine: Towards a Europeanization of Private Law") with the participation of not only scholars but also judges of the Constitutional Court of Ukraine and the Supreme Court.[1]

The question is what is recodification? In his research, Muzyka L. A. drew attention to the fact that foreign scholars use the term "codification"

[1] На ІІІ Харківському міжнародному юридичному форумі обговорили оновлення цивільного законодавства та необхідність європеїзації приватного права. URL: https://legalforum.nlu.edu.ua/news/na-iii-kharkivskomu-mizhnarodnomu-iurydychnomu-forumi-obhovoryly-onovlennia-tsyvilnoho-zakonodavstva-ta-neobkhidnist-ievropeizatsii-pryvatnoho-prava/.

to use "recodification", and the latter means both "re-codification" and "reverse" of codification.[2] In particular, such a term was used in the scientific article by Hondius E.H. back in 1982.[3] Dovgert A. uses the term "recodification" to mean "systemic substantive structural and substantive innovations of the current code (or group of codes and laws), without creating a new one"[4].

According to Muzyka L. A. recodification should be understood as the legislative activity that substantially alters the structure and scope of legal regulation included into the code (or the group of codes) and accounts the practice of their application. It can also be understood as changing (including amendment or removal) of the fundamental and most essential provisions in the code. And the scholar also proposes the term 'decodification', which means the legislative activity after which the Code is no more legally binding as a law.[5] We agree with this position, so not every subsequent codification will be considered a recodification. In the dissertation research Sirko M.V. justifies that in the 80-s of the XX century there was actually a recodification of civil law in the European states[6].

The general conclusion of the panel discussion "Renewal of the Civil Law of Ukraine: Towards a Europeanization of Private Law" is that not just the modernization of the rules of civil law is necessary, but the whole recodification of the Civil Code of Ukraine, including due to the fact that it was adopted more than 15 years ago, and some of its legal provisions do not reflect the current needs for regulating social relations. During the recodification, scholars propose to identify, which norms are effective and efficient in regulating civil relations, and which, on the contrary, need

[2] Музика Л. А. Що є актуальним для сучасного цивільного законодавства України: модернізація, системне оновлення чи рекодифікація? Науковий вісник Львівського державного університету внутрішніх справ. 2015. Вип. 1. С. 147.

[3] Hondius E.H. Recodification of the Law in the Netherlands: The New Civil Code experience. Netherlands International Law Review. Volume 29, Issue 3. December 1982, pp. 348-367.

[4] Довгерт Анатолій. Рекодифікація Цивільного кодексу України: основні чинники і передумови для старту. Право України. 2019. № 1: Національна доктрина приватного права: основні методологічні засади. С. 27.

[5] Музика Л. А. Що є актуальним для сучасного цивільного законодавства України: модернізація, системне оновлення чи рекодифікація? Науковий вісник Львівського державного університету внутрішніх справ. 2015. Вип. 1. С. 149.

[6] Сирко М.В. Цивільний кодекс Франції 1804 року та його вплив на цивільне законодавство країн Європи (на прикладі Польщі та Румунії). Дисертація на здобуття наукового ступеня кандидата юридичних наук по спец.: 12.00.01 Львів, 2015. С. 29.

improvement, including in accordance with European and international standards. We can agree with S. Pohribnij's conclusion that the criterion of both efficiency and effectiveness of the norms is the relevant case law[7]. Muzyka L. believes that the following steps should be taken in the codification of civil law: doctrine → lawmaking → practice of application[8]. In our opinion, when it comes to recodification, the scheme should look in the following way: practice of application → doctrine → lawmaking. That is why the recodification process should include a thorough analysis of the practice of application of legal rules, in particular judicial practice. After such analysis it is necessary to establish at the doctrinal level the position about the effectiveness and efficiency of one set of legal rules, and accordingly about the gaps in legislation and about inefficiency of other legal rules, and the development of appropriate proposals to amend the code.

Dovgert A. notes that the process of recodification of the Civil Code of Ukraine should take place under the "European scenario", taking into account the transformation of society, the formation of an efficient market economy, which the scholar considers as a component of civil society, as well as the European integration of society[9].

Illarionov O. believes that possible recodification of the Civil Code of Ukraine will lead to decodification of commercial and family law.[10] We do not agree with this view and believe that the basis of recodification of the Family Code of Ukraine is precisely the European integration processes of Ukraine, as well as the need to align family law with the European principles of family law.

In the history of the development of private law of an independent Ukraine, the question of the expediency of the Family Code has already been discussed, in particular during the drafting of the Civil Code. For example, the Civil Code Working Group wanted to unite all private law into one civil code and the family law should have become an integral

[7] Про рекодифікацію цивільного права, медіацію та мирову угоду говорили судді КЦС ВС на юридичному форумі у Харкові. URL: https://supreme.court.gov.ua/supreme/pres-centr/news/793713/

[8] Музика Л. Кодифікація та декодифікація: проблемні питання. Jurnalul juridic național: teorie și practică. Iunie 2015. С. 55.

[9] Довгерт Анатолій. Рекодифікація Цивільного кодексу України: основні чинники і передумови для старту. Право України. Національна доктрина приватного права: основні методологічні засади. 2019. № 1. С. 30.

[10] Ілларіонов О. Рекодифікація = декодифікація? URL: https://blog.liga.net/user/aillarionov/article/34014

part of civil code but as a separate chapter of it.[11] Romovs′ka Z.V. advocated the position that family law must be embraced in the independent code. As a result, the Civil Code of Ukraine (January 16, 2003) and the Family Code of Ukraine (a year earlier – January 10, 2002) were adopted separately, which have become legally binding on January 1, 2004. From 2004 and up to the present day, the Family Code of Ukraine has been amended by forty-six laws, most recently amended on August 28, 2018, and it was interpreted by two judgments of the Constitutional Court of Ukraine.

Undoubtedly, in the context of the recodification of the Civil Code of Ukraine, proposals for decodification the Family Code of Ukraine and including its provisions in the new Civil Code of Ukraine may be discussed. In our opinion, given the history of the development of family law on the territory of Ukraine, existing experience of codification of family law, a positive practice of applying the rules of the Family Code, its decodification would be groundless. At the same time, we are convinced that in the context of the recodification of the Civil Code, it is possible to modernize the provisions of the Family Code of Ukraine.

2.The experience of the unification of European principles of family law

The problem of harmonization of the private law of Ukraine in general and family law in particular with the law of the EU has been repeatedly addressed not only by scholars but also by politicians. There are works about the process of unification of European family law by European scholars (Marianne Roth, Frederik Swennen, Velina Todorova, Branka Rešetar, Milana Hrusaková, Ingrid Lund-Andersen, Anne Barlow, Nina Dethloff, Dieter Martiny and others) and Ukrainian scholars (Valentyna Borysova, Iryna Zhylinkova, Zoryslava Romovs′ka, Larysa Krasyts′ka, Ol′ha Yavor and others)[12].

The very creation of the European Union implies the harmonization and approximation of the laws of the Member States. The Treaty establishing the European Community, adopted on 25 March 1957, provided for the approximation of the laws of the Member States for the

[11] Ватрас В.А. Кодифікація новітнього сімейного законодавства: історія та сучасність. Університетські наукові записки, 2016. № 58, С. 36–37.

[12] Менджул М. В. Перспективи уніфікації європейського сімейного права. Visegrad Journal on Human Rights. 2019. №. 3. Vol. 1. P. 186.

functioning of the common market, which undoubtedly marked the recognition at international level of the processes of harmonization of the laws of the EU Member States.

The harmonization of family law in the EU is approved through the EU Council Regulations, the case law of the European Court of Human Rights, and the activities of the Commission on European Family Law, which has been actively developing the principles of European family law since 2001.

That is why, in our opinion, the modernization of the Family Code of Ukraine should take into account the regulations of the EU Council, the legal positions of the ECtHR, as well as the principles developed by the Commission on European Family Law. In particular, among the EU Regulations and other acts, the following should be taken into account: Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Article 5 states that it applies to cases relating to alimony), Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, Recommendation of the Committee of Ministers to Member States on family mediation of 21 January 1998, Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters and others.

Article 5 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters establishes the procedure for bringing a

claim, and in particular pursuant to paragraph 2, to a person domiciled in one EU Member State may be sued in another EU Member State in an alimony case in the court of the place of residence (or habitual residence) of the person entitled to the alimony. In the event that the alimony dispute is contiguous to a dispute about the civil status of the person, the claim shall be brought before a court having the jurisdiction under national law to admit such claims, unless that jurisdiction is based solely on the nationality of one of the parties.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility was adopted in order to create in the EU an area of freedom, security and justice, guaranteeing the free movement of persons , and to ensure the equality of all children, the Regulation extends to all decisions on parental responsibilities, including measures to protect children, regardless of the existence of judicial proceedings between spouses. According to Art. 1 the Regulation shall apply to civil disputes which are the subject of divorce, the establishment of the regime of separate residence of the spouses or the invalidation of marriage, the acquisition, exercise, restriction, termination of parental duties, if they relate to disputes about: the right to cohabit with the child and upbringing and access to the child; establishment of guardianship, guardianship and similar legal institutions; the appointment of a person or body caring for the child or his property represents the interests and assistance of the child, and the determination of the relevant functions of that person or body; transfer of the child to a foster home or special institution; child protection measures related to the management, preservation or disposal of the child's property. In general, the said Regulation is based on the principles of: mutual recognition of court decisions (part 2 of the preamble), protection of the best interests of the child (part 12 of the preamble), consideration of the child's opinion (part 19-20 of the preamble, Article 23), mutual trust in recognition and execution of court decisions on family disputes (part 21 of the preamble), the most favorable placement (the principle applies in the determination of the authorized court for family disputes (Article 15), etc.

In December 2008, Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to

maintenance obligations was adopted. All the obligations to pay alimony arising from family, paternity, marriage or family relations were covered by the said Regulation in order to guarantee a unified approach. It contains uniform rules for the application of both court and administrative decisions on an impartial basis and ensuring that all parties to the case are heard (preamble, paras. 11-12).

Paragraph 19 of the preamble to Council Regulation (EC) No 4/2009 states that in order to enhance the legal certainty, predictability and autonomy of the parties, the parties to the relationship have the right to choose a competent court under a contract based on special conflict of law, and to protect the weakness of such a choice of court. should be for the benefit of children under the age of eighteen. Article 46 of the Regulation states that EU Member States must provide free legal assistance in all matters relating to child support obligations arising from a parent-child relationship, under the age of 21 years. Thus, EU Council Regulation (EC) No 4/2009 contains uniform conflict-of-law rules that determine, within the EU, which legislation must be applied to the alimony obligations, establishes uniform rules on the mutual recognition of judgments and their enforcement.

Directive 2008/52 / EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters of 21.05.2008 No 2008/52/EC, pursuant to Article 1, applies to cross-border civil and commercial disputes, with the exception of rights and obligations that cannot be agreed by the parties other than those provided for by applicable law, in order to facilitate access to alternative dispute resolution procedures and to facilitate the amicable settlement of disputes. Concerning mediation in family disputes, on 21 January 1998 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (98) 1 at 616 meetings of the Ministers of Ministers. That act stated that the use of mediation in family matters could improve communication between family members, reduce conflict, lead to amicable settlement of disputes, ensure the duration of personal relationships between parents and children, and in this connection it is recommended that the governments of the Member States: encourage or, where necessary, enhance mediation in family matters; take or strengthen any measures necessary to comply with the principles of family mediation as a proper means of resolving family disputes.

Given that there are more than 16 million marriages with a foreign element in the EU, legal certainty on various aspects of family life is

important. Regulation No 1259/2010 (commonly known as the Rome III Regulation) sets out the procedure for defining legislation in the event of a divorce with a foreign element, and has been applicable in 17 countries since 29 January 2019: Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, Czech Republic, Netherlands, Austria, Bulgaria and Finland [13].

Council Regulation (EC) No 1259/2010 of 20.12.2010 on the extension of cooperation in the area of the law applicable to divorce and legal separation complements Regulation (EU) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual matters obligations ("Rome I") "of 17.06.2008 and Regulation (EC) No 864/2007 of the European Parliament and of the Council" On the law applicable to non-contractual obligations ("Rome II") "of 11.07.2007, which identified the general trend of harmonization of EU conflict-of-law rules in the field of civil and trade relations. Scholars note that the adoption of the Rome I and Rome II Regulations completed the main principles of European private international law and played an important role in the process of unification of private international law in the EU[14].

Council Regulation (EC) No 1259/2010 Rome II continued to unify conflict-of-law rules and principles applicable to private relations and contains sufficiently important rules to determine which right to apply in the event of divorce, judicial separation (spousal regime) in marital relations with a foreign element. In the Regulation analyzed, the principle of autonomy of the will was proclaimed as the basic one in dealing with conflict issues. Council Regulation (EC) No 1259/2010 "Rome II" applies only to marriage dissolution and single spousal residence regimes and does not regulate the legal capacity of individuals, the validity and recognition of marriage, the invalidity of marriage, spouses, property rights of spouses, marital property rights parental relations, alimony, property rights and inheritance (Article 1). An analysis of the provisions of Council Regulation (EC) No 1259/2010 of 20 December 2010 on the extension of cooperation in the field of law applicable to marriage

[13] Lhoest B., (2016). The Harmonization of European Family Law: Work in Progress. URL: https://www.peacepalacelibrary.nl/2016/12/the-harmonization-of-european-family-law-work-in-progress/.

[14] Трощенко І. О. Роль Регламенту «Рим ІІ» в уніфікації міжнародного приватного права в ЄС. Держава і право. Юридичні і політичні науки. Випуск 53. 2011. С. 576.

dissolution and legal separation allowed to conclude that it contains uniform conflict-of-law rules in order to determine the applicable law to the relations indicated therein. The following principles can be found in the Regulation: legal certainty (paragraph 9 of the preamble), autonomy of the will and freedom of choice of spouses of the law to be enforced in divorce (paragraphs 14-16 of the preamble), informed choice of law to be applied (paragraph 18, 19 of the Preamble), prohibition of discrimination (paragraph 30 of the preamble) and others.

We agree with scholars that, following the example of Macedonia, Ukraine also needs to comply with the provisions of the Rome III Regulation, and in the Law of Ukraine "On Private International Law" to increase the number of conflicting anchorages that should be applied when marriage is terminated and the parties choose the law[15].

On 24 June 2016, two EU Council Regulations No 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and No. 2016/1104 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, which, under the transitional provisions, have fully entered into force on 29 January 2019.

Council Regulation (EC) No 2016/1103 applies to regimes of matrimonial property and does not cover matters such as: marital capacity, existence, validity or recognition of marriage; the obligation to withhold; succession to the property of the deceased spouse; social security; rights in the case of divorce, separation, or annulment of a retirement pension for years of service or a disability pension accrued at the time of marriage and which did not bring retirement income at the time of marriage; the nature of the ownership of the property; any record in the real estate or movable property registry. According to Article 5 of the Rules, where a court is considering a divorce case, establishing a spousal residence regime, annulment of marriage, then this court has jurisdiction over matters of matrimonial property regimes.

Council Regulation (EC) No 2016/1104 applies only to the property consequences of registered partnerships having a cross-border component,

[15] Ватрас В. А. Проблеми та перспективи кодифікації міжнародного сімейного права України. Міжнародне приватне право. С. 182-186. URL: http://www.univer.km.ua/statti/2.vatras_v.a._problemy_ta_perspektyvy_kodyfikatsiyi_mizhnarodnoho_simeynoho_prava_ukrayiny.pdf.

and has been adopted to ensure that couples have legal certainty about their property, a degree of foreseeability and the definition of all rules in one document (preamble paragraph 15). That is why there was a unification of legal norms and principles regarding the regulation of property relations of registered partnerships. Moreover, according to paragraph 16 of the preamble, "to ensure the smooth functioning of the internal market, it is necessary to remove the barriers to the free movement of people who have entered into a registered partnership, especially those which make it difficult for such couples to manage and distribute their property." It is for this purpose that the Council Regulation 2016/1104 combines jurisdiction, applicable law, recognition (or adoption), applicability and enforcement of decisions, authentic documents and agreements. However, according to paragraph 17 of the preamble, a “registered partnership” is defined only for the purposes of the regulation, and the actual substance of the concept must be defined in the national legislation of the EU Member States. However, it is noted that the provisions of this Regulation do not oblige an EU Member State whose legislation does not have a registered partnership institution to provide for it in its national legislation.

Thus, both Regulations, like all other Regulations, have been adopted for the purpose of developing the sphere of freedom, security, promotion of justice and free movement of persons, and contain a number of common principles: proportionality, legal certainty; predictability; mutual recognition of court decisions; autonomy of the parties; the contractual choice of law to be applied; the unity of the applicable legislation; the benefits of a peaceful settlement of the dispute; recognition of authentic documents; respect for privacy and family life; non-discrimination; guaranteeing the right to an effective remedy and a fair trial, etc. Regulations Nos 2016/1103 and 2016/1104, Article 21, contain the principle of unity of applicable law, according to which the law applicable to the regime of matrimonial property (partnership property) applies to all assets subject to that regime, irrespective of whether where they are located. At the same time, these Regulations have excellent bases, for example, only EU Council Regulation No 2016/1103 contains the principle of guaranteeing marriage.

It is definitely too early to talk about codification of European family law. We agree with Dieter Martini that only after the continuation of the pan-European codification of civil law is it possible to decide on the scope and form of systematization of family law.

3. Modernization of the family code of Ukraine in the context of European integration

Commission on European Family Law developed: Principles of European family law regarding divorce and maintenance between former spouses[16], Principles of European family law regarding parental responsibilities[17], Principles of European family law regarding property relations between spouses[18], Principles of European family law regarding property, maintenance and succession rights of couples in de-facto unions. The latest guidelines were published in August 2019[19].

The question is – to what extent does the Family Code of Ukraine comply with the principles of European family law?

The first CEFL divorce and retention principles were published in December 2004[20]. Articles 105-107, 109, 110 and 112 of the Family Code of Ukraine comply 19 with European principles (1:1 – 1:4), in particular: freedom to dissolve marriage is guaranteed by law; no specific length of marriage is required for the marriage to be dissolved; the procedure for dissolution of marriage is defined by law and is carried out by the competent authority (both through court and administrative body); both types of divorce are guaranteed (by mutual consent and without the consent of one spouse).

At the same time, the Commission on European Family Law recommended setting a period of friendly settlement: "If the couple has children under 16 and they have agreed to all the consequences of the agreement at the beginning of the divorce, a three-month period of friendly settlement is established. If they have not agreed on all the consequences, a six-month period is required. If the couple does not have children under the age of sixteen and they have agreed in the agreement all the consequences of the divorce, then the period of such settlement is not required, if they

[16] Principles of european family law regarding divorce and maintenance between former spouses. URL: http://ceflonline.net/wp-content/uploads/Principles-English.pdf.

[17] Principles of european familylaw regarding parental responsibilities. URL: http://ceflonline.net/wp-content/uploads/Principles-PR-English.pdf.

[18] Principles of european family law regarding property relations between spouses. URL: http://ceflonline.net/wp-content/uploads/Principles-PRS-English1.pdf.

[19] Katharina Boele-Woelki, Frédérique Ferrand, Cristina González-Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny, Velina Todorova. Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions. 2019. 282 p.

[20] Boele-Woelki, K., 2005. The principles of European family law: its aims and prospects. Utrecht Law Review, 1(2), pp. 164. DOI: http://doi.org/10.18352/ulr.13.

have not agreed all the consequences – a three-month period of settlement is established. Also, a reconciliation period is not required if the marriage actually ended within six months before the divorce".

The Family Code of Ukraine in Article 111 only stipulates that the court shall take measures to reconcile the couple, if this does not contradict the moral principles of society. The period of conciliation is defined by Article 240 of the Civil Procedure Code of Ukraine, in particular, it is stated that the court may suspend the case and appoint a spouse a term for conciliation/settlement, which may not exceed six months. There is a variety of jurisprudence in Ukraine for setting time limits for reconciliation. Considering the principles developed by the Commission on European Family Law, in our opinion, it is worth the Art. 111 of the Family Code of Ukraine to be supplemented with part two with the following content: «2. If the couple has children under 16 and agreed to the consequences of the provision of Article 112-1 of this Code before the court or before the commencement of the case, then the period for conciliation is up to three months, if the spouses have not agreed on the legal consequences of the divorce. , the reconciliation period is up to six months. If the couple does not have children under the age of sixteen and they have not agreed to the legal consequences of the divorce provided for in Article 112-1, paragraphs 2 and 2, a three-month term of conciliation shall be set. A reconciliation period shall not be established if the spousal residence regime of at least six months has been established prior to divorce, as well as if the spouses do not have children under 16 and have agreed to the legal effects of divorce provided for in subparagraphs (c) and (c). h. Article 112-1, Part 2".

Although the 1:8 Principle of Divorce and Retention of the Commission on European Family Law states that divorce without the consent of one spouse should be allowed, if their relationship actually ended more than one year. Article 112 of the Family Code of Ukraine is more liberal, and involves the dissolution of marriage without any preconditions, but only on the ground that it would be established that the further cohabitation of the spouses and the preservation of the marriage would be contrary to the interests of one of them, to the interests of their children.

Chapter 9 of the Family Code of Ukraine generally complies with the principles of divorce and retention of the European Family Law Commission. However, unlike the Family Code of Ukraine, the principles of European family law do not limit the right to alimony by such a condition as the inability of one spouse to work and pay alimony.

The CEFL principles establish that in determining the alimony in favor of one of the former spouses, the following must be taken into account: the need for one of the spouses in the maintenance and the ability of the other former spouse to provide such maintenance; ability, age and health; performing childcare by one of the spouses; distribution of responsibilities during marriage; duration of marriage; standard of living during marriage; the presence of a new marriage or long-term relationship. In our opinion, the family law of Ukraine should be supplemented by the missing criteria.

European Family Law Principles on Parental Obligations of the European Family Law Commission aims to ensure the well-being of the child, and in this connection, Art. 7 of the Family Code of Ukraine should be supplemented by such a general principle as the welfare of the child. In addition, the family law of Ukraine should be supplemented by the principles of the autonomy of the child (according to which the right of the child to act independently in accordance with the level of development of its abilities and taking into account needs), protection of the interests of the child in the conflict of his interests with the interests of the parents (children should not be discriminated against on grounds such as gender, race, skin color, language, religion, political or other beliefs, national, ethnic or social background, sexual orientation, disability, property status, istse birth, etc.).

In order to align family law with the principle of 3:21, Article 160 of the Family Code of Ukraine must be supplemented by the rule that: “The parent of the child with whom the child resides must inform the other of the parent in advance about the change of the place of residence of the child. In the event of a dispute about the change of the child's place of residence, each parent may apply to a guardianship or court authority”. The second paragraph of Part 1 of Art. 161 of the Family Code of Ukraine redrafted in the following way: "In resolving the dispute over the place of residence of the minor child the following circumstances are taken into account: the attitude of the parents to the fulfillment of their parental responsibilities, the personal commitment of the child to each of them, the child's age, the child's opinion, his state of health, parent’s living conditions, geographical distance and remoteness, other significant circumstances".

In order to comply with the Principle 3:22 Article 177 of the Family Code of Ukraine, the second sentence of paragraph 1 must be redrafted in the following way: “Parents are obliged with due care secure saving

and increase the value of the property of the child, use it in the best interests of a child". The provision of Article 178 of the Family code of Ukraine on the use of the income from the property of the child is in line with European principles of family law.

The family law of Ukraine is in line with the European principles of family law to guarantee the right of the child to contact his parents and other relatives (principles 3:25 – 3:28), as well as to deprive and restore parental rights.

However, the Family Code of Ukraine does not contain rules on alternative dispute resolution (eg mediation), with the principle of 3:36 establishing an alternative dispute resolution (in all disputes concerning parental responsibilities, alternative dispute resolution mechanisms should be available). A similar norm should be provided in the family law of Ukraine.

In addition, the principle of 3:38 "Appointing a Special Representative for a Child" is important, and in our view, it should also be enshrined in family law, namely: a conflict of interest between the child and the parents, or the risk of the child's well-being, the court appoints a special representative for the child".

The family law of Ukraine is in line with such European principles of family law as equality, recognition of full legal capacity for each spouse, participation of each spouse in meeting the needs of the family according to his (her) abilities (includes not only financial contribution, but also housekeeping, raising children), concluding a contract on family property with the consent of another spouse, freedom to conclude contracts between spouses on their property, etc.

At the same time, the legislation of Ukraine does not contain provisions on the protection of the right to use by one of the spouses of the house or flat which is rented by another spouse in the case of divorce. According to the principles developed by the CEFL, if a family lease is contracted by one spouse, then both spouses are entitled to it, and one spouse cannot, without the consent of the other, terminate or modify the lease. The landlord is required to notify both spouses of the termination of the lease. In our opinion, similar provisions should be enshrined in the legislation of Ukraine.

According to the principle of 4:8, each spouse is obliged to inform the other about their income and debts. The Family Code of Ukraine also needs to be supplemented by a provision that establishes such a duty.

With respect to the property of each spouse and joint ownership, Chapters 7 and 8 of the Family Code of Ukraine generally comply with the principles of European family law developed by CEFL, except for the attribution of things for professional pursuits to joint joint ownership. When reforming the legislation in order to adapt it to the European principles, provision should be made for assigning things for professional activities to the property of one of the spouses.

Principle 4:21 states that one spouse's debt is his personal debt. Personal debts include debts that: arose before marriage; related to gifts received, inheritance; related to personal property; personal debts; incurred without the necessary consent of the other spouse. Debts that have arisen for the satisfaction of the needs of the family and which are not classified as personal debts are common debts. Personal debts may be recovered from the personal property of one of the spouses. In the event of debt in connection with the commission of an offense or crime, their value may be recovered from half of the joint property if personal property is not sufficient. In our opinion, the same rules should be set in the Family Code of Ukraine.

In August 2019, the Commission on European Family Law promulgated the Fifth Group of Principles on the Ownership, Retention and Succession of Couples in de-facto unions[21]. Based on an analysis of these principles, we have come to the 20 conclusion that, in general, the legal bases for the relationships of persons who are in de-facto family relations are in line with the principles developed by the Commission on European Family Law.

However, it is easy to see the difference in the terminology, the Commission proposes the terms "actual union" (which means two people living together as a couple and having a strong relationship), "qualified factual union" (when the persons are in actual relations at least five years or have a common child) and a "partner" (a person living in an actual union). The Family Code of Ukraine does not use the term "actual marital relations" or "actual marital relations", but only in Article 74 establishes "the right to property of women and men who live in the same family but are not married to each other or to any other marriage." In the scholar

[21] Katharina Boele-Woelki, Frédérique Ferrand, Cristina González-Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny, Velina Todorova. Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions. 2019. 282 p.

literature, the terms "actual marriage relations", "actual marriage"[22]. In legal practice the following term is found: "actual marital relationship". Thus, after the words "one family" in Article 74 of the Family Code of Ukraine, it is worth adding words "in actual union" in order to bring this norm to European standards.

CONCLUSIONS

The analysis showed that the unification of family law in Europe occurs not only as a result of the adoption of EU Council regulations, ECtHR practices, but also of the activities of the Commission on European Family Law on the unification of principles. The Family Code of Ukraine is generally based on the principles of European family law, which will certainly help to harmonize the legislation of Ukraine and the EU. We are convinced that in the context of the recodification of the Civil Code of Ukraine there is no reason to claim that the Family Code is being decoded. At the same time, the conducted research shows the need for conceptual modernization of the Family Code of Ukraine in the context of European integration processes, including through a number of changes.

SUMMARY

The study presents the results of the analysis of the impact of the recodification of the Civil Code and the processes of European integration on the development of family law in Ukraine. The author analyzed the views of scholars on the concept of "recodification". The author provided its vision of the stages of recodification. The author concluded that the recodification of the Civil Code may not lead to decodification if the Family code but only to its modernization. It is established that the unification of family law in the EU is due to the adoption of EU Council regulations, ECtHR practices and the activities of the Commission on European Family Law. Based on the analysis of the conformity of the Family Code of Ukraine with the principles of European family law, she suggested specific changes to the legislation. The Family Code of Ukraine is generally based on the principles of European family law, which will certainly help to harmonize the legislation of Ukraine and the EU. We are

[22] Сафончик О.І. Деякі питання правового регулювання правовідносин «фактичного подружжя» щодо взаємного утримання. Актуальні проблеми держави і права. 2010. С. 199–204.

convinced that in the context of the recodification of the Civil Code of Ukraine there is no reason to claim that the Family Code is being decoded. At the same time, the research shows the need for conceptual modernization of the Family Code of Ukraine in the context of European integration processes, including through a number of changes.

REFERENCES

1. На ІІІ Харківському міжнародному юридичному форумі обговорили оновлення цивільного законодавства та необхідність європеїзації приватного права. URL: https://legalforum.nlu.edu.ua/news/na-iii-kharkivskomu-mizhnarodnomu-iurydychnomu-forumi-obhovoryly-onovlennia-tsyvilnoho-zakonodavstva-ta-neobkhidnist-ievropeizatsii-pryvatnoho-prava/.

2. Музика Л. А. Що є актуальним для сучасного цивільного законодавства України: модернізація, системне оновлення чи рекодифікація? Науковий вісник Львівського державного університету внутрішніх справ. 2015. Вип. 1. С. 145–154.

3. Hondius E.H. Recodification of the Law in the Netherlands: The New Civil Code experience. Netherlands International Law Review. Volume 29, Issue 3. December 1982, pp. 348–367.

4. Довгерт Анатолій. Рекодифікація Цивільного кодексу України: основні чинники і передумови для старту. Право України. 2019. № 1: Національна доктрина приватного права: основні методологічні засади. С. 27–41.

5. Сирко М.В. Цивільний кодекс Франції 1804 року та його вплив на цивільне законодавство країн Європи (на прикладі Польщі та Румунії). Дисертація на здобуття наукового ступеня кандидата юридичних наук по спец.: 12.00.01 Львів, 2015. 215 с.

6. Про рекодифікацію цивільного права, медіацію та мирову угоду говорили судді КЦС ВС на юридичному форумі у Харкові. URL: https://supreme.court.gov.ua/supreme/pres-centr/news/793713/.

7. Музика Л. Кодифікація та декодифікація: проблемні питання. Jurnalul juridic naţional: teorie şi practică. Iunie 2015. С. 52–56.

8. Довгерт Анатолій. Рекодифікація Цивільного кодексу України: основні чинники і передумови для старту. Право України. 2019. № 1: Національна доктрина приватного права: основні методологічні засади. С. 27–41. С. 30.

9. Ілларіонов О. Рекодифікація = декодифікація? URL: https://blog.liga.net/user/aillarionov/article/34014.

10. Ватрас В.А. Кодифікація новітнього сімейного законодавства: історія та сучасність. Університетські наукові записки, 2016. № 58. С. 35–47.
11. Lhoest B., (2016). The Harmonization of European Family Law: Work in Progress. URL: https://www.peacepalacelibrary.nl/2016/12/the-harmonization-of-european-family-law-work-in-progress/.
12. Менджул М. В. Перспективи уніфікації європейського сімейного права. Visegrad Journal on Human Rights. 2019. №. 3. Vol. 1. P. 186. 186–190.
13. Трощенко І. О. Роль Регламенту «Рим ІІ» в уніфікації міжнародного приватного права в ЄС. Держава і право. Юридичні і політичні науки. Випуск 53. 2011. С. 572–576.
14. Ватрас В. А. Проблеми та перспективи кодифікації міжнародного сімейного права України. Міжнародне приватне право. С. 182-186. URL: http://www.univer.km.ua/statti/2.vatras_v.a._problemy_ta_perspektyvy_kodyfikatsiyi_mizhnarodnoho_simeynoho_prava_ukrayiny.pdf.
15. Principles of european family law regarding divorce and maintenance between former spouses. URL: http://ceflonline.net/wp-content/uploads/Principles-English.pdf
16. Principles of european familylaw regarding parental responsibilities. URL: http://ceflonline.net/wp-content/uploads/Principles-PR-English.pdf.
17. Principles of european family law regarding property relations between spouses. URL: http://ceflonline.net/wp-content/uploads/Principles-PRS-English1.pdf.
18. Katharina Boele-Woelki, Frédérique Ferrand, Cristina González-Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny, Velina Todorova. Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions. 2019. 282 p.
19. Boele-Woelki, K., 2005. The principles of European family law: its aims and prospects. Utrecht Law Review, 1(2), pp. 160–168. DOI: http://doi.org/10.18352/ulr.13.
20. Katharina Boele-Woelki, Frédérique Ferrand, Cristina González-Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny, Velina Todorova. Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions. 2019. 282 p.

21. Сафончик О.І. Деякі питання правового регулювання правовідносин «фактичного подружжя» щодо взаємного утримання. Актуальні проблеми держави і права. 2010. С. 199–204.

Information about the author:
Mendzhul M. V.
Candidate of Law Sciences, Associate Professor,
Department of Civil Law and Process, Law Faculty,
Uzhgorod National University
26, Kapitulna str., Uzhhorod, 88000, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/195-212

PRINCIPLES OF ADMINISTRATIVE ACTIVITY OF CUSTOMS AUTHORITIES OF UKRAINE AND THEIR CLASSIFICATION

Pryimachenko D. V., Tylchyk O. V.

INTRODUCTION

The importance and the necessity of clarifying the question concerning the principles of administrative activity, their system and role emerge from their understanding as regularity of development, which are reflected in the basic principles, theoretical ideas and provisions that underlie these activities. Principles of administrative activity of customs authorities are a manifestation and consolidation of the administrative activity's content regularity, they determine its essence, nature and promote to the effective substantive and procedural law realization which contained in customs legislation. The principles of administrative activity of customs authorities are dynamic in content and form. They are formed as a result of specific political and socio-economic conditions, reflecting the level of use of the positive patterns of social development. In practice, the principles are legally enforced in the form of legal norms, which are general provisions on which administrative activity should be based. In this capacity, the principles are relevant to the legal requirements mandatory for enforcement and compliance.

Being the basic provisions, the principles thus form a something like the "framework" for all administrative activities of the customs authorities. The principles of administrative activity which were formed on the basis of new views to the role of customs authorities in the economic processes currently occurring in the country, are an important prerequisite for the development and improvement of customs authorities.

The issue of the principles of administrative activity, as a whole, has been left out of the attention of legal scholars. In the legal literature, both past and present, the main focus was given on the principles of public administration (public administration), general principles, principles of particular branches of law, including administrative law and administrative process, and principles of specific institutions of particular branches of law. The researches of these issues have been investigated at different times by G.V. Atamanchuk, E.V. Dodin, V.D. Sorokin,

N.G. Salishcheva, S.I. Kotyurgin, A.P. Korenev, D.N. Bahrach, A.M. Kolodiy, V.G. Quail and others. However, the study of the principles of customs' administrative activity, which would be made in the context of the theory of customs law, would be extremely important for the analysis and improvement of the system of customs legislation, the further mechanisms development of legal regulation of customs and legal relations, improving the effectiveness of law-making and enforcement activities of customs authorities.

The proposed attempt to formulate the concept of principles of customs authorities' administrative activity and their classification is carried out taking into account that administrative activity of customs authorities is a component of administrative activity of public administration authorities, which is mainly regulated by substantive administrative, legal and administrative procedural norms and implemented in the customs sphere. In other words, the administrative activity of the customs authorities is a unity of administrative and specially legal activity aimed for the implementation customs law of substantive rules. Therefore, in the administrative activities of the customs authorities could be found the patterns effect of two types: inherent in administrative and procedural activities and, accordingly, two groups of principles. The first group are principles that reflect the general patterns of governance that operate in the settlement of customs and legal relations. The second group are principles that reflect the specificity of the administrative and procedural laws in the process of law-making and enforcement activities of customs authorities. The division into groups is rather conditional, since the objective patterns of administrative and procedural activity in the field of customs and legal regulation of public relations that actually operate, complement each other and their content is mutually conditioned.

1. The concept of the principles of customs authorities' administrative activities

In the scientific literature, the most widespread view is that the principles are the basic principles, initial ideas, characterized by universality, general significance, higher imperativeness and reflect the essential positions of theory, doctrine, and science[1]. Among law scholars

[1] Iurydychna entsyklopediia: V 6 t. / Redkol.: Yu.S. Shemshuchenko (holova redkol.) ta in. – K.: Ukrainska entsyklopediia, 1998. T. 5: P-S. 2003. 736 s. S. 110. (In Ukrainian).

was developed a general approach to understanding principles as guidelines, theoretical ideas that reflect objective laws and are enshrined in law[2]. But some scholars believe that the principle is a specific concept, which contains not so much regularity, relationships, interconnections, but our knowledge about them[3]. Principles are the result of the human's generalization of objectively valid laws and regularity inherent in the general features, the characteristics that determine the activity. Recognizing the principle as a result of scientific knowledge, it should not be forgotten that not all laws, relations and relationships, including in the field of administrative activity of customs authorities, are investigated and formulated in the form of principles.

As Atamanchuk G.V. rightly points out, many is not yet known and it is necessary to engage in knowledge; what is fixed and seems at some point true is also dynamic; the objective conditions that give rise to the laws, attitudes and relationships of public administration, as well as the subjective factors that perceive and apply them, are constantly changing; the means of cognition, scientific tools of revealing the laws, relations and interrelations of public administration are developing, the experience of their use in public practice is enriched[4]. All mentioned above, at one time was concerned to the state administration, but it is fully acceptable for the administrative activities of the customs authorities and requires active work on scientific awareness of certain principles. An important moment that should be considered in exploring principles is the practical implementation of these principles. Unfortunately, as the administrative scientists have rightly observed, in our tradition, prevailing in the Soviet period, the principles of law are perceived not as guidelines, regulations, but as something purely declarative and abstract[5]. It is not enough to know the principles, it is necessary to want and be able to apply them in

[2] Administratyvne pravo Ukrainy. Akademichnyi kurs: Pidruch.: U 2 tomakh: T. 1. Zahalna chastyna / Red. kolehiia: V.B. Averianov. K.: Yurydychna dumka, 2004. 584 s. (In Ukrainian).;Dodin E.V. Dokazatelstva v administrativnom protsesse. M., Yuridicheskaya literatura, 1973. 192 s. (In Russian); Sorokin V.D. Administrativnoe protsess i administrativno-protsessualnoe pravo. SP.b: Izd-vo Yuridicheskogo instituta, 2002. 47 s. (In Russian); Kotyurgin S.I. Ponyatie, printsipyi administrativno-protsessualnoy deyate-lnosti: Lektsiya. Omsk: Omskaya VShM MVD SSSR, 1973. 75 s. (In Russian)/

[3] Atamanchuk G.V. Teoriya gosudarstvennogo upravleniya. Kurs lektsiy. M.: Omega-L, 2004. 584 s. S. 262. (In Russian).

[4] Atamanchuk G.V. Teoriya gosudarstvennogo upravleniya. Kurs lektsiy. M.: Omega-L, 2004. 584 s. S. 263. (In Russian).

[5] Averianov V. Nova doktryna ukrainskoho administratyvnoho prava: kontseptualni pozytsi. Pravo Ukrainy. 2006. № 5. S. 11-17. S.12. (In Ukrainian).

their activity, because the practical effect of the principles depends not on themselves but on the people attitude to them. In other words, principles are knowledge of the general laws laid down by the legislator in the norms of law used in the practical activity of the enforcers of these norms. The importance of clarifying the question of the principles of administrative activity, their system and role emerge from their understanding as patterns of development, which are reflected in the basic principles, theoretical ideas and provisions that underlie these activities. The principles of customs authorities' administrative activity of are manifestation and consolidation of the laws regulation of the administrative activity's content, they determine its essence, nature and contribute to the effective implementation of substantive and procedural rules contained in customs legislation. The principles of customs authorities' administrative activities are dynamic in content and form. They are they are formed as a result of a specific political and socio-economic conditions, reflecting the level of use of positive patterns of social development. In practice, the principles are legally enforced in the form of legal norms, which are general provisions on which administrative activity should be based. Therefore, the principles are relevant to the legal requirements obligatory for execution and abundance. Moreover, in the event of detection of gaps in applicable customs legislation or conflict of rules, the principles allow authorized officials or citizens to act properly, taking into account precisely the general concepts, the general spirit of the law, which are reflected in the principles, including the principles of administrative[6]. Understanding this is especially relevant for the administrative activities of the customs authorities, the legal regulation of which is carried out in the context of permanent, dynamic, and sometimes not completely consistent and consistent changes in the current customs legislation, which sometimes leads to gaps and conflicts.

According to these tasks, we propose understand the principles of administrative activity of customs authorities as the objective laws reflected in the basic ideas, regulations, conclusions that characterize the content of the activities of customs authorities and which are fixed in legal rules or derive from them.

[6] Alekseev S.S. Obschaya teoriya prava: V 2 t. M.: Yuridicheskaya literatura, 1982. T. 2. 359 s. (In Russian). S. 348.

To formulate the principles of the customs authorities' administrative activity, it is necessary to understand the nature and objectively specified manifestations of this legal activity in its various relationships and when performing specific tasks and to reflect them in the form of scientific ideas, guidelines. In administrative and legal science, at one time, a number of requirements were formulated, which must meet the process of identifying and justifying the principles of public administration[7]. The proposed requirements could also be used to identify and justify the principles of administrative activity.

Principles of administrative activity should:

a) to reflect not any, but only the most essential, main, objectively necessary laws, relations and interconnections of administrative activity;

b) characterize only the regular patterns, relationships and relations of administrative activity;

c) cover mainly those patterns, relationships and relationships that characterize administrative activity as a holistic phenomenon, that is, those of a general rather than a single nature;

d) reflect the specifics of administrative activities, their differences from other activities.

We believe that except mentioned above, to the principles of administrative activity of the customs authorities also could be added such requirements:

- principles must be enshrined in, or follow from, legal rules;
- the principles should have their own clearly defined scope of action, their name should indicate the limits of prevalence and, accordingly, should not overlap with other already existing principles, not interfere with their action;
- the principles should be formulated, where possible, in concise form and without descriptiveness.

2. Classification of administrative activity principles of customs authorities

The principles of administrative activity form a system in which they are in one way or another interconnected and interdependent. Their systematic nature provides their use in the process of administrative activity of the whole set of principles, individual groups of related

[7] Atamanchuk G.V. Teoriya gosudarstvennogo upravleniya. Kurs lektsiy. M.: Omega-L, 2004. 584 s. (In Russian). S. 265.

principles and each individual principle. However, the separation of a principle from the system makes it possible to clearly define the role of each principle, which facilitates their practical application. Unfortunately, the volume of the article does not allow to reveal the content of each of the principles in full, so only a brief description of them is offered.

It is proposed to analyze the regularity of implementation administrative activities maden by the customs authorities with the requirements for the process of identification and formulation of principles. Such approach allows to distinguish in the system two groups of administrative activity principles of customs authorities: system-wide and organizational, among which the principles of construction of the system of customs authorities carrying out administrative activity and principles of their activity are distinguished.

System-wide - these are principles that are formed according to the patterns of administrative and procedural activity that is performed by customs authorities in the field of customs and legal regulation of public relations. These principles are the basis for customs to carry out administrative activities. They are implemented in administrative activity regardless of the level and place of the customs authorities (its official) in the single nationwide system of the customs service of Ukraine.

Organizational principles reflect the nature, patterns, specifics of building and organization of the system of customs services of Ukraine and their activities. These principles are taken into account in the creation, reorganization, liquidation and operation of customs authorities and their structural subdivisions. The usage of organizational principles allows rationally to distribute the competence among the subjects of administrative activity, to choose the most optimal variants of the use of administrative-legal methods and forms of activity of customs authorities in the exercise of their functions.

To the system-wide principles of administrative activity of customs authorities belong the following principles: legality, priority of human and citizen's rights and freedoms, combination of interests of citizens and subjects of foreign economic activity and the state, objectivity, combination of publicity and professional secrecy, publicity (formality) and independence in decision making.

The principle of legality is a universal principle, the effect of which extends to all spheres of legal regulation of social relations, and therefore the sphere of customs and legal regulation is no exception. Legality as

a principle of administrative activity of the customs authorities derives directly from the subordinate executive-administrative character of this activity and consists in the fulfillment by the customs authorities of their tasks and functions in full compliance with the Constitution, laws of Ukraine and other normative acts in accordance with its legislatively defined competence.

The principle of legality is common to both the law enforcement and the law-making activities of the customs authorities, but it may manifest itself in different ways. For example, according to Art. 405 of the Customs Code of Ukraine (hereinafter referred to as CC of Ukraine)[8] the customs authority is obliged to issue to the business entity a permission for the implementation of certain activities, the control of which is carried out by the customs authorities (operation of a duty-free shop, operation of a customs warehouse, etc.), subject to the last of all statutory requirements. The customs authority shall not have the right to refuse to grant the permit, except in cases, which are expressly provided by the legislation (Article 410 of the CC of Ukraine). In the case of unjustified refusal to grant a permit, the decision of the customs authority will be contrary to the principle of legality.

The principle of legality does not lose its relevance in the implementation of customs law-making activities. The departmental rulemaking of the State Customs Service of Ukraine should ensure the normative-legal development of laws, their specification, detailization and adaptation to the relevant conditions of activity of its subordinate customs authorities.

The principle of priority of human and citizen's rights and freedoms follows from the provisions of the Constitution of Ukraine, but finds its continuation and detailization in the norms of customs legislation.

According to the Art. 3 of the Constitution of Ukraine[9] human rights and freedoms and their guarantees determine the content and focus of the activity of the state, and hence of its offices, including customs authorities. This principle determines the nature of building relationships between citizens and customs authorities, according to which the latter should direct their activities to implement the rights, freedoms and legitimate interests of citizens in the field of customs and legal relations.

[8] Mytnyi kodeks Ukrainy: Zakon Ukrainy vid 13.03.2012 r. Vidomosti Verkhovnoi Rady Ukrainy. 2012. № 44-45, № 46-47, № 48. St. 558. (In Ukrainian).

[9] Konstytutsiia Ukrainy. Vidomosti Verkhovnoi Rady Ukrainy. 1996. № 30. St. 141. (In Ukrainian).

The essence of the principle of priority of the rights and freedoms of the person and the citizen lies in creation of such organization of customs activity which would guarantee unimpeded realization by citizens of the rights and legitimate interests in the sphere of customs and legal regulation of public relations. Customs officials, carrying out enforcement activities in the performation of their capacity, must be guided above all by the need to recognize, secure and protect the rights and legitimate interests of citizens in the movement of goods and vehicles across the customs border of Ukraine. Rights and legitimate interests enshrined in law are adamant and binding to enforce them by the customs authorities and their officials. The arbitrariness of customs officials is inadmissible in their activities.

The need to study *the principle of combining the interests of citizens and subjects of FEA and the state* as a system-wide principle of administrative activity of customs authorities is due to the following reasons: firstly, it is generally recognized that the satisfaction of the interests of the state directly or indirectly satisfies the interests of its individual citizens, and therefore, by protecting the national interests of the state, the customs authorities also protect the interests of its individual citizens, secondly, in their activities, all the links of the customs authorities, taking into account the priority of human and citizen's rights and freedoms, must take into account the interests of the state as a whole.

The effect of this principle is that in the course of their administrative activities, the customs authorities have the operational autonomy that enables them to choose a law enforcement option that would allow them to fulfill the tasks they face, with a minimum degree of interference to the legitimate interests of citizens and sub FEA.

The principle of objectivity aims at eliminating as much as possible the manifestations of subjectivity, unilateralism and bias on the part of customs officials. Customs authorities can fully realize their social purpose only if the application of the rules of customs legislation is based on a complete and comprehensive study of relevant materials.

The essence of the principle of objectivity is to ensure the establishment, analysis and evaluation of the real facts that are relevant for making informed decisions about situations and for further action. The existence of this principle is conditioned by the tasks of organizing the most expedient, optimal and law-based activities of the customs authorities, as well as the tasks of ensuring the rights and legitimate interests of citizens and FEA subjects and their protection.

The principle of objectivity should be considered as a duty of all authorized officials of the customs authorities to thoroughly and investigate all the circumstances that lead to certain variants of their behavior and decisions in the course of administrative activity.

In our opinion, t*he principle of combining publicity and professional secrecy* also applies to the system-wide principles of administrative activity. The essence of this principle lies in the availability of interested persons to information related to the activities of customs authorities and their decisions, customs rules, the order of movement of goods and vehicles across the customs border, but provided that the exercise of the right to information will not violate the rights, freedoms and the legitimate interests of others. Customs authorities, when carrying out their tasks and performing the functions assigned to them, shall ensure the transparency of information concerning their administrative activities, except in the case of information which is of state or commercial secret or is confidential.

The effect of the principle of combining publicity and professional secrecy enables citizens and business entities not only to observe the mechanism of formation and realization of state-power influence and the course of those processes that take place in the administrative activity of customs bodies, but also to actively participate in them, although and indirectly.

The principle of *publicity (formality) of the administrative activity* of the customs authorities is to enshrine the duty of the customs authorities, their officials to carry out the customs business directly. The exclusivity of the customs authorities in carrying out such activities is confirmed by their mission: the appointments of the customs authorities are to create favorable conditions for the development of foreign economic activity, to ensure the security of society, to protect the customs interests of Ukraine (Article 544 CC of Ukraine[10]

Immediate realization of customs policy involves the implementation of customs law-making and enforcement activities, in which officials are required to consider and resolve individual cases and take the actions provided by customs legislation. Administrative activities are carried out officially, so on behalf and of the state.

The principle of autonomy and independence in decision making is closely interconnected with the previous principle. In Art. 4 of the CC

[10] Mytnyi kodeks Ukrainy: Zakon Ukrainy vid 13.03.2012 r. Vidomosti Verkhovnoi Rady Ukrainy. 2012. № 44-45, № 46-47, № 48. St. 558. (In Ukrainian).

of Ukraine[11] secured the exclusive competence of the customs authorities of Ukraine to carry out the customs business, the implementation of which is impossible without the implementation of the principle of autonomy and independence in decision making.

The essence of this principle is, firstly, that any interference by other state authorities and their officials in the administrative activity of the customs service of Ukraine is unacceptable, which means the external independence of the customs authorities, secondly, a higher-ranking customs authority or official should not interfere with legitimate decisions of subordinate structures without special need, and without reason and without proper legal formulation to transfer their powers and responsibilities, it is about their internal independence.

The realization of this principle, on the one hand, increases the efficiency of administrative activity, accelerates it, and on the other hand, increases the personal responsibility of officials for the decisions made, which promotes their legality and validity.

Consideration in the administrative activities of the customs authorities the group of organizational principles allow to optimize the structure and the process of functioning of the customs authorities, to distribute powers between separate units, which makes it possible to reduce the likelihood of duplication in the implementation of functions, and thus ensures the proper effectiveness of the investigated activity. The enforcement of these principles implies the obligatory to consider the specific historical conditions, political situation in the country, the level of social, economic and scientific and technical development of society, which is a prerequisite for the most rational use of human and material and technical resources.

The system of organizational principles of administrative activity of customs authorities includes two groups: principles of construction of the system of customs authorities performing administrative activity and principles of their activity.

We agree with the opinion about the conditionality of such separation, the complexity of its implementation[12]. In fact, it is impossible categorically define the patterns of organization or activity, because the principles of

[11] Mytnyi kodeks Ukrainy: Zakon Ukrainy vid 13.03.2012 r. Vidomosti Verkhovnoi Rady Ukrainy. 2012. № 44-45, № 46-47, № 48. St. 558. (In Ukrainian).

[12] Marchuk V.M. Osnovyi nauchnoy organizatsii gosudarstvennogo upravleniya (Administrativno-pravovoy aspekt. Obschaya chast). K.: NIiRIO KVSh MVD SSSR, 1979. 97 s. S. 40. (In Russian).

construction significantly affect on the activity, and conversely, the activity is closely related to the organization, resulting from the laws of systematic and deterministic organization of functional content.

The first group includes the following principles: unity of the customs system, territoriality, linearity and functionality. This division of the system of organizational principles of administrative activity, in our opinion, allows us to identify the main directions of improving the efficiency of the customs authorities and its modernization.

The principle of unity of the system of customs authorities is found in the normative section in the XX of the Customs Code of Ukraine[13], which implies that the customs authorities together with specialized educational institutions and research institutions make up a single national system - the customs service of Ukraine.

The effect of this principle is due to the existence of two main groups of systemic factors, which in their unity and characterize the organic interconnection of the constituent elements of the customs system.

Firstly, these are the factors that determine the functional community and are conditioned by the unity of the tasks and functions performed on the customs and legal regulation of public relations within the framework of the single customs policy of the state in the single customs territory of Ukraine. The fact that the whole system of customs authorities is involved in the implementation of the state customs policy does not mean that the scope of functions and powers in all links of the system is the same. There are, of course, differences between customs authorities of different organizational and legal levels, which determine the nature and place of a specific customs authority in a single system.

Secondly, these are the factors that determine the organizational unity of the customs system. Organizational unity is ensured by the organizational construction of the system of customs authorities, characterized by a clear hierarchy and sufficiently strict subordination of its components. In addition, each customs authority is connected with other higher and lower customs authorities, neither of which can function by itself, because only in close interaction with other units can it perform its functions and exercise the powers conferred on it. Any customs authority is not an autonomous unit, but an element of complex formation, which is the system of customs authorities of Ukraine.

[13] Mytnyi kodeks Ukrainy: Zakon Ukrainy vid 13.03.2012 r. Vidomosti Verkhovnoi Rady Ukrainy. 2012. № 44-45, № 46-47, № 48. St. 558. (In Ukrainian).

The unity of the customs authorities system is also conditioned by the unity of the tasks and functions performed in order to implement the customs policy of the state.

According to the territorial principle of construction and management of the system of customs authorities, determining the location of customs authorities should take into account the peculiarities of the administrative-territorial units where these authorities will be located and will function and the specifics of economic zoning of the state. The essence of this principle lies in the structural construction of a system whereby the customs authorities will be able to operate effectively in certain clearly defined territories, taking into account the economic potential of those territories.

The territorial principle of building a system of customs authorities is also taken into account in the creation of customs offices, separate departments and customs checkpoints on the customs border of Ukraine. These divisions of customs are also formed taking into account the peculiarities and distribution of transport, freight and passenger flows, as well as other socio-economic, demographic and geographical factors.

The territorial principle of building a system of customs authorities is supplemented by *the principle of linearity and functionality*. The effect of the principle of linearity and functionality in the construction of the system of customs authorities is reflected in the rational combination of the linear and functional type of customs management organization.

The linear type provides the form of system organization of authorities and their subdivisions, where there are direct organizational links between the higher customs authorities (officials) and their subordinate authorities (persons), which, as a rule, do not have intermediate links. In this type of management, the lower customs authority (official) reports to only one supervisor.

The linear type is usually used in the organization of small groups and groups of employees, where the work is relatively simple and does not require narrow specialization. With this type of organization are built separate departments of the customs authorities.

With complex structures of the apparatus, services and departments of the customs authorities, and such majority, the headmaster alone is not able to exercise all powers. In this regard, the linear structure is connected with the functional.

Functional type construction of the system of customs authorities involves the dispersion of special management functions for their direct

implementation between individual structural divisions of the management authorities. According to these functional structural units, tasks, functions, powers, organizational structure are normatively defined and fixed.

By means of these functional structural units, the headmaster resolves specific issues of administrative activity. Functional way to build a system of customs authorities provides specialization of labor, skilled solution of issues, increases the efficiency of coordination and control, simplifies the work of headmasters. It is also important that the functional structural units exert managerial influence over the linear units, not through the head of the customs authority to which they are part.

In the second group of organizational principles are the following principles: rational distribution of powers, combination of unity (uniqueness) and collegiality, expediency, efficiency and responsibility of customs authorities for the decisions taken.

The organizational principles of the customs authorities are used to determine the content of their activities. Adherence to these principles makes it possible to use more effectively the potential of the customs authorities, to make adequate management decisions, to apply sound procedures, to exercise effective internal control and to increase the level of enforcement discipline of customs officials.

The use of the *principle of powers' rational division* implies a clear regulatory assignment of tasks, functions, rights and responsibilities for each customs authority, its structural unit, an official.

The essence of this principle is to align tasks and functions in compliance with the powers conferred on the subject of administrative activity to perform these tasks and functions, its place in the unified national system of the Customs Service of Ukraine, and structural features.

The implementation of the principle of rational division of powers determines the differentiation and fixation of the basic powers of a specific customs authority, unit, official through their normative fixing; the optimum concentration of rights and responsibilities necessary to perform the tasks assigned to the subject; the variety and conformity of rights and responsibilities that would meet the needs of the activity in content.

The administrative activities of the customs authorities are based on *the principle of unity and collegiality.* Considering on the specificity of the administrative activity of the customs authorities, the element

of unity is the leading one, and collegiality takes place in solving the most complex and important issues related to the functioning of the customs system of Ukraine.

Uniformity means that the customs authority is headed by the head alone - the head of the State Customs Service of Ukraine, the head of the regional customs or customs office, which is appointed in accordance with the procedure established by law. The head of the customs authority carries out the general management, has broad representative, financial-economic and control powers and can apply disciplinary influence to the subordinates, in addition the head bears personal responsibility for the organization and functioning of the subordinate body.

The use of collegiality in the administrative activities of the customs authorities creates the conditions for a more complete and comprehensive discussion of issues, which is of particular importance in solving complex, complex problems that arise in the course of the activity of the customs system.

The practical reflection of collegiality in the activities of the customs authorities is found in the functioning of the Board of the State Customs Service of Ukraine, which was created to agree on issues within the competence of the State Customs Service of Ukraine and discuss the most important areas of its activity. The decisions of the board are implemented by orders of the State Customs Service of Ukraine[14].

The principle of expediency is one of the mandatory principles of administrative activity of customs authorities, the essence of which is that the customs authorities have the right and obligation to choose the rule of law, methods and means of carrying out its prescriptions and independently decide on options for the application of the law, given the time and place in each case, in order to achieve the most optimal result of the activity.

A required condition for the principle of expediency is the predictability by law or regulation of a law enforcement entity's right to such a choice of rules and variants of their conduct.

In fact, the principle of the expediency of administrative activity involves several aspects of choice: the choice of the rule to be guided, the choice of options for the execution of prescriptions containing the legal rule and the procedure for applying the relevant rule of law.

[14] Polozhennia pro Derzhavnu mytnu sluzhbu Ukrainy: zatverdzheno postanovoiu Kabinetu Ministriv Ukrainy vid 06.03.2019 r. № 227. Ofitsiinyi visnyk Ukrainy. 2019. № 26. St. 900. (In Ukrainian).

Among all possible options for the decision in the course of its activity, the customs authority should choose one that would ensure the most complete and accurate implementation of the rule of law. In doing so, the solution should take into account, protect and satisfy the rights and legitimate interests of both the state and the citizens and entities of foreign economic activity to which they were concerned.

The administrative activities of the customs authorities, like any other activity carried out in time, have definite time limits, which makes *the principle of efficiency* one of the key principles of the customs authorities.

This principle is due, first of all, to the dynamism of social relations arising from the crossing of the customs border by the citizens, their movement and subjects of foreign economic activity of goods, other subjects, prevention, cessation of violations of the rules of the current legislation in this field.

The essence of this principle is the implementation of all necessary for resolving specific situations involving customs authorities, procedures and decision-making on them as soon as possible.

Observance of the principle of efficiency is important in the implementation of customs by both the operational, executive and jurisdiction activities.

The principle of responsibility of customs authorities for the decisions taken is significantly influenced by the quality of the administrative activity of the customs authorities. It allows to ensure the legality, expediency and objectivity of the administrative activities of the customs authorities. In practice, this principle causes the adoption of justified and effective decisions, the protection of the rights and legitimate interests of citizens and subjects of foreign economic activity, the justified application of administrative and coercive measures and, ultimately, promotes the establishment of democratic foundations in administrative activities.

The implementation of this principle is connected, first of all, with the imposing of responsibility (disciplinary, material, administrative and criminal) for the failure or improper performance of customs authorities by their officials and for the decision, if they caused moral or foreign economic activity to citizens or entities other damage or damage.

The degree of responsibility of officials depends on their place in the hierarchical structure of the customs authority, the extent of competence and the nature of the activity performed. However, if the officer of

the unit is responsible only for his own decisions, actions or omissions, the head of the customs authority shall bear personal responsibility for the organization and operation of the subordinate authorities.

CONCLUSIONS

Certainly, proposed for consideration system of principles of customs authorities' administrative activity is not exhaustive and can be supplemented by other principles if desired. However, we have tried to establish and analyze the most common regularity inherent in the administrative activity of customs at the present stage.

The consistent and steady implementation of the principles under consideration is a prerequisite for improving the efficiency of the administrative activities of customs authorities, contributes to the successful implementation of their functions and the tasks they face in the conditions of building a rule of law with a market economy.

SUMMARY

The article deals with the question concerning the principles of administrative activity, their system and role emerge from their understanding as regularity of development, which are reflected in the basic principles, theoretical ideas and provisions that underlie these activities. Principles of administrative activity of customs authorities are a manifestation and consolidation of the administrative activity's content regularity, they determine its essence, nature and promote to the effective substantive and procedural law realization which contained in customs legislation.

The proposed attempt to formulate the concept of principles of customs authorities' administrative activity and their classification is carried out taking into account that administrative activity of customs authorities is a component of administrative activity of public administration authorities, which is mainly regulated by substantive administrative, legal and administrative procedural norms and implemented in the customs sphere.

It is proved that in the administrative activity of the customs authorities it is possible to detect the effect of regularities of two types: inherent in administrative and procedural activity and, accordingly, two groups of principles. The article describes the main essential characteristics of the principles of administrative activity of customs authorities.

Certainly, the system of principles of administrative activity of the customs bodies proposed for consideration is not exhaustive and can be supplemented by other principles if desired. However, we have tried to establish and analyze the most common patterns inherent in the administrative activities of customs at the present stage.

REFERENCES

1. Iurydychna entsyklopediia: V 6 t. / Redkol.: Yu.S. Shemshuchenko (holova redkol.) ta in. – K.: Ukrainska entsyklopediia, 1998. T. 5: P-S. 2003. 736 s. (In Ukrainian).
2. Administratyvne pravo Ukrainy. Akademichnyi kurs: Pidruch.: U 2 tomakh: T. 1. Zahalna chastyna / Red. kolehiia: V.B. Averianov. K.: Yurydychna dumka, 2004. 584 s. (In Ukrainian).
3. Dodin E.V. Dokazatelstva v administrativnom protsesse. M., Yuridicheskaya literatura, 1973. 192 s. (In Russian).
4. Sorokin V.D. Administrativnoe protsess i administrativno-protsessualnoe pravo. SP.b: Izd-vo Yuridicheskogo instituta, 2002. 47 s. (In Russian).
5. Kotyurgin S.I. Ponyatie, printsipyi administrativno-protsessualnoy deyatelnosti: Lektsiya. Omsk: Omskaya VShM MVD SSSR, 1973. 75 s. (In Russian).
6. Atamanchuk G.V. Teoriya gosudarstvennogo upravleniya. Kurs lektsiy. M.: Omega-L, 2004. 584 s. (In Russian).
7. Averianov V. Nova doktryna ukrainskoho administratyvnoho prava: kontseptualni pozytsi. Pravo Ukrainy. 2006. № 5. S. 11-17. (In Ukrainian).
8. Alekseev S.S. Obschaya teoriya prava: V 2 t. M.: Yuridicheskaya literatura, 1982. T. 2. 359 s. (In Russian).
9. Mytnyi kodeks Ukrainy: Zakon Ukrainy vid 13.03.2012 r. Vidomosti Verkhovnoi Rady Ukrainy. 2012. № 44-45, № 46-47, № 48. St. 558. (In Ukrainian).
10. Konstytutsiia Ukrainy. Vidomosti Verkhovnoi Rady Ukrainy. 1996. № 30. St. 141. (In Ukrainian).
11. Marchuk V.M. Osnovyi nauchnoy organizatsii gosudarstvennogo upravleniya (Administrativno-pravovoy aspekt. Obschaya chast). K.: NIiRIO KVSh MVD SSSR, 1979. 97 s. (In Russian).
12. Polozhennia pro Derzhavnu mytnu sluzhbu Ukrainy: zatverdzheno postanovoiu Kabinetu Ministriv Ukrainy vid

06.03.2019 r. № 227. Ofitsiinyi visnyk Ukrainy. 2019. № 26. St. 900. (In Ukrainian).

Informationaboutthe authors:
Pryimachenko D. V.
Doctor of Law,
Vice-Rector on Scientific Work
of the University of Customs and Finance
2/4, Vernadsky str., Dnipro, 49000, Ukraine
Tylchyk O. V.
Doctor of Law, Professor,
Professor at the Department of Administrative Law
and Procedure and Customs Security
of the University of Customs and Finance
2/4, Vernadsky str., Dnipro, 49000, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/213-231

PROTECTION OF THE LABOR RIGHTS OF CREATIVE WORKERS ACCORDING TO THE LEGISLATION OF FOREIGN COUNTRIES

Voloshina S. M.

INTRODUCTION

The development of high technologies, the globalization of the economy and economic relations, the emergence of new forms of production, the improvement of existing means of production and the desire to improve production and production processes in the country – these are the characteristics that characterize countries with high levels of economy, technological and innovative progress. And usually this development is associated with the creation of a new intellectual product, the development of new technologies, which is carried out using the intellectual resources of employees, using their creative work and creative abilities. For this reason, in highly developed foreign countries, not only are they reasonably well-suited to recruiting staff to work at an enterprise, institution or organization, but also attempting to take appropriate and timely protection for employees engaged in creative activities, to prevent violations of their rights and legal rights. interests, and in the case of infringements with the least cost to restore them.

It should be noted that in foreign countries, unlike in Ukraine, creative work is considered to be one of the highest paid, and workers employed in this field are in high demand for work in enterprises. The importance of creative work and creative activity is guaranteed by a number of legal acts in this field, legal, material and procedural guarantees for the proper realization and protection of the violated rights of creative workers. Countries with a high awareness of the need for creative work and intellectual activity at the legislative level establish an effective and effective mechanism for the protection of intellectual property rights, and workers who perform creative tasks are given a number of benefits and benefits, and additional safeguards for the protection of intellectual property are provided.

Analyzing the legislation of Ukraine in the field of intellectual activity, we have already emphasized the absence of a clear mechanism for the protection of the rights of creative workers in the performance of

their work function, noted the lack of proper organizational, material, legal mechanism to ensure the protection of the rights of creative workers, inconsistency of legislation in this field.

1. The rights of creative workers

The rights of creative workers should be explored in the context of the protection of intellectual property rights and copyright, as these categories are quite close and closely related. In addition, it should be noted that research on copyright in foreign countries should emphasize the various approaches to the regulatory regulation of the rights of creative workers for the Anglo-Saxon and continental system of law. Under the Anglo-Saxon system, both natural and legal persons may be the author of copyrights generally reduced to property rights which can be freely transferred to other persons.

The Anglo-American tradition emphasizes the principle of ownership or the economic aspect of copyright that can be protected and transferred, for which tax can be deducted. A variety of works can be granted copyright privileges. According to the continental (European) system (France, Germany, Russia, Ukraine and other countries), only an individual can be the author of a clearly divided personal and property right. Personal rights always belong only to the author, and property may be represented by other persons, but with a restriction. The European tradition puts forward the idea of moral rights (droit d'auteur) as the highest priority, allowing authors to protect the integrity of their work and to claim authorship[1]. Thus, the mechanism of protection of workers' labor rights should be considered taking into account the peculiarities that are inherent to each state, based on its historical development, regulatory and consolidation of the rights and freedoms of the author, the degree of protection of property and non-property rights of the author or creator of the object intellectual property rights.

Let us examine in detail the degree of legal protection of intellectual property objects in various foreign countries. Investigating and analyzing foreign experience of protecting the creative rights of workers in Ukraine and in the laws of other countries of the world, it is worth emphasizing the common feature of Ukrainian and world law, which is that the property rights and created object of intellectual property rights belong to the

[1] Охорона авторського права в Україні. URL: http://osvita.ua/vnz/reports/culture/11257.

author. However, the degree of ownership of such rights in different states is different, which is conditioned by the distribution of intellectual property (creative) results between employees who create intellectual property objects and employers. In turn, as noted by D.R. Gotsin, the French Intellectual Property Code does not even refer to the employer as a person who has any copyright in a work performed in connection with the performance of an employment contract (other than hereditary rights to computer programs), but the alienation of the rights created by only possible under a separate civil contract. At the same time, US law defines exclusively the employer as the owner of copyright for official works[2].

Thus, the laws of foreign states provide for a different distribution of the rights to the results of intellectual activity in respect of employees who have created a relevant intellectual object in the course of performing their work function. Thus, the laws of individual states (France) protect the rights of the worker, securing for him the exclusive rights to use the object created by him, giving him the appropriate property rights in relation to such object, and at that time, which in other countries is preferred The employer is entitled to copyright and works created in the course of the employee's creative activity.

In addition, we emphasize that in different legal systems of the world the rights to intellectual property are defined differently. In the United Kingdom, Spain, Portugal, France, the Federal Republic of Germany, Japan, the United States and some other countries, intellectual property results are recognized as property rights. In Austria, Belgium, Greece, the Netherlands, the Scandinavian countries, Switzerland, Egypt and some other countries, the same result is recognized as objects of exclusive right of use[3]. Such distribution, of course, involves the use of various legal means and means of protection of intellectual property rights. We, however, agree with the view supported by our legislator that the created rights should be attributed to the objects of property rights, which greatly enhances their protection and protection.

Analyzing the norms of the current legislation in the Civil Code of Ukraine and the Code of Labor Laws for the work of creative workers, we note that there is almost no legal definition of their rights and obligations. The practice of foreign countries more closely approaches the

[2] Гоцин Д.Р. Авторське право на студентські роботи // Молодий вчений. 2015. № 12 (27). Ч. 3. С. 79-83.

[3] Право інтелектуальної власності: підручник для студентів вищих навч. закладів / [за ред. О.А. Підопригори, О.Д. Святоцького]. К.: Ін Юре, 2002. 624 с.

problem of normative-legal fixing of the rights of creative workers in the relevant regulatory legal acts on their regulatory regulation.

The Labor Code of Ukraine does not clearly define and provide for the peculiarities of regulatory regulation of creative workers, which, in turn, causes a number of problematic issues in the regulatory regulation of their rights and duties, as well as the protection of their rights.

The Labor Code does not clearly define and provide for the specific legal regulation of the work of creative workers, which, in turn, raises a number of problematic issues in the legal regulation of their rights and duties, as well as their protection. The current legislation of Ukraine does not provide clear criteria for determining the peculiarities of regulating the work of creative workers, such as for the work of young people, minors, women, etc.

Therefore, the Labor Code should clearly stipulate the peculiarities of regulating the work of creative workers, which, in our opinion, may consist of the following: 1) contract, civil contract, copyright contract, contract agreement, etc; 2) working conditions of the creative worker, which consist not only in the proper organizational and logistical support of the creative workers by the employer, but also protection against those factors that do not depend on the employer or employee (for example, protection of the creative worker from downtime; 3) normalization of labor. It is worth noting that the normalization of the work of the creative worker is quite difficult to understand the concept that follows from the specifics of creative activity; 4) remuneration. A characteristic feature of creative work in foreign countries is that intellectual work in highly developed countries is paid higher than in other countries. In particular, he cites some statistics in his scientific research, which states that in foreign countries, as a rule, mental work is paid higher than physical labor.

According to research, the wages of intellectual workers are on average higher than the wages of workers: in Germany – by 20%; Italy and Denmark – by 22%; in Luxembourg – by 44%; France and Belgium by 61%. The average wage of American engineers is almost twice as high as the average wage of workers[4]. An important guarantee for the protection of the right of creative workers is the timely receipt of wages and appropriate compensation for the creation of an intellectual property object.

[4] Баранов В.В. Світовий досвід побудови ефективної системи оплати праці на підприємстві // Наукові праці Кіровоградського націон. техн. Ун-ту. Економічні науки. 2011. Вип. 2. Ч. І. С. 139–145.

Another object that needs regulation is the right to rest, which is also not clearly regulated in relation to creative workers. In the scientific literature, the term "sabbatical", which is considered as a separate type of holidays. provided for by applicable law. As part of our research, we propose to consider creative leave in relation to creative workers.

A characteristic feature of the legislation in the field of intellectual activity of foreign countries is that highly developed countries approach the problem of protection of intellectual property fairly carefully, defining a number of offenses in this area and establishing sufficiently significant responsibility for infringement of intellectual property rights. In particular, the legislation of France, unlike the national legislature, establishes a rather broad list of offenses in the field of intellectual property.

Thus, the French Trademark Law establishes as the main types of infringements: counterfeiting – the reproduction of another's mark, registered for identical or similar goods and services (for the occurrence of both civil and criminal liability, it is not necessary to prove the guilt of the counterfactor, the very fact of its implementation); misguided imitation – the approximate reproduction of another's sign capable of causing the risk of confusion between the original and the imitated sign (responsibility arises in the presence of guilt in the form of intent); the use of trademarks without the consent of interested persons and the use of imitated trademarks (responsibility comes from the presence of a commercial purpose of the offender, the purpose of profit); erroneous marking – the use by an unauthorized person for the commercial purposes of a genuine, original mark of another person to mark their goods and services; substitution of goods or services – the supply of goods or the offering of services other than those ordered under the registered trademark; storage, sale and delivery – unlawful storage of counterfeit, by deception of marked and imitated signs, as well as sale, putting into circulation, delivery or offer for delivery of goods or services marked with the corresponding signs[5].

The current legislation of Ukraine provides for significantly fewer offenses in the field of intellectual activity and little responsibility for violations of the rights of creative workers. For example, the Code of Administrative Offenses Code provides for liability solely for such types of offenses as infringement of intellectual property rights (Article 512),

[5] Мироненко Н.М. Захист прав на торговельні марки: українська практика та європейський досвід // Право України. 2011. № 3. С. 30–39.

unfair competition, which consists in the illegal copying of the form, packaging, external design, and so on. imitation, copying, direct reproduction of another entrepreneur's goods, unauthorized use of his name (Article 1643), demonstration and distribution of films without a state license for distribution and demonstration violation of the conditions for distribution and display of films stipulated by the state certificate for the right of distribution and display of films (Article 1647), illegal distribution of copies of audiovisual works, phonograms, videograms, computer programs, databases (Art. 1649), violation of the law governing the production, export, import of disks for laser reading systems, export, import of equipment or raw materials for their production (Art. 16413)[6]. The sanctions of these articles predominantly provide for the imposition of a fine on offenders and, in exceptional cases, the confiscation of certain items.

Counterfeiting can be considered as part of another offense – piracy, the essence of which is the reproduction of a work, phonogram, audio-visual work, computer program, etc. by fraudulent use of the name, trade name or trademark of the legal publisher, manufacturer, licensee, etc. In these cases, as a rule, there is also an offense related to the counterfeit use of the company name[7]. Exploring counterfeiting as a type of infringement of copyright and intellectual property rights, it should be noted that some aspects of the understanding of counterfeit goods are covered in the Customs Code of Ukraine and the Law of Ukraine "On Copyright and Related Rights". For example, Article 4 of the Customs Code of Ukraine (Article 17, Clause 4) provides for the definition of counterfeit goods, which recognize goods containing intellectual property rights whose import to the customs territory of Ukraine or export from this territory is a violation of intellectual property rights. property protected under the Law. A similar norm is enshrined in Art. 1 of the Law of Ukraine "On Copyright and Related Rights" contains the definition of a counterfeit copy, which is considered a copy of a work, phonogram or video, reproduced, published and (or) distributed in violation of copyright and (or) related rights, including copies protected in Ukraine of works, phonograms and videograms imported into the customs territory

[6] Кодекс України про адміністративні правопорушення від 07.12.1984 № 8073-X // Відомості Верховної Ради УРСР. 1984. № 51. Ст. 1122.

[7] Право інтелектуальної власності: акад. курс: підруч. для студ. вищих навч. закладів / [О.П. Орлюк, Г.О. Андрощук, О.Б. Бутнік-Сіверський та ін.]; за ред. О.П. Орлюк, О.Д. Святоцького. К.: Ін Юре, 2007. 696 с.

of Ukraine without the consent of the author or other subject of copyright and (or) related rights, in particular from countries where these works, phonograms and videograms have never been protected or ceased whether to be protected.

However, it should be noted that more detailed regulation of counterfeiting in the current legislation is not provided, nor are there clear limits of legal liability for this type of offense. Thus, the Customs Code of Ukraine only provides for liability for the importation into the customs territory of Ukraine or export of goods intended for industrial or other business activities outside the territory with violation of the intellectual property rights protected by law (Article 476), which is expressed in the imposition on the offender of the imposition a fine of one thousand non-taxable minimum incomes of citizens with the confiscation of goods moving in violation of intellectual property rights.

We believe that the above article does not fully regulate counterfeiting, and therefore the responsibility for this type of offense solely in the Customs Code is insufficient. In view of the above, and having examined the scientific positions of scientists on the definition of offenses in the field of intellectual property, we propose in the current legislation, namely the Code of Ukraine on Administrative Offenses to hold responsible for such types of offenses as counterfeiting. Equally important today are such offenses as misguided imitation, erroneous marking, the responsibility for which must also be defined and enshrined at the legislative level, by amending the current Code of Administrative Offenses and fixing relevant articles for the above types of offenses[8].

With regard to criminal liability for infringement of copyrights, intellectual property rights, rights of employees engaged in creative activities, it should be noted that the current Criminal Code establishes liability solely for: infringement of copyright and related rights; infringement of the rights to the invention, utility model, industrial design, topography of the integrated circuit, plant variety, rationalization proposal; the illicit manufacture, falsification, use or sale of illegally made or counterfeit control stamps for marking the packaging of copies of audiovisual works and phonograms; unlawful use of a trade mark (mark for goods and services), 9 commercial (trade name), geographical

[8] Вахонєва Т.М. Захист трудових прав творчих працівників за законодавством держав світу // Наука і правоохорона. 2015. № 1. Ч. 2. С. 37–42.

indication; – unlawful collection in order to use or use commercially confidential information[9].

Unfortunately, the Ukrainian legislature has not analyzed the experience of foreign countries and international legal norms related to the protection of intellectual property rights and copyright objects and does not provide for criminal liability in the field of intellectual property for certain types of offenses. In addition, analyzing the experience of foreign countries and international communities in the field of protection of intellectual property rights, we can conclude that the liability for certain types of crimes with statutory liability is disproportionate. In particular, we consider it necessary in the Criminal Code of Ukraine to increase responsibility for plagiarism.

2. The protection of intellectual property rights and the labor rights in foreign countries

The protection of intellectual property rights in foreign countries is carried out at a rather high level, which, as we have repeatedly emphasized, is due to the special attitude towards creative workers and their creative activity. Proper protection of intellectual property rights, protection and protection of copyright are one way of stimulating scientists to pursue intellectual and creative activities and further scientific research in the relevant area of scientific knowledge. It should be emphasized that the protection of intellectual property and copyright is also actively pursued internationally, usually in specific, specific areas of activity, such as in the field of protection of computer programs, literary works, copyright and related rights, etc. In particular, a number of important international legal acts concerning the protection of the rights of scientists and creators of intellectual property rights have been adopted today. One such act should be referred to as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In exploring the rules of this Agreement, O.O. Krupchan stresses the condition of the agreement, according to which the member states of the Agreement may provide in their national law the right of courts to demand from the offender information about third parties involved in the production and distribution of goods and services that violate the ownership of the sign, as well as their distribution channels. Also

[9] Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III // Відомості Верховної Ради України. 2001. № 25. Ст. 131. 402.

interesting is the provision of the Agreement on damages to the defendant. According to this provision, a defendant who, at the request of the owner of an intellectual property object, has taken precautionary measures that have unreasonably restricted the defendant in his rights or completely deprived them, and as a result of which he has been inflicted certain damages, has the right to claim compensation for damage caused as a result. such abuse, including attorney's fees[10]. We consider this position to be sufficiently substantiated as it establishes additional safeguards for the protection of the rights of intellectual property creators. That is, the responsibility in this case rests not only on the direct infringer of the creator's rights, but also on persons who are in one way or another involved in the infringement of intellectual property rights. This, in our view, is quite important, since intellectual property rights and copyright are specific objects of protection both by the state and by the courts and law enforcement agencies. The importance of obtaining information on third parties involved in the production and distribution of goods and services that violate the ownership of the sign, as well as their distribution channels is acquired in the process of self-protection of infringed herbs and legitimate interests of intellectual property objects by the sub further used by the courts in the direct examination of cases. This is due to the fact that in the process of self-defense appropriate circumstances of violation of the rights of the creative worker are established, and quite often in the process of investigation it is established not only when the persons who directly committed the violation and those who in one way or another contributed to the implementation of such violation of rights and interests.

Analyzing the experience of foreign countries, it should be emphasized that in some states, only literary works that are given only certain features are subject to the protection of labor rights and intellectual property rights. For example, one of these features is a sign of originality. Investigating this feature A.M. Yevkov notes that the originality of the work is a matter of fact. Originality cannot be judged equally in all kinds of works. It differs depending on whether it is a work of science and technology or a work of art, literature, popular or symphonic music, original or derivative work. There is no need for the author to be free from

[10] Крупчан О.О. Міжнародно-правові механізми охорони і захисту авторських прав // Питання розвитку права інтелектуальної власності: збірник наукових праць. 2009. Вип. 8. С. 109–110..

outside influences. The ideas used by the author may be as old as the world, but this does not prevent the work from being original, since, as stated earlier, copyright considers intellectual creativity based on pre-existing elements. The main thing here is that the work is different from its predecessors, that the wine is not a copy or inheritance of another work[11].

In particular, such a position expressed in Romanian law in the Law of Ukraine "On Copyright and Related Rights" states that the subject matter of copyright is original works of intellectual creativity in the field of science, regardless of the way of creation, means or practical form of expression and regardless of their value or purpose[12]. We agree with the above position of the scientist, because the originality of the work originates from the creative nature of the work, the development of creative and mental abilities of the creator, etc. Originality is a prerequisite for recognizing a work as being within the meaning of an intellectual property object, characterizing it as a particular intellectual property. However, in addition to originality at the legislative level, there are also other conditions for recognizing a work as an intellectual property. Yes, the Law № 158 of 31.05. In 1961, it was stipulated that the object of legal protection under paragraph 1 of the Danish law was precisely the work in its special, individual design, which was provided to it by the author. Copyright protection is known to have a very limited territorial nature and belongs to the category of exclusive rights. The exclusiveness of copyright lies not only in the personification of any of the rights under consideration, in the identification of this right with its owner, but also in the fact that, unlike ordinary property relations, where a creditor with his rights is opposed by a particular debtor with his obligations any person and society as a whole is opposed by the copyright owner[13].

Describing the work of creative workers, we note that in foreign countries, much attention is paid to certain conditions for creative work. In particular, it concerns the norms of the work schedule and the work schedule, which follows from the peculiarities of the creative activity. For example, creative workers can only work a couple of hours a day, and in some cases, almost 24 hours a day. In addition, employers often enter

[11] Авторське право в міжнародно-правовому аспекті / Уклад. А.М. Євков Х.: 2010. 126 с.

[12] Про авторське право і суміжні права: Закон Республіки Румунія від 14.03.1996 № 8 / http://www.wipo.int/wipolex/ru/text.jsp?file_id=129487.

[13] Шибаєва Л.Л. Деякі особливості міжнародно-правової охорони права інтелектуальної власності // Форум права. 2016. № 3. С. 277–282.

into civil contracts with creative workers. For example, with actors, writers and artists[14]. An important guarantee for the protection of the rights of creative workers, which arises from the peculiarities of their work, is protection against downtime, which is not provided for by the current Labor Code.

The current legislation of Ukraine does not provide a by-law for the protection of creative workers from downtime, and therefore we consider it necessary, as in most countries, to consolidate this norm at the legislative level.

It should be noted that the experience of foreign countries testifies to the widespread application of the system of material support to employees of enterprises, institutions, organizations, increasing the level of their material support. As V.V. Baran, the key elements of material incentives for employees are: use of the tariff system; the use of progressive forms of remuneration; the dissemination of original bonus systems and incentives for innovation; higher pay for mental work; substantial individualization of wages[15]. The work of creative workers is no exception. In addition, they practice such a form of work motivation abroad as a flexible work schedule. This provides employees with an opportunity to work from home, which greatly improves their attitude to work and, consequently, improves their quality. In addition, when working from home, an employee can perform much more work.

In British firms, the promotion of gifts has become widespread. Another effective way of motivating work is to create self-governing groups. The groups independently decide on issues related to work planning, meetings, coordination with other department etc.[16]. We believe that at the legislative level, the ability of creative workers to use flexible working conditions should be enshrined and the opportunity for creative workers to work on creating an intellectual property right at home should be legislated.

Exploring the legal status of creative workers, I. Bogdan gives an example of international norms in this field. Thus, the scientist notes that

[14] Шадрина Т. С. Особенности трудового договора с творческими работниками // Учреждения культуры и искусства: бухгалтерский учет и налогообложение. 2012. № 11. С. 58–69.

[15] Пресняков М. В. Особенности регулирования труда лиц до 18 лет // Трудовое право. 2010. № 6. С. 11–21.

[16] Заярна Н.М. Зарубіжний досвід мотивації праці та доцільність його застосування в України // Науковий вісник НЛТУ України. 2011. Вип. 215. С. 368–372.

the international norm is more universal in the matter of classification of a person into the category of "creative workers" and establishes the guarantees provided by the legislation on labor for all workers, regardless of what legal basis the person performs work, which in its content is creative, determining her status as a creative worker. It is stated that the legal status of the "creative figure" is not defined, and therefore, does not carry the legal burden, and therefore does not determine the rights and/or obligations. The author also stresses that the continuation of discussions about understanding the concept of "creative worker" is also a mistake. A person who refers to himself as a creative worker voluntarily agrees to the status of "free artist", whose activity, according to such a person, is not regulated by labor law, and therefore cannot be protected by labor and legal means[17].

The importance of protecting the labor rights of creative workers as jurisdictional and non-jurisdictional bodies is of particular importance. An important element of the protection of the labor rights of workers, including those engaged in creative work, is that in foreign countries there are specialized labor courts and the procedural procedure for the protection of labor rights is clearly regulated at the legislative level. In particular, such courts exist in Austria[18], Great Britain[19], USA, Germany, etc. It is worth agreeing with the opinion of A.S. Matsko and J.Ya. Kiselyov, who noted that access to labor courts in European countries for workers is wider than in ordinary courts: the dispute procedure is faster and cheaper, there are no formalities observed in civil proceedings, the courts show greater initiative in litigation and litigation. evidence. There are differences in both the burden of proof (which is mostly on the owner) and the methods of proof. According to A.S. Matsko and J.Ya. Kiselev, the creation of labor courts, the active development of labor justice – the logical conclusion of the recognition of the autonomy of labor law. The specific features of labor law dictate the need to form procedural forms and procedural law in general[20].

---

[17] Богдан І.А. Умови праці як елемент трудо-правового забезпечення творчості // Юридична Україна. 2013. Вип. № 7 (127). С. 50–56.

[18] Пархомчук С.О. Шляхи впровадження в судову систему України органів патентної юрисдикції // Часопис Київського університету права НАН України. 2012. № 2. С. 228–231.

[19] Орлова В.В. Как работают патентные суды Германии и Великобритании // Патенты и лицензии. 2007. № 5. С. 57–66.

[20] Порівняльне трудове право: навч. посіб. / [Б.С. Беззуб, Л.В. Голяк, О.М. Кісілевич та ін.]. К.: МАУП, 2005. С. 79–114.

The laws of some highly developed countries provide for the existence of a specialized judicial body to hear cases arising from the use of intellectual property and intellectual property rights. The existence of such specialized courts is conditioned by the need to possess appropriate practical knowledge in the field of intellectual property, the peculiarities of the exercise of such protection, which greatly speeds up the consideration of such cases, and therefore the speedy restoration of the infringed right.

The most specialized specialization of courts in the field of intellectual property is in Germany. Thus, according to a judge of the Federal Supreme Court of Germany, Professor Joachim Borkamm, the Federal Patent Court operates in Munich. denial of patent or trademark registration). Another function of the Patent Court is to hear claims for patent validity. In Germany, after a patent has been granted, it can only be challenged in the Federal Patent Court and, on appeal, in the Federal Supreme Court. In the course of patent infringement proceedings, a judge must recognize the grant of a patent. He may initiate patent infringement proceedings only if, in his estimation, the patent is most likely to be declared invalid. In civil litigation in Germany, claims are also dealt with exclusively by specialized courts. Thus, of the 16 district courts of the federal state of Baden-Württemberg, only two can hear copyright and trademark disputes, and only one can handle patent claims[21].

A characteristic feature of the protection of intellectual property rights in foreign countries is the fact that countries with high economic development, while protecting property rights, impose rather severe sanctions for infringement of intellectual property rights. For example, in analyzing the system of property rights protection in the United States, Bezpalko and N.P. Skrygun, emphasize that this state provides for criminal liability for copyright infringement and imprisonment of up to 10 years. The penalties provided for by Ukrainian law for copyright infringement are also severe enough: the maximum penalty for such actions in the criminal code is 6 years' imprisonment. But forensic provision of the solution of this problem, both in practical and theoretical aspect is quite difficult. This is due in the first place to the fact that protection of copyright and related rights has long been in the realm of

[21] Боркамм И. Процессуальные действия по вопросам интеллектуальной собственности в рамках системы гражданского права: опыт Германии. URL: http://www.wipo.int/edocs/mdocs/enforcement/ru/wipo_ace_2/wipo_ace_2_3.pdf.

civil law only[22]. At the scientific level, in particular in the scientific position of M.Ya. Melnikova stressed that the legislator should increase the level of penalties for violations in the specified area, depending on the level of public danger. The government must prove to the public that it will not condone copyright infringement in the field of information technologies and with their help. The facts of illegal distribution of works on the Internet, their public announcement in public places, establishments of trade, food, etc., have also become widespread[23].

It should be noted that in most foreign countries there are specialized legal acts in which detailed regulation of protection of intellectual property rights is carried out. For example, in France the Code of Intellectual Property has been adopted. In characterizing this code, it states that the Intellectual Property Code consists of a legislative part, a regulatory part and a section on the application of rules in overseas territories. The legislative part contains general provisions on intellectual property rights. The regulatory part details the individual provisions of copyright, industrial property rights, legal means of individualization of participants in civil trafficking, goods and services. The Intellectual Property Code regulates the procedure for the implementation of international treaties ratified by France[24].

Another area of copyright protection in the field of copyright is the widespread use of copyright and labor rights by employees who create copyright and intellectual property rights. The protection of the labor rights of creative workers is also reflected in the proper protection of intellectual property objects created by such workers, both independently and for the performance of the relevant official task. In particular, the protection of intellectual property rights is expressed in the criminal liability for violations of employees' rights to the results of their intellectual activity, which is enhanced in contrast to the Ukrainian legislation. For example, examining the peculiarities of criminal responsibility of the United States of America states that severe penalties are imposed under the laws of the United States of America for

[22] Безпалько О.В. Проблематика захисту від «інтелектуального піратства» в світі і України. URL: http://dspace.nuft.edu.ua/jspui/bitstream/123456789/8957/1/piratstvo.

[23] Мельников М. Я. Піратство як злочин у галузі авторського права і суміжних прав: погляд на проблему // Право України. 2003. № 4. С.72–75.

[24] Зінич Л.В. Особливості правового регулювання використання винаходів за законодавством Франції // Национальний юридический журнал: теория и практика. 2015. Декабрь. С. 136-–138.

counterfeiting and piracy. In particular, under US law, unauthorized reproduction of digital works (such as software products) and their pirated distribution (eg via the World Wide Web) is criminalized without the need to prove the offender's commercial advantage. The thresholds for bringing a criminal case for piracy under the laws of the United States of America are low and are based on the retail price of pirated goods[25].

Therefore, after examining the most general aspects of intellectual property rights protection, we propose to agree with Yu. Yakimenko, who states that the state should take the following measures to ensure effective copyright protection:

- to establish a level of legal protection that complies with the rules of the main international treaties in the field of copyright;
- to condemn the illegal use of copyright objects;
- introduce rules that provide adequate compensation to copyright entities for the damage they cause;
- introduce into national law rules that provide for severe criminal penalties for illegal use of copyright objects;
- develop procedures to identify and prove cases of misuse of copyright objects;
- ensure the effective implementation of these sanctions and procedures.

CONCLUSIONS

It would also be appropriate to introduce a mediation practice for the settlement of disputes arising out of copyright infringement, such as that effectively applied in international practice, along with other alternative dispute resolution methods. This would help to unburden the state bodies that carry out copyright protection, reduce the terms of copyright protection cases, preserve in most cases partnerships between the parties to the conflict[26]. A similar opinion was expressed by T.V. regarding the definition of measures to improve civil liability for copyright infringement. The mine, which includes such measures: First, the issuance of regulations to regulate the field of copyright, especially with regard to issues related to the Internet; second, the state must provide effective

[25] Захист прав інтелектуальної власності: норми міжнародного і національного законодавства та їх правозастосування: практичний посібник. – К. : К.І.С., 2007. 448 с.

[26] Якименко Ю.А. Способи захисту авторського права // Вісник Дніпропетровського ун-ту ім. Альфреда Нобеля. – Серія: Юридичні науки. 2015. № 1 (6). С. 37–41.

mechanisms for bringing copyright offenders to justice, paying greater attention to measures to prevent offenses; third, an important role in the improvement of the civil legislation is played by bringing the normative legal acts in conformity with each other and international acts and standards, eliminating contradictions.

As a conclusion, in foreign highly developed countries considerable attention is paid to the protection of the labor rights of creative workers, which is due to the need to use the intellectual potential of the individual to improve production processes in enterprises. The peculiarity of protecting the rights of creative workers in foreign countries is to strengthen the protection of created objects of intellectual property, by expanding the types of offenses in the sphere of intellectual property and increased responsibility for their infringement, protection from downtime, etc.

SUMMARY

The main experience of foreign countries on the work of creative workers proposed in the Labor Code should clearly stipulate the peculiarities of regulating the work of creative workers, which, in our opinion, may consist of the following: 1) the emergence of employment relations with creative workers is an employment contract, a civil contract, a copyright contract, a contract agreement and more; 2) working conditions of the creative worker, which consist not only in the proper organizational and logistical support of the creative workers by the employer, but also protection against those factors that do not depend on the employer or employee (for example, protection of the creative worker from downtime; 3) normalization of labor. It is worth noting that the normalization of the work of the creative worker is quite difficult to understand the concept that follows from the specifics of creative activity; 4) remuneration.

Analyzing the problems of protection of intellectual property rights, the types of offenses in this area and the responsibility for their infringement are proposed to expand the list of offenses in the field of intellectual property. For example, in the case of France, it is proposed in the current legislation, namely the Code of Administrative Offenses to fix responsibility for such offenses as counterfeiting, misguided imitation, erroneous marking by amending the current Code of Administrative Offenses and fixing relevant articles offenses.

It is proposed at the legislative level to consolidate the ability of creative workers to use flexible working conditions and the ability of creative workers to work on the creation of an intellectual property right at home.

The need for the establishment and existence of a specialized judiciary in Ukraine to handle cases arising from the use of intellectual property and intellectual property rights has been simplified. It is emphasized that the possibility of setting up specialized courts for the resolution of intellectual property disputes can be considered as a long-term perspective in the development of our country, which should be based on the experience of such courts in foreign countries and the analysis of the possibility of their introduction in the national court system. It is more appropriate to analyze the causes and conditions that contribute to the violation of the parties' rights in the intellectual property relationship, to legislatively enforce the terms of the intellectual property treaties and the agreements on the distribution of intellectual property rights, to define the conceptual foundations and ways of protecting intellectual property rights and their legislative consolidation.

REFERENCES

1. Охорона авторського права в Україні / http://osvita.ua/ vnz/reports/culture/11257/.
2. Гоцин Д.Р. Авторське право на студентські роботи // Молодий вчений. 2015. № 12 (27). Ч. 3. С. 79-83.
3. Право інтелектуальної власності: підручник для студентів вищих навч. закладів / [за ред. О.А. Підопригори, О.Д. Святоцького]. К.: Ін Юре, 2002. 624 с.
4. Баранов В.В. Світовий досвід побудови ефективної системи оплати праці на підприємстві // Наукові праці Кіровоградського націон. техн. Ун-ту. Економічні науки. 2011. Вип. 2. Ч. І. С. 139–145.
5. Мироненко Н.М. Захист прав на торговельні марки: українська практика та європейський досвід // Право України. 2011. № 3. С. 30–39.
6. Кодекс України про адміністративні правопорушення від 07.12.1984 № 8073-X // Відомості Верховної Ради УРСР. 1984. № 51. Ст. 1122.
7. Право інтелектуальної власності: акад. курс: підруч. для студ. вищих навч. закладів / [О.П. Орлюк, Г.О. Андрощук, О.Б. Бутнік-Сіверський та ін.]; за ред. О.П. Орлюк, О.Д. Святоцького. К.: Ін Юре, 2007. 696 с.
8. Вахонєва Т.М. Захист трудових прав творчих працівників за законодавством держав світу // Наука і правоохорона. 2015. № 1. Ч. 2. С. 37–42.

9. Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III // Відомості Верховної Ради України. 2001. № 25. Ст. 131. 402.

10. Крупчан О.О. Міжнародно-правові механізми охорони і захисту авторських прав // Питання розвитку права інтелектуальної власності: збірник наукових праць. 2009. Вип. 8. С. 109–110.

11. Авторське право в міжнародно-правовому аспекті / Уклад. А.М. Євков Х.: 2010. 126 с.

12. Про авторське право і суміжні права: Закон Республіки Румунія від 14.03.1996 № 8 / http://www.wipo.int/wipolex/ru/text.jsp?file_id=129487.

13. Шибаєва Л.Л. Деякі особливості міжнародно-правової охорони права інтелектуальної власності // Форум права. 2016. № 3. С. 277–282.

14. Шадрина Т. С. Особенности трудового договора с творческими работниками // Учреждения культуры и искусства: бухгалтерский учет и налогообложение. 2012. № 11. С. 58–69.

15. Пресняков М. В. Особенности регулирования труда лиц до 18 лет // Трудовое право. 2010. № 6. С. 11–21.

16. Заярна Н.М. Зарубіжний досвід мотивації праці та доцільність його застосування в України // Науковий вісник НЛТУ України. 2011. Вип. 215. С. 368–372.

17. Богдан І.А. Умови праці як елемент трудо-правового забезпечення творчості // Юридична Україна. 2013. Вип. № 7 (127). С. 50–56.

18. Пархомчук С.О. Шляхи впровадження в судову систему України органів патентної юрисдикції // Часопис Київського університету права НАН України. 2012. № 2. С. 228–231.

19. Орлова В.В. Как работают патентные суды Германии и Великобритании // Патенты и лицензии. 2007. № 5. С. 57–66.

20. Порівняльне трудове право: навч. посіб. / [Б.С. Беззуб, Л.В. Голяк, О.М. Кісілевич та ін.]. К.: МАУП, 2005. С. 79–114.

21. Боркамм И. Процессуальные действия по вопросам интеллектуальной собственности в рамках системы гражданского права: опыт Германии // http://www.wipo.int/edocs/mdocs/enforcement/ru/wipo_ace_2/wipo_ace_2_3.pdf

22. Безпалько О.В. Проблематика захисту від «інтелектуального піратства» в світі і України // Экономические науки. Серия: Маркетинг и менеджмент / http://dspace.nuft.edu.ua/jspui/bitstream/123456789/8957/1/piratstvo.

23. Мельников М. Я. Піратство як злочин у галузі авторського права і суміжних прав: погляд на проблему // Право України. 2003. № 4. С. 72–75.

24. Зінич Л.В. Особливості правового регулювання використання винаходів за законодавством Франції // Национальний юридический журнал: теория и практика. 2015. Декабрь. С. 136–138.

25. Захист прав інтелектуальної власності: норми міжнародного і національного законодавства та їх правозастосування: практичний посібник – К. : К.І.С., 2007. 448 с.

26. Якименко Ю.А. Способи захисту авторського права // Вісник Дніпропетровського ун-ту ім. Альфреда Нобеля. – Серія: Юридичні науки. 2015. № 1 (6). С. 37–41.

Information about the author:
Voloshina S. M.
PhD in Law, Associated Professor
at the Department of Labour and Social Security Law
National University “Odessa Law Academy”
2, Academychna str., Odessa, 65009, Ukraine

DOI https://doi.org/10.36059/978-966-397-142-1/232-250

DIRECTIONS FOR IMPROVEMENT OF ADMINISTRATIVE AND LEGAL PRINCIPLES OF MANAGEMENT IN THE ENSURING OF THE COUNTRY ENVIRONMENTAL SAFETY

Yemets L. O.

INTRODUCTION

Today the management system in the field of environmental safety in Ukraine is in a state of reform, which is conditioned, on the one hand, by the processes of reforming public administration in general, and, on the other hand, the need for the incorporation of the rules of international legal acts in the field of environmental protection into the national legislation, ratified by Ukraine. In particular, in recent years, a number of key legislative acts in the field of environmental safety have been adopted. An important step in reforming the management system in the field of environmental safety was the adoption of the Laws of Ukraine "On Environmental Impact Assessment" and "On Strategic Environmental Assessment". These laws provide for the creation of a mechanism for assessing the environmental consequences of planned economic activities (in the case of environmental impact assessment) and the implementation of government planning documents (in the case of strategic environmental assessment).

The environmental impact assessment is carried out in relation to the planned economic activity, which includes construction, reconstruction, technical re-equipment, expansion, re-engineering, elimination (disassembly) of objects, other interference into the environment. Its procedure includes: 1) the preparation of a report on the environmental impact assessment by a business entity; 2) public discussion; 3) analysis by the notified body of the information provided in the environmental impact assessment report, any additional information provided by the entity, as well as information received from the public during the public discussion during the implementation of the procedure for assessing transboundary impact, other information; 4) providing the competent authority with a reasoned opinion on the environmental impact assessment taking into account the results of the analysis provided for in paragraph 3 of this part; 5) taking into account the conclusion on the environmental impact assessment in the decision on the implementation of the planned activity.

1. Urgent problems of the reform of the management system in the field of environmental safety in Ukraine and ways of their solution

The mechanism of environmental impact assessment is sufficiently complete with the regulatory and legal acts necessary for its implementation. Thus, the Cabinet of Ministers of Ukraine has adopted the resolutions No. 989 of 13.12.2017 "On Approval of the Procedure for Conducting Public Hearings in the Process of Environmental Impact Assessment", No. 1026 of 13.12.2017, "On approval of the procedure for the transmission of documentation to provide a conclusion on impact assessment on the environment and financing of the environmental impact assessment and the procedure for maintaining the Unified Register on environmental impact assessment", which adequately regulate the procedure for conducting an environmental impact assessment.

Somewhat worse is the legal and regulatory framework for strategic environmental assessment. The Strategic Environmental Assessment, in accordance with the provisions of the Law of Ukraine "On Strategic Environmental Assessment", is a procedure for defining, describing and evaluating the consequences of the implementation of government planning documents for the environment, including for public health, justifying alternatives, developing measures for prevention, reduction and mitigation of possible negative consequences, which includes the definition of the scope of strategic environmental assessment, the preparation of a report on strategic environmental assessment, public discussion and consultation taking into account in the government planning document the report on the strategic environmental assessment, the results of public discussion and consultations, informing about approval of the government planning document and is carried out in accordance with the procedure established by the Law of Ukraine "On Strategic Environmental Assessment"[1].

The urgent issue is the reform of the government control system in the field of environmental protection. On May 31, 2017, the Cabinet of Ministers of Ukraine, by its resolution No. 616-p, approved the Concept for reforming the system of government supervision (control) in the field of environmental protection, the implementation of which is scheduled for

[1] Про стратегічну екологічну оцінку : Закон України від 20.03.2018 № 2354-VIII. База даних «Законодавство України». Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2354-19.

2017–2020. In particular, the document emphasizes that "the system of organization of supervision (control) over observance the requirements of environmental legislation is imperfect"[2].

One of the main steps envisaged in the concept is the liquidation of the State Ecological Inspection with the transfer of its tasks to a single integrated government body for environmental monitoring and supervision (control) – the State Environmental Protection Service. According to the concept, the establishment of the State Environmental Protection Service was planned in 2017 (simultaneously with the liquidation of the State Environmental Inspectorate). Nevertheless, as of 2018, the relevant decisions have not been adopted. Instead, the Cabinet of Ministers of Ukraine adopted a decision on the gradual reorganization of the State Environmental Inspectorate into the State Environmental Protection Service, which was reflected in the adoption of the Resolution of the Cabinet of Ministers of Ukraine No. 102 "On the Implementation of the Concept for the Reform of the State Supervision System (Control) in the Field of Environmental Protection" on February 21, 2018. Without liquidating the State Environmental Inspectorate and without establishing the State Environmental Protection Service, this document, on the other hand, eliminates the regional divisions of the State Environmental Service, in parallel forming interregional territorial bodies of this body. It should be noted that the Concept for reforming the system of government supervision in the field of environmental protection does indeed provide for the key difference of the new body to leave the administrative-territorial division of Ukraine as the basis for the functioning of territorial bodies of government supervision in the field of environmental protection.

The functioning of nationwide environmental automated information and analytical system for ensuring access to environmental information is not fully ensured too. At present, work is underway to create the National Automated System "Open Environment", which, according to the Ministry of Ecology and Natural Resources, intends not only to provide citizens with access to environmental information, but also perform a number of other functions, including the portal for the granting administrative services.

[2] Про схвалення Концепції реформування системи державного нагляду (контролю) у сфері охорони навколишнього природного середовища : Постанова Кабінету Міністрів України від 31.05.2017 № 616-р. URL: http://zakon2.rada.gov.ua/laws/show/616-2017-%D1%80.

Important in terms of ensuring environmental safety and harmonizing Ukrainian legislation with European rules is the revision and modernization of requirements for rules, limits and other indicators that characterize emissions of harmful substances, as well as permits for the conduct of activities related to the potential environmental impact. One of the most promising directions of reform in this direction is the introduction of the integrated permission system.

Integrated permissions are provided for in the Directive 2010/75/EC on industrial pollution (comprehensive pollution prevention and control), the need for implementation of which provisions in Ukrainian legislation is foreseen by the Association Agreement. According to the document, the integrated permission for the implementation of activities is a decision that establishes individual requirements for the operation of a particular object.

The permission must contain all measures necessary to achieve a high level of environmental protection as a whole. In other words, the document is based on an integrated approach to environmental protection rather than measures to protect soil, air or water separately. The permission must contain the limit values of pollutant emissions or equivalent parameters, proper requirements for the protection of soils and groundwater and monitoring requirements. The directive states that permission requirements should be based on the best available technologies.

An important element of the mechanism for the issuance of integrated permissions is the obligatory participation of local governments and the public in the decision-making process on the provision of an integrated permission, as well as ensuring the public availability of all documents and decisions on the basis of which the decision to deliver an integrated permission is being made.

There is a need to reform government policy and in the context of certain areas of environmental safety.

Thus, one of the important directions of improvement of the government policy in the environmental area is the introduction of an integrated water resources management system. With the adoption in 2016 of the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on the Implementation of Integrated Approaches in the Management of Water Resources Based on the Basin Principle", the introduction of a basin water management principle, which involves integrated water resources management within the district of river basin

has begun in Ukraine[3]. This management system is based on the accounting and monitoring of all types of water use located within the regional ecosystems of the relevant river basins, taking into account the interests of different industries and hierarchical levels of water use, involving all interested parties in the decision-making process and promoting their efficient and sustainable use[4].

The law provides, in particular, for hydrographic and water management zoning of the territory of Ukraine, the development of river basin management plans and the development of water management balances. At the same time, further reform of the sphere is hampered by the fact that the Ministry of Ecology and Natural Resources prepared the concept of reforming the scope of protection and rehabilitation of water, the rational use of water resources and the development of water management and land reclamation, has not yet been approved. In particular, it provides for the reform of the State Agency for Water Resources, aimed at eliminating the combination of the body, on the one hand, functions of the implementation of government policy in the management, use and reproduction of water resources, and on the other – economic functions. The economic functions of the State Agency of Water Resources, in accordance with the project concept, are to be transferred to the newly formed State Joint Stock Company "Water of Ukraine". The draft concept also proposes the establishment of a permanent consultative and advisory body to the Cabinet of Ministers of Ukraine – the National Council for the Protection, Restoration and Sustainable Management of Water Resources, for the elaboration of proposals and coordination of the relevant central executive bodies and local authorities, enterprises, institutions and organizations involved to the use of natural resources in the rivers basins of Ukraine.

Another important area of environmental security that needs to be reformed is waste management. According to N.V. Trushkina and I.M. Kocheshkova, although the Ukrainian legal acts contain a number of basic waste management requirements that comply with certain norms

[3] Про внесення змін до деяких законодавчих актів України щодо впровадження інтегрованих підходів в управлінні водними ресурсами за басейновим принципом : Закон України від 4 жовтня 2016 року № 1641-VIII. *Відомості Верховної Ради України*. 2016. № 46. Ст. 5.

[4] Минюк О. Ю., Минюк Д. І. Система суб'єктів державного управління у галузі екологічної безпеки. *Електронне наукове видання «Порівняльно-аналітичне право».* 2014. № 2. С. 182–188. С. 49.

of European legislation, and the current Law of Ukraine "On Waste" as a whole takes into account the requirements of the Framework Directive 75/442 / EC on waste and Directive 91/689 / EC on hazardous waste, many issues related to waste management in Ukraine remain unregulated and some aspects require reform[5]. In this regard, in 2017, the National Waste Management Strategy until 2030 has been approved. This document, in particular, requires the development and adoption of a number of legislative and regulatory legal acts designed to improve the waste management system in Ukraine. In the context of its reform, the adoption of a new framework law on waste is urgently needed, which should consolidate a number of key provisions, which include: clarification of the terminological apparatus (in particular, the introduction of the concepts of "waste management", "recycling", etc.); a five-tier hierarchy of waste management; expansion of producer responsibility in accordance with the polluter pays principle; improvement of the procedure for termination of waste status.

To sum up, it should be noted that in recent years in the field of reforming the system of environmental safety, a number of measures have been taken to improve and modernize this area, harmonization of legislation and procedures with European legislation. A number of important laws aimed at introducing the best international practices in the field of environmental safety have been adopted, in particular, the Laws of Ukraine "On Environmental Impact Assessment", "On Strategic Environmental Assessment", "On Amendments to Certain Legislative Acts of Ukraine on Implementation of Integrated Approaches to Management" water resources according to the basin principle", developed and approved legal acts necessary for the implementation of these laws provisions.

At the same time, there is a significant number of transformations that need to be implemented in order to modernize the system of environmental safety. The key areas of reform should include: reforming the system of government environmental supervision (control) and monitoring, completing the formation of the State Environmental Protection Service; completion of the system of environmental impact assessment and strategic environmental assessment; building of the State Automated System "Open Environment" as an ecological automated

[5] Трушкіна Н. В., Кочешкова І. М. Нормативно-правове регулювання розвитку сфери управління відходами в Україні. *Вісник економічної науки України*. 2017. № 2 (33). С. 97–102. С. 97.

information and analytical system providing access to environmental information, the portal of administrative services, system of management activity and document circulation, etc.; introduction of integrated permitting system.

2. Ways of improvement of the legislation on administrative violations in the field of environmental safety

Ensuring ecological safety of Ukraine, in addition to the implementation of organizational and regulatory measures by the authorized bodies to regulate the relevant social relations, also requires the construction of an effective system for counteracting unlawful acts in the field of environmental protection and the use of natural resources. According to official statistics, the number of administrative offenses committed in the field of environmental protection remains rather high: in 2013 they have reached 153888, in 2014 – 87533, in 2015 – 67054, in 2016 – 61190, in 2017 – 61034[6].

Administrative liability in the field of environmental safety can be defined as a form of legal responsibility, which is the application by courts and other authorized bodies of the government and their officials of administrative penalties and financial sanctions of administrative and legal nature to individuals and legal entities guilty of committing an administrative misconduct in the field of environmental safety, which entails for these individuals the burdensome consequences of personal, material or organizational nature. This form of responsibility has a dual nature – it is a form of administrative coercion and legal liability.

The analysis of scientific literature regarding the signs of legal liability allows to distinguish the following signs of administrative liability in the field of environmental safety: 1) this type of legal liability; 2) applied by the authorized bodies of the government and in accordance with the procedure established by law; 3) the grounds are the commitment of an administrative offense in the field of environmental safety, as determined by the current legislation; 4) applies to persons specified by law (individuals, legal entities, officials); 5) the offender experiences adverse consequences, certain limitations of personal, organizational, property character; 6) adverse consequences (restrictions) should be stipulated by the sanction of the relevant legal rule.

[6] Адміністративні правопорушення у 2013–2017 роках (Статистичний бюлетень). Державна служба статистики України. Київ. 2018. URL: https://ukrstat.org/uk/druk/publicat/kat_u/publzlochin_u.htm.

Thus, an environmental offense is a socially dangerous, unlawful, guilty act committed by a delinquent subject, which infringes on citizens' environmental rights and freedoms of, public relations in the field of environmental protection, environmental management, reproduction of natural resources, environmental safety, management in the environmental area, for which the legislation of Ukraine establishes legal liability.

The main features of the environmental offense remain with respect to its general definition: social danger (harm), guilty, punishment, wrongfulness. Instead, the reason for its allocation as a separate species is the object of its encroachment. As follows from the above definitions, they include, in particular: the rights and legitimate interests of environmental law actors; the established procedure for the use and restoration of natural resources; the order of environmental protection; environmental safety requirements; the management of ecology. Along with the foregoing, in certain scholars' works, specific features of environmental offenses are distinguished: environmental misconduct; environmental hazard (harmfulness); ecological orientation[7].

The main feature that allows the delineation of environmental offenses from others (including those related to natural objects) and gives grounds for recognizing it as an independent form in the system of offenses is to inflict damage on nature, natural objects, ecosystems (and through them to the human).

We believe that the list of features is somewhat artificial, since it is possible to distinguish similar features and other administrative offenses, for example, transport orientation, financial harm, trade unlawfulness[8]. The main criterion for delimiting the offenses is, according to us, the criterion for delimiting the offenses, according to which they differ precisely because of the object of the unlawful encroachment (this classification is proposed by the laws of Ukraine on legal liability), and the additional one is an offense that makes it possible to classify an act as a crime, disciplinary or administrative offense.

The isolation of administrative offenses in the field of environmental safety as a separate type of environmental offenses also follows from the current legislation of Ukraine, in particular, Article 68 of the Law

[7] Середницька І. А. Екологічне право (в схемах). Альбом схем : наочний посібник. Одеса : ОДУВС, 2016. 81 с. С. 41.

[8] Ємець Л. О. Система та склад адміністративних правопорушень в сфері екологічної безпеки**.** *Вісник Чернівецького факультету Національного університету «Одеська юридична академія».* 2018. Вип. 1. С. 34–48. С. 35.

of Ukraine "On Environmental Protection". Thus, according to the basic law of Ukraine on environmental protection for environmental violations, administrative liability may arise.

The peculiarity of administrative offenses in the field of environmental safety is the fact that the primary object of its encroachment is the environment, and the secondary one is life and health of people who are harmed or threatened with the task of such damage as a result of violation of the rules of environmental protection, otherwise, if an act directly threatens or detrimental to the health and life of people, it can not be regarded as being committed in the field of environmental safety.

We pay attention to the divergence of the norms of Article 68 and section 11 of the Law of Ukraine "On Environmental Protection". Article 68, for example, separates violations of environmental safety standards and the admission of excessive discharge of pollutants and other harmful impacts on the environment. At the same time, such harmful emissions, in accordance with section 11 of the Law of Ukraine "On Environmental Protection", is a violation of the environmental safety requirements. Consequently, these articles require some agreement in terms of the content of legal liability for violations of environmental safety requirements.

In addition, Article 68 of the Law of Ukraine "On Environmental Protection" states that "violation of the legislation of Ukraine on environmental protection entails the disciplinary, administrative, civil and criminal liability established by this law and other legislation of Ukraine. The legislation of Ukraine may also establish liability for other violations of the legislation on environmental protection[9]."

From this follows several conclusions: a) administrative liability for violation of environmental safety requirements is established by this law and other legislative acts – codes and laws of Ukraine; b) In addition to the offenses referred to in Article 68, administrative liability may be provided for other offenses and enshrined in other codes and laws of Ukraine.

At the same time, article 70 "Administrative and Criminal Responsibility for Environmental Violations and Crimes" states that the definition of the corpus delicti of environmental offenses and crimes, the procedure for bringing the perpetrators to administrative and criminal liability for their commitment is established by the Code of Ukraine

[9] Про охорону навколишнього природного середовища: Закон України від 25 червня 1991 року № 1264-XII. *Відомості Верховної Ради України (ВВР).* 1991. № 41. Ст. 546.

on Administrative Offenses and the Criminal Code of Ukraine. Consequently, it follows from the content of Article 70 that the provisions of Article 68 concerning the establishment of administrative offenses and legal liability in other laws, in addition to the basic codes, contradict the content of this article. Accordingly, it is necessary to harmonize the content of these articles.

In particular, we propose to consolidate part 1 of Article 68 and Article 70 and edit it out as follows: "Violation of the legislation of Ukraine on environmental protection entails disciplinary, administrative, civil and criminal liability. Determining the corpus delicti of administrative offenses and crimes, the procedure for bringing the perpetrators to administrative and criminal liability for their commitment are established solely by the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine."

Depending on the allocation of a special object of environmental offenses, scientists distinguish the following types of environmental offenses: in the use of natural resources; general environmental offenses; violation of environmental safety requirements.

After analyzing Section II of the Code of Ukraine of Administrative Offenses, among the whole set of administrative offenses, the following offenses committed in the field of environmental safety can be distinguished:

1. Administrative offenses in the field of environmental safety (public relations in the field of environmental safety – the main object): Article 52 "Wrecking and contamination of agricultural and other soils"; Article 53 "Violation of the rules of soil use"; Article 59 "Violation of the rules of water resources protection"; Article 59-1 "Violation of requirements for the protection of territorial and internal marine waters from pollution and litter"; Article 62 «Failure to fulfill obligations for registration in ship's documents of operations with harmful substances and mixtures»; Article 71 «Putting into operation production facilities without equipment that prevents harmful influence on forests»; Article 72 "Damage to the forest by sewage, chemical substances, oil and petroleum products, harmful emissions, waste and garbage"; Article 73 "Waste littering of forests"; Article 78 "Violation of the procedure for the emission of pollutants into the atmosphere or the influence on it of physical and biological factors"; Article 79 "Failure to comply with the requirements for the protection of atmospheric air at the commissioning and operation of enterprises and facilities"; Article 80 "Release of vehicle

and other mobile means with exceeding the standards of pollutant content in the exhaust gases"; Article 81 «Exploitation of auto-,moto-vehicles and other mobile means with exceeding of standards of content of pollutants in exhaust gases»; Article 82 "Violation of requirements for waste management during their collection, transportation, storage, processing, utilization, disposal, disposal or disposal"; Article 82-1 "Violation of rules for conducting primary accounting and control over waste management operations or failure to submit or submit reports on the generation, use, disposal and disposal of waste"; Article 82-2 "Production of waste products or their use without corresponding normative and technical and technological documentation"; Article 82-4 "Mixing or disposal of waste for the disposal of which there is a corresponding technology in Ukraine, without special permission"; Article 82-5 "Violation of rules for the transfer of waste"; Article 82-6 "Violation of the established rules and mode of operation of waste treatment and treatment plants and facilities"; Article 82-8 "The burial of untreated (untreated) household waste"; Article 83 "Violation of the rules of application, storage, transportation, disposal, elimination and disposal of pesticides and agrochemicals, toxic chemicals and other drugs"; Article 83-1 "Violation of plant protection legislation"; Article 90-1 "Non-compliance with rules and norms in the process of creation, production, storage, transportation, use, disposal, elimination, disposal of microorganisms, biologically active substances and other biotechnology products"; Article 91-1 "Failure to comply with environmental safety requirements in the process of introducing discoveries, inventions, utility models, industrial designs, rationalization proposals, new technology, technologies and systems, substances and materials"; Article 91-3 "Concealing excess of the established limits on the volume of formation and disposal of waste".

2. Administrative offenses related to environmental safety (public relations in the field of environmental safety – an additional or optional object): Article 42-1 "Production, procurement, sale of agricultural products containing chemical preparations beyond the maximum permissible concentration levels" ; Article 42-2 "Preparation, processing or marketing of radioactive contaminated foodstuffs or other products"; Article 53-3 "Removal and transfer of soil cover of land without special permission"; Article 57 "Violation of Requirements for the Protection of Subsoil"; Article 61 "Damage to water facilities and equipment, violation of rules of their operation"; Article 77 "Violation of requirements of fire safety in forests"; Article 78-1 "Violation of the procedure for the

implementation of activities aimed at the artificial changes in the state of the atmosphere and atmospheric phenomena"; Article 82-3 "Concealing, distorting or refusing to provide complete and reliable information on requests of officials and appeals of citizens and their associations regarding the safety of waste generation and handling"; Article 82-7 "Violation of requirements of legislation in the field of chemical current sources"; Article 91 "Violation of the rules of protection and use of territories and objects of the nature reserve fund"; Article 91-2 "Exceeding the limits and norms of use of natural resources"; Article 91-4 "Refusal to provide or untimely provision of environmental information"; Article 91-5 "Violation of requirements of legislation in the field of environmental impact assessment"; Article 95 "Violation of rules and norms of nuclear and radiation safety"; Article 96 "Violation of requirements of legislation, construction norms, standards and rules during construction"; Article 172-9-2 "Violation of legislation in the field of environmental impact assessment"; Article 188-5 "Failure to comply with lawful orders or orders of officials of bodies that exercise government control in the field of environmental protection, use of natural resources, radiation safety or the protection of natural resources"; Article 188-16 "Failure to comply with the lawful requirements of officials of the central executive authority, which implements the government policy on issues of civil protection, supervision and control over the state of protection of territories from natural and man-made emergencies[10]".

We consider such a classification to be the most optimal. Instead, let us draw attention to the second group of offenses that has been highlighted by us as offenses related to environmental safety. These misdemeanors are the main object of other social relations (in the field of information, public health, use of natural resources), but their destabilization can negatively affect the state of the environment and damage the health of citizens, although the onset of such negative consequences is not obligatory.

[10] Кодекс України про адміністративні правопорушення (статті 1–212-21): Закон України від 07.12.1984 № 8073-X. URL: http://zakon3.rada.gov.ua/laws/show/80731-10.

3. The system of criteria and indicators for assessing the effectiveness of management in the field of environmental safety of the country

Formation of the system of ensuring ecological safety of the country is impossible without the formation of a list of criteria and indicators for assessing the effectiveness of public authorities in this area. Understanding the importance of ensuring a safe environment for the existence of mankind has led to the formation of numerous approaches to assessing the state of the environment and the effectiveness of public authorities to protect it. The processes of reforming the system of state governance determine the need for transformation and in that part, which concerns the provision of environmental security of the state.

The performance indicators determined by the strategy do not form an integral system. For example, the effectiveness of implementing a strategy in the context of the state of atmospheric air is proposed to assess, on the one hand, the content of certain chemical and organic ingredients in the atmosphere and the volume of pollution, and on the other – on the number of joint implementation projects and projects targeted environmental (green) investment, as well as the volume of investments, caused by the sale (transfer) of units (parts) of the established amount of greenhouse gas emissions. Consequently, this system of criteria allows only to assess, on the one hand, certain parameters of the state of the environment, and, on the other hand, the fact that the state authorities carry out certain measures without answering the way in which these measures have affected the state of environmental safety, which these the events had results. In other words, in this way the criteria chosen by the authors of the strategy do not allow to assess exactly the effectiveness of public administration in the field of environmental safety.

With this in mind, we will turn to the international experience in assessing the state of the environment. World practice has developed several approaches to the development of a system of environmental indicators, depending on the goals that they are facing. The easiest to perceive are environmental indices, which are composite indicators that allow a simultaneous assessment of many factors that affect environmental safety and the overall state of the environment. So, for the rating comparison of the states on the effectiveness of the policy in the field of environmental safety basically used two main indicators.

The Environmental Vulnerability Index is calculated to measure negative environmental impacts. The index is calculated on the basis of 50 indicators. In addition to calculating the base index, the indicators "are

used to determine a number of sub-indices. By the nature of the factors measured by the indicators, sub-indexes "Dangers", "Resistance" and "Damage" are allocated. By category of factors, the sub-indices «Climate change», «Biodiversity», «Water resources», «Agriculture and fishing», «Factors of human health», «Desertification», «Impact of natural disasters» are calculated. Despite the fact that this index evaluates not so much the activity of the government and other interested actors, but the degree of threats in the environment, the dynamics of its change can indicate the effectiveness of the measures.

It should be noted that the index of environmental efficiency does not claim to be a complete reflection of the effectiveness of state policy in the field of economic security; only issues that are considered to be most relevant at the international level are taken into account; At the same time, specific aspects of ensuring environmental security, typical of individual states, may not be taken into account.

The feature of the indexes is the summing up of several indicators in a single numerical value. Although this approach provides a fairly easy comparison of countries on the state of the environment, and also clearly demonstrates changes in the safety and quality of the environment, this ease and visibility are achieved at the expense of a certain simplification, which does not allow them to be fully used for making managerial decisions in the field of environmental safety. Nevertheless, in Ukraine, the use of the approach of composite indexes may be appropriate for comparing the state of the environment and the effectiveness of the policy in the field of ensuring environmental safety in the context of regions, settlements, etc. Today, the indicators of the Organization for Economic Cooperation and Development form the following groups:

1. Key environmental indicators. These indicators are aimed at a general overview of key environmental issues and related trends (including 10-15 indicators).

2. Basic environmental indicators. This group seeks to monitor progress in the field of environmental protection, factors affecting it and monitor environmental policy. It forms the basis of a system of indicators, including the most important and sustained upgrade indicators. Includes about 50 indicators.

3. Sector indicators for the environment. Indicators of this group provide a thematic description of the state of the environment in certain areas (transport, energy, forests, agriculture, households, consumption, tourism).

4. Indicators obtained from environmental accounting.

5. Indicators of reduction of pressure on economic growth of the environment.

The basis of the system of indicators is the basic indicators of the environment. They are considered as the minimum agreed upon by the members of the organization a list of indicators characterizing the state of the environment. In turn, the basic indicators are divided into two criteria.

The first criterion is a three-element model for assessing the state of the environment "pressure-state-reaction". Its starting point is the following statement: human activity poses pressure on the environment and affects the quality and quantity of natural resources; society reacts to these changes through environmental, economic and sectoral policies, as well as through changes in behavior. Accordingly, in the base indicators there are: indicators of pressure; state indicators; reaction indicators.

The second key criterion for division is a group of environmental issues characterized by indicators. At the moment, they are: climate change; reduction of the ozone layer; eutrophication; acidification; toxic pollution; the quality of the environment in the cities; biodiversity; cultural landscapes; waste; water resources; forest resources; fish resources; deterioration of soil quality; material resources; socio-economic, sectoral and general indicators.

The model used to assess the state of the environment and the effectiveness of the policies of the EU member countries is quite similar. The European Environmental Agency is the main body providing the functioning of the indicator system.

Describing the current state of the use of indicators of the state of the environment, it should be noted that today the indicators of the state of the environment are primarily used in the system of state monitoring of the environment. Its functioning is regulated by a number of normative legal acts: by the Resolution of the Cabinet of Ministers of Ukraine dated March 30, 1998 No. 391 "On Approval of the Regulation on the State System for Environmental Monitoring", by the Resolution of the Cabinet of Ministers of Ukraine of March 9, 1999 No. 343 "On Approval of the Procedure for Organization and monitoring in the field of atmospheric air protection "; the Resolution of the Cabinet of Ministers of Ukraine of 20.07.1996 No. 815 "On Approval of the Procedure for the Implementation of State Water Monitoring"; the Resolution of the Cabinet of Ministers of Ukraine dated August 20, 1993 No. 661 "On Approval of the Regulation on Land Monitoring"; the Resolution of the Cabinet of

Ministers of Ukraine dated February 26, 2004 No. 51 "On Approval of the Regulation on the Monitoring of Agricultural Soil".

Today, the Ministry of Ecology and Natural Resources of Ukraine provides a number of indicators for monitoring and assessing the state of the environment (indicators of atmospheric air pollution and ozone depletion of the atmosphere, climate change, water resources, biodiversity and the state of forests, the state of land resources and soils, agriculture, energy ; transport, waste). In other words, the subject of indicators is close enough to the one applied by the agency. At the same time, today the list of indicators is not regulated. On the one hand, it corresponds to world and European practice. The set of indicators is constantly expanding and changing; in addition, attention should be paid to heterogeneity of indicators. If key and baseline indicators (which represent a relatively small proportion of the total number of indicators) are relatively stable, a number of indicators may be single-digit or measured over a short period of time; accordingly, the normative and legal consolidation of an exhaustive list of indicators of the state of the environment is not rational. At the same time, consolidating the general principles of the functioning of the system of indicators is useful in order to harmonize and streamline the environmental assessment system and the effectiveness of government policy in the field of environmental safety.

The main document, which sets the criteria for assessing the effectiveness of public administration in the field of environmental security, is the Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2020". This is quite logical, because, as rightly noted by I. Kravchuk, the basis for evaluation is laid in strategic planning[11]. On this basis, the indicators of the effectiveness of any activity are determined primarily by the specific tasks identified at the planning stage. Therefore, one of the possible ways of integrating environmental monitoring data is the use of appropriate indicators as criteria for the effectiveness of the objectives.

CONCLUSIONS

Today, the management system in the field of environmental security in Ukraine is in a state of reform, which is due to the processes of reforming public administration in general and the need to include in the

[11] Кравчук І. Оцінювання державної політики в Україні. *Вісник Національної академії державного управління*. 2010. № 4. С. 72–79. С. 73.

national legislation the norms of relevant international legal acts. In order to optimize the procedure for implementing a strategic environmental assessment, the procedure for monitoring the consequences of the implementation of the state planning document for the environment should be approved. From the point of view of ensuring environmental safety, it is important to revise and modernize the requirements regarding norms, limits and other indicators that characterize the emission of harmful substances, the granting of permits for activities related to the potential environmental impact. One of the promising directions of reform in this direction is the introduction of integrated permitting system. In order to increase the effectiveness of bringing to administrative responsibility for offenses in the field of environmental security it is expedient: 1) to review the sanctions of many offenses in the field of environmental safety in the direction of their increase, which is caused by considerable damage to the environment and health of people caused by these species misconduct; 2) merge into one article of the Code of Administrative Offenses in one article the composition of the offenses provided for in article 82-3 "Concealment, distortion or refusal to provide complete and reliable information on requests of officials and appeals of citizens and their associations regarding the safety of waste generation and handling with them "and 91-4" Refusal to provide or untimely provision of environmental information ", since the offense provided for in Article 82-3 of the CUAO is a special case of an unlawful act described in Article 91-4 of the CUAO; 3) make changes to the CUAO regarding the precise establishment of the list of persons authorized to draw up protocols on administrative violations in the field of environmental safety, to exclude from the content of CUAO officials who must draw up protocols and consider cases of the former State Inspection of Agriculture, to include in the list of persons having draw up protocols on administrative offenses under Article 90-1, officials of the State Service of Ukraine for Food Safety and Consumer Protection, and under Articles 71 and 72 – officials of the State Forest Resources Agency of Ukraine.

SUMMARY

The article deals with analysis of administrative and legal principles of management in the field of ensuring the ecological safety of the country. The author has generalized foreign experience of ensuring the country ecological safety and has elaborated the possibilities of its use in Ukraine. The object of administrative-legal regulation has been

determined: they are social relations in the form of behavior and actions of people who take place in connection with providing of subjects of public authority, first of all public administration, ecological rights and freedoms of the man and the citizen, interests of the society and the government in this area. Proposals for solving problems of administrative and legal regulation of access to public information in the field of providing environmental safety of the country have been developed. The mechanism of systematic informing of citizens about the state of the environment has been proposed, especially in the part of information, which managers are economic entities. The author has made proposals aimed at ensuring control over the observance of legislation on ensuring access of citizens to public information and he has given recommendations on the reform of the management system in the field of environmental safety in Ukraine. A system of criteria and indicators for assessing the effectiveness of management in the field of ensuring environmental safety of the country has been elaborated.

REFERENCES

1. Адміністративні правопорушення у 2013–2017 роках (Статистичний бюлетень). Державна служба статистики України. Київ. 2018. URL: https://ukrstat.org/uk/druk/publicat/kat_u/publzlochin_u.htm.

2. Ємець Л. О. Система та склад адміністративних правопорушень в сфері екологічної безпеки**.** *Вісник Чернівецького факультету Національного університету «Одеська юридична академія».* 2018. Вип. 1. С. 34–48.

3. Кодекс України про адміністративні правопорушення (статті 1–212-21): Закон України від 07.12.1984 № 8073-X. URL: http://zakon3.rada.gov.ua/laws/show/80731-10.

4. Кравчук І. Оцінювання державної політики в Україні. *Вісник Національної академії державного управління*. 2010. № 4. С. 72–79. С. 73.

5. Минюк О. Ю., Минюк Д. І. Система суб’єктів державного управління у галузі екологічної безпеки. *Електронне наукове видання «Порівняльно-аналітичне право».* 2014. № 2. С. 182–188.

6. Про внесення змін до деяких законодавчих актів України щодо впровадження інтегрованих підходів в управлінні водними ресурсами за басейновим принципом : Закон України від 4 жовтня 2016 року № 1641-VIII. *Відомості Верховної Ради України*. 2016. № 46.

7. Про охорону навколишнього природного середовища: Закон України від 25 червня 1991 року № 1264-XII. *Відомості Верховної Ради України (ВВР).* 1991. № 41. Ст. 546.

8. Про стратегічну екологічну оцінку : Закон України від 20.03.2018 № 2354-VIII. База даних «Законодавство України». Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2354-19.

9. Про схвалення Концепції реформування системи державного нагляду (контролю) у сфері охорони навколишнього природного середовища : Постанова Кабінету Міністрів України від 31.05.2017 № 616-р. URL: http://zakon2.rada.gov.ua/laws/show/616-2017-%D1%80.

10. Середницька І. А. Екологічне право (в схемах). Альбом схем : наочний посібник. Одеса : ОДУВС, 2016. 81 с.

11. Трушкіна Н. В., Кочешкова І. М. Нормативно-правове регулювання розвитку сфери управління відходами в Україні. *Вісник економічної науки України*. 2017. №. 2 (33). С. 97–102.

Information about the author:
Yemets L. O.
Doctor of Law, Docent,
Associate Professor at the General Legal Disciplines Department
of the Dnipro Humanitarian University
35, Yermolovoi str., Dnipro, 49033, Ukraine

NOTES

Publishing house “Liha-Pres”
9 Kastelivka str., Lviv, 79012, Ukraine
44 Lubicka str., Toruń, 87-100, Poland

Printed by the publishing house “Liha-Pres”
Passed for printing: October 15, 2019.
A run of 150 copies.