JURISPRUDENCE AND FUNDAMENTALS OF LEGAL BEHAVIOUR IN MODERN CIVIL SOCIETY

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)

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Jurisprudence and fundamentals of legal behaviour in modern civil society : collective monograph / V. M. Halunko, A. M. Demchuk, M. M. Yatsyshyn, K. M. Hlynyanaya, etc. – Lviv-Toruń : Liha-Pres, 2019. – 212 p.

ISBN 978-966-397-168-1

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.

ISBN 978-966-397-168-1

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DOI https://doi.org/10.36059/978-966-397-168-1/1-16

THE IMPORTANCE OF PUBLIC ADMINISTRATION IN ADMINISTRATIVE REGULATION

Halunko V. M., Demchuk A. M., Yatsyshyn M. M.

INTRODUCTION

At first glance, the relevant amendments, that is the change and update of the framework of categories and concepts of disciplines of administrative cycle in terms of the categories "state management) and "public administration), caused by banal borrowings of the foreign terminology. However, it is not quite so and partially corresponds to reality. Now, theoretical and legal category of "public administration" is increasingly applied in academic and scientific disciplinary use of administrative-legal cycle that greatly modifies, typical for the second half of the twentieth century, the Soviet conceptual identification (association) of administrative legal disciplines with the category "governance".

Therefore, it is clear that there is the foreign lexical influence on the transformation of governance into public administration in the case of a change of the obsolete categories base of administrative-legal cycle and in terms of the theoretical use of terminological legal vocabulary based on the foundations and principles of the concept of "governance" or "public administration)). But, in our opinion, this influence should be considered as a groundless or secondary, in other words, as narrow one.

According to our opinion, one of the answers relatively establishment of the primary factor for substitution of the terms "governance" for "public administration)), advantages of the application of "public administration" in the theoretical dimension of the sciences of legal and administrative direction, can be obtained if there is a particular definition of "public administration" established through analyzing specific characteristic features of this procedural activity, which, according to our position, is the most optimal approach.

1. Meaning of the category of "public administrations"

The analysis of foreign literature regarding the category of "public administration" actually testifies about the similarity of scientific positions regarding the content, purpose and classification approaches.

Thus, Singh H. and Sachdeva P. indicate that the term "administration" derives from Latin "administere", which means the care of people or affairs management. In opinion of scholars, administration can be defined as "group

activities which include cooperation and coordination with the purpose to achieve desired goals or tasks".

In general, the term "administration" includes at least four different meaning depending on the context of use:

– the first, as a discipline: the name of a field of study or discipline that was lectured in colleges and universities;

– the second, as places, type of work (profession), especially it touches the process of knowledge obtaining and training, in fact human resources training;

– the third, as a process, namely the total number of measures taken to implement public policy or policy for the provision of public services or goods;

– the fourth, in the synonymous meaning of the categories "executive" or "government"[1].

In the general sense, the term "public administration" refers, above all, to the general management of society as a whole. Therefore, in the general sense, administration's activity is directed at shared benefit of the public through the implementation of public administration[2].

Other scholars, in particular Morenikeji A. and Oluwafemi J., consider public administration as the government activity on the formulation and adherence to state policy at the federal, state and local levels, as well as the implementation of executive and operational functions. At the same time, they emphasize the fact that public administration forms government activity for people. Due to the efficient and effective public administration, the government provides high-quality administrative services for a citizen[3].

Marume S.B.M. says that public administration should be interpreted through the prism of two main approaches to the meaning of corresponding categories, in particular integrated one which is a comprehensive and covers all actions of the government and managerial approach, which will be more narrow in relation to the integrated and will provide management influence. According to this point of view, public administration covers all measures taken to achieve the goal of state power. In other words, public administration is the complex of managerial, technical, office and personnel activities[4].

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[1] Singh H., Sachdeva P. Public Administration: Theory and Practice. Dorling Kindersley. 2012. P. 1–25. URL: http://egyankosh.ac.in/bitstream/123456789/ 25454/1/Unit-1.pdf.

[2] Public Administration: Definition, Nature and Dimension (article). URL: http://www.yourarticlelibrary.com/public-administration/public-administration-definition-nature-and-dimension/63417.

[3] Morenikeji A., Oluwafemi J. Towards A Theoretical Definition of Public Administration. Journal of Business and Management. 2014. № 3(16). P. 65–70. URL: file:///C:/Users/User/Downloads/TowardsATheoreticalDefinitionofPublicAdministration-OLLAJohnOluwafemi.pdf.

[4] Тернущак М.М. Курс лекцій з адміністративного права (загальна частина): тезові формулювання. Ужгород: Гражда, 2016. С. 9.

In fact, Uchem R.O. and Erunke C.E. support almost the same position regarding the separation of public administration interpretation in the integral and managerial approaches, but the scholars consider this category from the position of integral and managerial schools. In particular, they emphasize that public administration is a relatively broad and comprehensive area that does not point to the specific direction and scope of public administration. Public administration, at the moment, crosses the line of governmental activities and ruling circles including other spheres, namely church, market, postal services, transport and international relations, etc. However, for a more detailed understanding of the scope of public administration it is advisable to use the following scientific schools: integral and managerial.

The Integral School interprets public administration is a sum total of all the activities undertaken in fulfillment of public policy. These activities include not only managerial and technical functions but also clerical. The central argument of the integral scholars is that public administration is only concerned with all the activities of government undertaken by one or the entire three branch of government.

In its turn, the Managerial School sees public administration as an area that is specifically concerned with only those persons engaged in the performance of managerial functions in an organization. This implies that only those who plan, programme and manage the activities of an organization are the main focus of public administration. The functions of these people are numerous, and are geared towards the achievement of certain goals. For the first time, these functions were outlined in 1980 using the acronym POSDCORB, meaning: P. Planning, O. Organizing, S. Staffing, D. Directing, C.O. Coordinating, R. Reporting B. Budgeting[5].

It also necessary to mention scientific achievements of Pommer E., Edwards G., Raadschelders Jos C. among the number of topical foreign and modern papers devoted to public administration[6].

In general, we think that public administering is the activities of bodies of public administration towards satisfaction of public needs (interest) of natural and legal persons[7], and public administration is a complex of state and municipal bodies the activities of which should be aimed at meeting public interest.

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[5] Uchem R.O., Erunke C.E. Nature and scope of public administration. International Journal of Development and Sustainability. 2013. № 1. P. 177–182. URL: https://isdsnet.com/ijds-v2n1-13.pdf.

[6] Pommer E. Public administration in Europe. Zarządzanie Publiczne. 2016. № 2(36). P. 34–52. URL: file:///C:/Users/User/Downloads/zp36-2.pdf.

[7] Тернущак М.М. Курс лекцій з адміністративного права (загальна частина): тезові формулювання. Ужгород: Ґражда, 2016. С. 9.

Therefore, in the context of relevant definitions and disclosure of the stated problem, we propose to pay a special attention to the term "public interest", which will act as a system-generating, primary characteristic of the category "public administration) in a particular situation. In our opinion, such a characteristic feature as publicity equally acts as a qualifying one both for "public administration" and "governance" in terms of the legal nature of administrative legal relationship where an entity of authoritative power always acts as one of the parties (subjects) regardless of a situation and subject.

We support and share the position of R. Melnyk and S. S. Mosondz on the definition of "public interest" as a conscious interest of the whole society, which is a reflection of the economic, social and law-enforcement needs of the population[8], and we propose to indicate that public interest in public administration, on the one hand, is the quintessence for an unhampered implementation of public international and constitutional rights such as follows: the right to form power (electoral law), to public service, to social security, and on the other hand is the activities of public bodies in observance of the principles of law, rule of law, transparency, inevitability of punishment, and others.

Consequently, the term "public interest) in the context of the category of "public administration" will obtain basic, as noted, system-forming content and will be a theoretical reflection of the ideal model of state functioning in terms of partner activities of public authorities and citizens, the relationships formed on trust and compliance with laws.

Moreover, public interest, in accordance with the modern theory of "anthropocentrism" in administrative study, is the purpose of the activity of public authority by its bodies. However, depending on a political, economic and social environment, the realization of public interest may not coincide with the democratic principles and foundations in full, above all it touches the application of public coercion, but within the statutory limits, in the case of emergency or other essential conditions (for example, in the context of anti-terrorist operation).

In support of this statement, in 1911, A. Yelistratov wrote that public interest would always be the subject-matter of the relations between a representative of state power and citizens. In this context, an outstanding scholar noted that the public interest takes government for common interest, this, in turn, depends on the level of population's culture. And what government considers as a public weal, in fact, can differ from the interests of a large part of the population. But, in any case, the demands of the ruling

[8] Адміністративне право України (у схемах та коментарях): навч. посібник / Р.С. Мельник, С.О. Мосьондз; за ред. Р.С. Мельника. К.: Юрінком Інтер, 2015. С. 18.

government are placed on citizens not as a private interest of individual representatives of power, but for the public good[9].

In turn, the category "state administration), which according to the Soviet legal tradition and heritage, closely correlates with state control over the activities of public bodies like administrative-team cooperation but in essence it is a strict control of one entity over the activities of other in the aspect of functioning of public power, is not relevant taking into account the ephemeral effectiveness of administrative-team system of public administration in comparison with the present not the best state of affairs.

In our opinion, advantages of the concept of "public administration" over the concept of "governance" in relation to the formation of terminology framework of administrative-legal cycle in the modern circumstances is obvious, and fist of all it caused by the political-social European integration process, a course chosen by political officials and expected public desire for shifts and changes in fortunes.

Analysis of theoretical scientific basis which usually has solutions of the problem is no less important aspect in revealing the essence of any issue as well as in developing any subject-matter. Thus, other answer to the expediency of change of administrative terminological categories of "governance" into "public administration" we will get after the analysis of different opinions, subjective points, and ideas of leading scholars in administrative study.

In a textbook "Administrative Law" T. Hurzhii stresses that "administering" is activities of administration on adjustment of subjects' actions (bodies, units, enterprises, institutions, organizations) and, in addition, he divides this term into such subtypes (according to the criterion of interest implementation):

– public administering (implemented for the purpose of realizing public interests);

– private administering (implemented for the purpose of realizing private interests);

– corporate administering (implemented for the purpose of realizing corporate interests)[10].

In our opinion, the author's (T. Hurzhii) approach to the definition of "administering" is more in line with the category of "management", as *activities on actions adjustment of subordinate subjects* will mean a certain imperative component specific to administrative-team principle, but not a

[9] Елистратов А.И. Административное право. М.: Тип. И.Д. Сытина, 1911. 89 с.

[10] Гуржій Т.О. Адміністративне право України: навч. посібник. К.: КНТ; Х.: Бурун і К, 2013. С. 13.

dispositive component specific to partner relationship. Nobody denies that any activity, either in public bodies or at a private enterprise, based on subordination, for example following the conditional construction "authorities-apparatus-staff". At the same time, coercion application is not always a key for discipline and successive team cooperation, more often moral and finance encouragements and others serve as more effective mechanism. Moreover, in practice, the terms as "dependent" and "subordinate" are interpreted by employees in an ambivalent manner, and don't promote harmony keeping in team.

In turn, we completely share the position regarding the division of "administering" into public, private and corporate according to the criterion of interest implementation.

R. Melnyk in a textbook "General administrative law" concludes that "public management" is an activity connected with the internal organization of functioning (reorganization of divisions, transfer of civil servants, implementation of disciplinary liability) of public authorities, and "public administration" is a general concept which cover subjects the main task of which is enforcement of the Constitution and laws[11].

We support the abovementioned definitions of "public management" and "public administration", and taking into account the definition of *public management as an internal organization of activity of public subjects* we see it expedient to correlate, partially, similar terms "public administration" and "public management" according to the principle "from the general to the special). In this term, "public administration" acts as the general, and "public management" acts as the special.

In our opinion, *public administration* is a general activity of public authority on satisfaction of public interest (it was mentioned above) regardless of a typology of administrative relations that consists a general subject of administrative law. And the approach of R. Melnyk specifies *public management* as internal organizational activity of public authority that, in our opinion, provides practical realization of public relations subject of which may be:

– the first, processes connected with the beginning, service career and discharge from public service;

– the second, implementation of tasks and functions, which are established by staff arrangement of official powers, as well as tasks, duties, instructions of direct and senior leaders of a body where a person works.

[11] Загальне адміністративне право: підручник / І.С. Гриценко, Р.С. Мельник, А.А. Пухтецька та ін.; за заг. ред. І.С. Гриценка. К.: Юрінком Інтер, 2015. С. 53-54.

There is a quite similar approach of Frederick C. Mosher, who in his own article on "Britannica" encyclopedia resource, says that in our time "public administration" should be compared with the responsibility for determining of policies and development government programs, namely, for planning activities, organization, management, coordination and control over national and government operations[12].

A non-standard but surprisingly relevant analysis of the category "public administration" which has been conducted by T. Kolomoiets, a well-known Ukrainian academic lawyer, sparks interest and draws attention. Thus, a textbook "Administrative law of Ukraine. Academic programme" considers the term "public administration" in the context of double meaning of its certain components. The first is "publicity" that is a set of features of procedural activity of administrative entities, such as: a common, accessible to all, serving all, combines state (national) and self- governing (territorial). The second is "administration" namely, indications of subordination to political power and service to the public interest[13].

We believe that performed individual analysis of the components of public administration, and in fact the explanation of the terms of "publicity" and "administration" which was presented in terms of distinguishing typical, characteristic features of the terms, the key place among which, according to our belief, is hold by *community, accessibility, service to the public interest,* comprehensively emphasizes the purpose of public administration.

Domestic scholars D. Pryimachenko and R. Ihonin reffering to I. Vasylenko, Russian scholar, consider public administration as coordinated group actions in state affairs:

– firstly, which are connected with the three branches of power – legislative, executive, judicial and their interaction;

– secondly, which are important for the formation of state policy and which are a part of the political process;

– thirdly, which significantly differ from administration in the private sector; fourthly, which are closely linked with numerous private groups and individuals working in different companies and communities[14].

The corresponding position, in our opinion, is not quite clear and doesn't correlate to the majority of features of public administration.

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[12] Mosher F.C. Public administration. URL: http://www.britannica.com/topic/public-administration.

[13] Коломоєць Т.О. Адміністративне право України. Академічний курс: підручник. К.: Юрінком Інтер, 2011. С. 167.

[14] Адміністративне право України: словник термінів / за заг. ред. Т.О. Коломоєць, В.К. Колпакова. К.: Ін Юре, 2014. С. 338.

If we can partially agree with the statement that *coordinated activity in state affairs* indirectly characterizes public administration, however the terms "coordination" and "state affairs" should be referred to a speciality of public management and sphere of social (political) sciences, so the first three features should not be linked to public administration. In the first and second cases, the interconnection of branches of power and the formation of a state policy in the context of satisfaction of political interest is a subject-matter of state (constitutional) law. In the other two, in particular, the third feature indicates the difference in administration in the private and public sectors, which is obvious, but there is no specification for the essence of the relevant differences.

In respect to the provision of the fourth feature of "public administration" (from the point of view of I. Vasylenko, D. Pryimachenko, R. Ihonin) it touches the fact that coordinated actions within state affairs are closely connected to private actors who work in different companies and communities, we see it actual and such that corresponds to the essence not only the category "public administration" but also to the categories "state management) and "public management).

2. Place and influence of public administration on the development of legal disciplines in administrative cycle

Covered the core of the terminology structure of "public administration" in administrative science, it is necessary to clarify the category of "administrative-legal cycle", that is, the legal disciplines which, in full or indirect forms, reflect the content, features and essence of public administration in Ukraine in the prospect of a profound analysis of the characteristics of a relevant category and in the context of legal administrative disciplines,.

Thus, primarily, legal disciplines of administrative-legal cycle, which are taught in higher schools (institutions of 1–4 levels of accreditation), as well as of exclusively legal or specialized-legal aspect and broad-profile ones, should involve such classical disciplines as "administrative law" and "administrative procedure). However, taking into account the broad-spectrum updating of the legislative and sublegislative administrative framework, and in fact the categories transformation of the legal basis of the state and municipal sector activities, which is conditioned by a number of social upheavals in terms of change and turn of the political vector of the state development as a whole, there is also a practical need for a clear adjustment, systematization and amendments of educational discipline base, in our case it concerns the disciplines of administrative-legal cycle.

The current legislation, in a specific way, prompts and contributes to academic and research institutes and their structural units (institutions,

faculties, departments) that they develop more new courses, including special courses of study, on administrative subject matter. This is especially topical when, as already mentioned, certain essential regulatory changes take place, which, in turn, act as a theoretical precondition that pushes domestic administrative scholars to develop and introduce a new categories base, as well as future newest institutions. Or on the contrary, scientific developments in administrative science can serve as a promotional mechanism for the domestic legislator on regulatory framework development.

For example, the pioneered institute of "administrative services) that was introduced to administrative law and obtained a final statutory-perfect form in 2012 (after approval of the Law of Ukraine "On Administrative Services)), and a certain structural-forming regulatory and theoretical outlines from the middle of the XXI century (2006)[15].

Currently, the instituion of administrative services, without exaggeration, is one of the key priorities of improving the activities of executive and municipal authorities. Specifically, the European model of public administration, which we have previously described as public administration in the context of the fact that the current political leadership of the state is gradually implementing the relevant practice in various spheres of public activity of the executive government and local self-government, is successful in nature, convenient for the public and business. In particular, this is a systematic formation of new centers for the provision of administrative services, the introduction of new IT-services on the electronic web- resources (websites, portals), and improvement of the procedure services provision through the elaboration of new electronic operating systems of document circulation based on the principle of "single window system" and others.

In its turn, regulatory and theoretical-categories changes[16] touched the institute of "civil and municipal service" which automatically evolved into the institute of "public service" after the availability a rule (para. 15 p. 1 Art. 3) in

[15] Писаренко Г.М. Адміністративні послуги в Україні: організаційно-правові аспекти: автореф. дис. … канд. юрид. наук: 12.00.07 "Адміністративне право і процес; фінансове право; інформаційне право". О., 2006. 19 с.

[16] Тернущак М.М. Законодавчі зміни у частині тлумачення терміну "державна служба": порівняльний аналіз положень законів Про державну службу у редакції 1993 та 2015 рр. Актуальні питання реалізації нового Закону України "Про державну службу": Всеукраїнський форум вчених адміністративістів (Запоріжжя, 21 квітня 2016 р.) / Запорізький національний університет, Національний юридичний університет імені Ярослава Мудрого, Київський національний університет імені Тараса Шевченка, Вищий адміністративний суд України, ГО "Асоціація фахівців адміністративного права", Запорізька обласна державна адміністрація, Запорізька обласна рада, Запорізький центр перепідготовки і підвищення кваліфікації працівників органів державної влади, органів місцевого самоврядування, державних підприємств, установ та організацій. Запоріжжя: ЗНУ, 2016. С. 109–112.

the Code of Administrative Procedure of Ukraine (hereinafter referred to as "the CAPU") according to which public service is activity performed in public political posts, professional activities of judges, public prosecutors, military service, alternative (non-military service), diplomatic service, other civil service, service in power structures of Autonomous Republic of Crimea, local self-government bodies.

Well, in essence, the main innovation of administrative-procedural science in the part of separation of the new institute of administrative law – administrative justice (legal proceedings) that was transformed at the scientific and theoretical level into a separate discipline "administrative legal proceeding", was the fact that in 2004 the Code of Administrative Procedure was adopted and came into force in 2005.

Moreover, depending on the methodological achievements of structural units of higher education institutions and scientific developments of some law schools, the legal relations of administrative justice are objects either of individual disciplines such as "administrative legal proceeding", "administrative procedure" or of a fundamental discipline of administrative-legal cycle "administrative law".

Currently, an active phase of the reform processes concerning the activities of public administration continues in Ukraine. In particular, the adoption of the Law "On Administrative Services" in 2012 was a significant event of legislative and statutory consolidation of the norms that would be applied to minimize the barrier of bureaucratic and corrupt character to receive services from the subjects of authoritative powers. It should be noted that the adoption of this Law has also substantially affected the change of the generally established theoretical positions of certain legal branches.

Therefore, the consequences of these legislative, scientific and academic modifications in the development of new institutes of administrative-legal cycle lead to the introduction on the new disciplines of administrative-legal and procedural focus, which were not taught separately, were introduced to domestic higher education institutions, in particular to their structural units. At the modern stage (the end of the first decade of the XXI century) such disciplines include courses as follows:

– "administrative reform", "legal regulation of administrative services provision" and others;

– before (in most cases from the beginning of 2005): "administrative legal proceedings), "administrative justice), "actual problems of administrative legal proceedings" and others;

– in earlier times (the end of the XX – the beginning of XXI century): "administrative-tort law", "administrative responsibility) and others.

However, in our opinion, the influence of the category of public administration in relation to the disciplines of administrative-legal cycle is reflected to the outmost in the discipline "Legal regulation of public (state) management" the subject-matter of which is provisions of Ukrainian regulatory framework, academic theoretical provisions on administrative law and procedure, which present actual problems of realization of administrative and legal norms, the modern development of branches reform of administrative and legal cycle connected with the change of categories and concepts framework and refresh of administrative legislation. The issues and problems directly touching public administration are studied within a particular discipline, in particular the specific nature of beginning, career and termination of public service; peculiarities of provision of administrative services by executive and local self-government bodies; administrative reform in certain spheres of public management.

It's no good to skip the issue of administrative reform as now Ukraine begins to reform almost all spheres of public administration as well as to initiate reforming of justice system and related legal institutions. We note that a successful implementation of some reforms directly and indirectly depends on a complex approach to introduction of measures of legal and organizational nature, multiagency coordination of the branches of government, impartial public control and totally apolitical nature of the nation's leadership.

In general, administrative reform is a process of adoption of a relevant regulatory framework that will contribute to the formation of an institutional structure of public management which will completely meet public interest, in other words the priority of their activities will be devotion to people and the national interests of the country. In more narrow interpretation, administrative reform is a complex of measures aimed at updating administrative and legal status of reform's actor (administrative or other body) by virtue of optimization of servants' number, improvement of institutional coordination of teamwork of structural subdivisions at the central and regional levels, improvement of electronic, information and financial security of employees, simplification of the procedures for provision of administrative services etc.

At the moment, attention is drawn to the range of branching of areas and spheres of public administration where administrative reform is taking place. In particular, this is a reform of the activity arrangement of public administration bodies components of which include: administrative-territorial (decentralization).

In essence, the implementation of the relevant reform will be in the unification of the territorial communities of villages, settlements, and cities in accordance with the principles of polycentric nature, subsidiarity and the procedure prescribed in the provisions of the Law "On Voluntary Association of Territorial

Communities). A gradual unifying of territorial communities will not only contribute to optimization of the territorial organization of local authorities in relation to change of insufficiently capable administrative units by self-reliant ones, which will be able to ensure the expected, proper level of public administration in the field perfectly but also to increase financial income in local budgets. Moreover, the next stage of decentralization should be the process of reorganization of local state administrations and the introduction of prefecture institute with control powers over the observance of the Constitution and laws of Ukraine by local self-government bodies, and the coordination of the activities of territorial bodies of central executive authorities.

– provision of administrative services reform.

The reform is related to the procedural improvement of the provision of administrative services, which was launched in 2012 since the adoption of the Law "On Administrative Services), is actively implemented and practiced in almost all territorial executive authorities and local self-government bodies. Usually, the centers of administrative services, activities of which are divided according to the principles of "front and back office) and "single window) function as separate units or official places in the abovementioned bodies.

– reform of the improvement of administrative and legal support, such as legal, personnel, financial, information, logistical, for the activities of administrative bodies.

In turn, from the beginning of 2013, other public reforms have been implemented in Ukraine, in particular, the reform of judicial system and related legal institutes (advocacy, public prosecution, and penalties system); reform of the system of prevention and counteraction of corruption (anti-corruption); reform of the law enforcement system.

In addition, up to date, taking into account the focuses of administrative reform that have been conducted and are being implemented, the main stage of administrative reform should include:

1. Reform of the institute of administrative justice (2004, Adoption of the CAPU).
2. Establishment of a new institute of administrative law – the institute of administrative services (2011, adoption of the Law "On Administrative Services)).
4. Reform of the institute of public service (2016, adoption of a new Law "On Civil Service).
5. Reform of the judicial system and related legal institutes (2016, amendment of the Constitution of Ukraine (in relation to justice system).
6. Administrative-territorial reform (decentralization in the part of voluntary association of territorial communities (2015, the Law "On Voluntary Association of Territorial Communities").

CONCLUSIONS

From the middle of the XXI century, the category of "public administration" is actively used by administrative scholars (Kolomoiets T., Kolpakov V., Kuzmenko O., Melnyk R., Pryimachenko D.) in connection with the reinterpretation of the doctrinal concepts of the development of administrative-law school (from the theory of "management" to "anthropocentrism"), borrowing of foreign academic and research methodology, in terms of "administrative law" studying, the implementation of best practices of the regulatory provisions of the European and American laws in the domestic legislation and a number of other political and socio-economic factors related to European integration processes.

Now, the need to implement a theoretical category "state management) in the context, above all, of administrative law almost disappears and has lost its sense due to longstanding transformation of categories and concepts framework in relation to the substitution of the category by "administrative administration" and "public management).

Public administration is the activities of public administration bodies in meeting public needs (interests) of individuals and legal entities in various spheres of public administration.

The system-forming component, in fact basic one in interpreting "public administration", will be "public interest", which on the one hand will be considered as the quintessence for the continuous implementation of public international and constitutional rights, such as: the right to form a governance (electoral law), to public service, to social security, and on the other hand as the activities of public bodies in the area of observance of the principles of legality, the rule of law, publicity, inevitability of punishment.

Public administration is, in general, an internal organizational activity of public entities, and in detail it is processes connected with entry, career and termination of public service; performance of the tasks and functions determined by staff arrangement of the official powers of the body where a person works, as well as tasks, orders, instructions of direct and senior leaders; organizational and legal support of functioning of a public body (statutory, personnel, financial, logistic).

The correlation of the categories "public administration" in relation to "public management" meets the principle "from the general to the special" where public administration is the general concept and public administration is the special one.

An obvious influence of the concept "public administration" on the development of legal disciplines of administrative and legal cycle is due to:

– normative changes in the context of the system updating of the regulatory framework, especially of the legislative framework, when it

touches the functional introduction of new institutes of administrative legal cycle (institutes of "administrative justice (the CAPU, 2005)", "administrative services (Law of Ukraine "On Administrative Services,));

– theoretical and categories changes in the part of the concepts updating and the thematic content of the disciplines of administrative-legal cycle, in particular, of the legal regulation of state administration, act as the logical accomplishment (result) of the fundamental scientific developments by the leading reseacrh and methodological legal administrative schools.

SUMMARY

The article examines a place, influence and significance of the category of "public administration" in the context of studying of juridical disciplines of administrative and legal cycle.

It determines a number of prerequisites for clarifying a legal nature, in particular, a subject of the legal regulation of administrative law and administrative procedure through the influence of the category "public administration". The first section includes the procedural changes in the framework of system update of regulatory and legal base, first of all legislative one, in relation to the functional introduction of new institutes of administrative and legal cycle (the institutes of "administrative justice", "administrative services") and implementation of the results of performed administrative reform. The second section of preconditions includes theoretical and category changes in relation to the update of conceptual framework that are a logical result of the fundamental scientific achievements of the leading research-methodological legal administrative schools.

The author's definitions for "public administration" and "public management" are formulated as well as their correlation under the principle "from the general to the special" where public administration is the general concept and public administration is the special one.

It is established that the category "public interest" is a system and forming component and actually, the basic one in interpreting "public administration". On the one hand, it is considered as a quintessence for the continuous implementation of public international and constitutional rights, such as: the right to form a governance (electoral law), to public service, to social security, and on the other hand as the activities of public bodies in the area of observance of the principles of legality, the rule of law, publicity, inevitability of punishment.

The range of problems under consideration is evaluated in the articles published in the professional periodicals of Ukraine, in the papers of international and All- Ukrainian conferences as well as in academic programs of disciplines "administrative law", "administrativeprocedure".

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DOI https://doi.org/10.36059/978-966-397-168-1/17-28

EUROPEAN FAMILY LAW: PROBLEMS OF FORMATION

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INTRODUCTION

The term “space of freedom, security and justice” (hereinafter referred to as the “Space”) first appeared in the 1997 Amsterdam Treaty. In essence, this refers to the gradual smoothing of differences, harmonization, and future merging of the law enforcement systems of the EU member states[1].

Certain difficulties arise when trying to formulate such fundamental concepts as, for example, “European private law”, “European family law”, “unification and harmonization of European family law”.

In the classical interpretation of Roman continental law, it is customary to separate public law and private law. In the continental (European) system of law, the distinction between private and public law does not reflect industry specifics, but indicates the presence of two relatively independent branches of legal regulation that have significant differences in the nature of the impact on public relations. Also, in a number of countries of the continental system of law, a dualistic system of private law operates (private law is divided into civil and commercial law, respectively, the civil and commercial codes are in force).

In addition to civil law, the private law system also identifies industries such as family, inheritance and private international law.

In the literature, there is also such a thing as “European private law” (in German literature Europaeisches Privatrecht, in French droit prive europeen, in English-language European private law).

The program “community integration” has become a fundamental milestone in the history of private law, defining the main directions of its further evolution: the development of unified and harmonized norms of European private law and the development of European legal science. As you know, initially harmonization and unification took place in the areas of commercial law and related fields of civil law.

As a result of European integration and the removal of restrictions on the free movement of people in the European Union, one of the most specific characteristics of their personal lives is gradually changing: an increase in the number of families whose members are either citizens of different EU countries, or when one of the family members is a citizen of an EU country or have several citizenships.

[1] Бирюков М.М. Европейское право: до и послеЛиссабонского договора. М.: Статут, 2013. С. 105–132.

We must also not forget that family law, unlike any other branch of law, affects not only the private interests of individuals, but also ensures the relationship between the public and private interests of society. No society can maintain the rule of law without establishing rules for the relationship of people, without fixing restrictions and prohibitions. This is precisely the reason why in a number of states it is believed that family law, or at least part of it, is regulated by public law.

Naturally, there is a need for legal regulation of the conclusion of cross-border marriages, marital and parental legal relations. A particularly urgent need for such legal regulation arises in situations where such families break up, and family members, including children, live in different states.

The cross-border context determines the specifics of family relationships and caring. [2] Naturally, each state, nation, country has its own unique national heritage, on which the norms of family law are based. The complexity of legal regulation lies in the fact that family relations with the participation of foreigners are immediately associated with two, and sometimes several, states, and, accordingly, with two or more legal systems, often solving marriage and family issues in different ways.

1. Characteristics of European Family law

Family law of every European country has its own national characteristics. On the one hand, this allows European nations to preserve their family traditions and culture, and on the other hand, it makes it difficult to fully exercise the rights of individuals in family relations in families with a foreign element when changing citizenship or country of residence.

Until recently, family law, thanks to the so-called "cultural restrictions", remained almost completely outside the scientific comparative legal study. In the scientific literature there is the concept of "cultural heritage of individual countries"[3]. According to this concept, the cultural and historical diversity of family traditions, the lack of common family values and goals are an insurmountable obstacle to the unification of family law. So, Otto Can-Freund speaks negatively about the idea of harmonizing the family law of the EU member states, considering such an idea a "hopeless issue". A skeptical attitude to the formation of a single family law for EU member states is based on the scientific works of scientists. In science, the prevailing opinion was that institutions and categories of family law are particularly susceptible to

[2] Zechner M. Informaali hoiva sosiaalipoliittisessa kontekstissa. Acta Universitatis Tamperensis. Tampere: Tampere University Press, 2010.

[3] Guilherme de Oliveira Um direito da família europeu? Play it again... Europe! in "Um código civil para a Europa". Coimbra: Coimbra Editora, 2002. P. 117–126.

moral, religious, political and psychological effects, and since historically, racially, socially and religiously, family values differ from one country to another, family law in these countries is different from another non-interconnected legal systems.

Ole Lando, the "father" of the first harmonization project, made a statement in 2006: "Family legal acts of the EU countries reflect the national character, dominant religion, traditions, family issues that are related to the economic and social conditions of each country." For these reasons, Ole Lando thought that there could never be a convergence of family laws and, in particular, laws on divorce.

So, for quite a long time it was believed that family law could not be unified for all EU member states, since there is a factor of cultural restrictions.

However, as the lack of uniformity in the field of private law creates difficulties for the development of free movement of goods, services and capital, so the absence of a unified family law creates difficulties for the free movement of people and their creation of a family. After all, people cannot predict the legal consequences of their family acts and acts when moving from one EU country to another, as well as when they enter into family relations with a person who is a citizen of another EU state.

Family law affects the very essence of people's daily lives, like no other area of law does. Each person throughout his life in one way or another becomes the subject of family law.

The large differences between the national legal systems of the EU countries prevent the obtaining of a truly common European identity in the form of European citizenship and the formation of a comprehensive European legal space. Specific problems of legal regulation of a cross-border family include differing legal systems of states, as well as problems associated with distances and movements of family members, the resolution of which is, as a rule, within the competence of law enforcement agencies.

Such legal issues include, for example, issues:

– determination of the jurisdiction of the court when applying for the dissolution of marriage;

– the legislation of which state of the valley will be applied in resolving family disputes;

– fulfillment of maintenance obligations with a foreign element;

– realization and protection of such rights as the right to communicate and the right to reside with a child.

And although the problems of unification of family law did not initially attract attention and, accordingly, were not regulated in the Constituent Agreements, EU rulemakers sent EU member states along the path of mutual recognition and enforcement of court decisions. Of particular note is

Article 67 of the Lisbon Treaty, which states that "the EU facilitates access to justice, in particular by using the principle of mutual recognition of judicial and extrajudicial decisions in civil matters".

Despite the ever-changing views of society on the institution of the family and its forms, the fundamental foundations of its legal regulation remain unshakable. Many legal concepts, such as marriage are akin to sacrament, the indissolubility of marriage or the exclusion of illegitimate children from family members have been developed for a long time by canon law. With changes in the mentality of society, ideological pluralism, it is increasingly difficult to apply these concepts, but they persist. Moreover, it is obvious that a number of reforms of family legislation carried out in one country take root in society, sooner or later other states will go for such reforms. For example, the right to divorce during the life of the spouses. In 1970, divorce was allowed in Italy, in 2011 in Malta. In the past few years, family law has increasingly become the subject of comparative legal research, law, and harmonization.

The accumulated experience of EU cooperation in cross-border civil matters indicates that European legal acts and mechanisms can be more effectively implemented for the benefit of citizens and society, if there is more: understanding and mutual trust between practicing lawyers in different EU countries; knowledge of EU legislation and developed legal instruments for cooperation; a consistent understanding of EU law (necessary to ensure proper and uniform application in national cases).

2. The subject, function and method of European family law

Traditionally, the norms of family law of any legal system regulate all the main varieties of family relations, primarily between spouses (former spouses), parents and children, other relatives.

The subject of European family law adheres to established traditions. However, in such family relationships there should be a European element complicating the mechanism of their legal regulation.

As the subject of legal regulation of European family law, it is necessary to consider: property relations of spouses and persons in partner unions, family rights of minors and their protection, maintenance relations, legal relations of parents and children, etc. However, these relationships must be complicated by the cross-border aspect,

The presence in the legal relationship of the European element can find expression, firstly, in its subjective composition, when the participant (both participants) of the legal relationship is a citizen (s) of different EU states. Secondly, the European element can be seen in cases where the legal fact that determines this or that family-legal state takes place outside the territory of

the state, but within the EU. Thirdly, when family members who are citizens of one EU state reside in the territory of another.

It should be borne in mind that in the field of family relations, the possibility of cross-border conflicts is quite high[4].

As a research method should use the method of comparative law. The method of comparative law is a way of knowing the legal systems of various states by comparing the same state and legal institutions, their basic principles and categories. It is with this method that it is possible to identify the common features of family law that are inherent in all countries of the European Union, to determine how, in which countries certain relations are regulated, and whether consensus is reached on legal issues.

The purpose of the study should be to study:

a) what methods are used in various legal systems in order to achieve equality between men and women, whether in marriage or common-law marriage, in relation to the property rights of these persons;

b) the rights and interests of minors and their protection;

c) national rules for regulating family rights in individual countries and the general principles for regulating family relations inherent in all EU countries (or at least the majority), identifying their advantages and disadvantages.

The influence of the developed concepts, principles, traditions of European norms on the national family law of the EU member states is considered as a necessary prerequisite for harmonization and unification of the EU family law.

European Family Law has the following functions:

– ideological – serves as a model for national legal systems;

– regulatory – allows you to regulate family relationships with the European element;

– preventive – eliminates conflicts of law of national systems of several EU countries, allowing participants in family relations and state bodies to decide on the choice of law.

3. Sources of legal regulation of European family law

The legal framework for regulating family relations with the European element is complex, multi-level in nature, it includes material and conflict norms contained in multilateral and bilateral international treaties, conventions, regulations, and domestic law.

[4] Kokkini-Iatridou D, et al. Een inleiding tot het rechtsvergelijkende onderzoek. Deventer, 1988. P. 128–188.

Among the special international legal sources of a global nature, containing unified norms of substantive law, are the 1980 Convention on the Civil Aspects of International Child Abduction, the Hague Convention on the International Procedure for the Collection of Alimony for Children and Other Forms of the Family, and the Law Protocol, applicable to maintenance obligations "2007.

Among the special sources at the regional level are a number of conventions developed by the Council of Europe, in particular:

– Convention on the legal status of children born out of wedlock 1975;

– Convention on the Law Applicable to Alimentary Obligations in favor of Children of 1956;

– The 1958 Convention on the Recognition and Enforcement of Decisions in Cases of Maintenance Obligations for Children;

– Convention on Jurisdiction, Applicable Law and Recognition of Adoption Decisions, 1965;

– Convention on the Recognition of Divorces and Judicial Separation Decisions of 1970;

– Convention on the Law Applicable to Maintenance Obligations of 1973;

– Convention on the Law Applicable to Spouses' Ownership Regimes of 1978;

– Convention on the conclusion and recognition of the validity of marriages 1978;

– Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation with respect to Parental Responsibility and Measures for the Protection of Children, 1996

The most important sources of European family law are:

– Council Regulation (EU) No 2201/2003 of November 27, 2003 on jurisdiction in EU law of the provisions of the relevant Convention;

– Council Regulation (EU) No 1259/2010 of December 20, 2010 on the law applicable in the event of divorce or separation of spouses by a court decision (Rome III), which entered into force on June 21, 2012;

– Regulation of the European Council No. 4/2009 "On jurisdiction, applicable law, recognition and enforcement of decisions, as well as cooperation in the field of maintenance obligations".

There is no doubt that the decisions of the European Court of Human Rights (hereinafter – the ECHR) are crucial in discussing the harmonization and unification of the legislation of the EU countries. Thanks to the decisions of the ECHR, cases related to the violation of Art. 8 of the Convention on the Rights and Freedoms of Man and Citizen (hereinafter – the Convention), "The Right to Respect for Private and Family Life", it is possible to protect a wide variety of family rights, the borders of which are constantly expanding.

Moreover, almost all the problems that arise in the practice of national courts for the protection of family rights are also developed in the decisions of the ECHR. Indeed, the decisions of the ECHR are binding on the administration of justice in all countries[5].

So the German Constitutional Court stated: "At the level of domestic law, the provisions of international agreements are not considered directly applicable... and, like the generally recognized norms of international law..., they do not have the status of constitutional norms. The fundamental law undoubtedly follows the classical idea that the relation of public international law and domestic law is the relation of two different legal spheres.... The fundamental law seeks to integrate Germany into the legal community of peace-loving and free states, but does not renounce the sovereignty ultimately concluded in German constitution.... The law of international treaties applies at the domestic level only when it is incorporated into the internal legal system in an appropriate form and in accordance with substantive constitutional law, "the Constitutional Court emphasized[6].

Accordingly, the courts are obliged to comply with and apply the Convention (it was duly ratified), but its violation does not in itself constitute a ground for complaint to the Constitutional Court. Moreover, there may be situations where the rights provided by the Convention conflict with the constitutional rights of others. The Constitutional Court emphasized that in the sense of domestic law, the Constitution, in principle, takes precedence over international obligations: in exceptional cases (ausnahmsweise), the legislator may deviate from the requirements of international treaties in order to avoid violation of fundamental constitutional principles.

Notwithstanding the foregoing, the Constitutional Court has recognized that the Convention and the practice of the ECHR are essential in German constitutional law. Namely, they should be "taken into account" when interpreting the provisions of national law, including the norms of the most basic law.

If the ECHR has recognized a law or a court ruling contrary to the Convention, the state is obliged to eliminate the violation. Accordingly, all state bodies are obliged to take measures within their competence to create a legal situation that meets the requirements of the Convention. This also applies to the courts. They are obliged to "take into account" (Berücksichtigungspflicht) the provisions of the Convention and the decisions

[5] Гармаш, А., Суслова, И. Защита прав детей в Европейском суде // ЭЖ-Юрист. М.: Изд. Экономическая газета, 2012. № 31. С. 15.

[6] Будылин С. Дело Гѐргюлю: Германия выбирает мир с ЕСПЧ / Режим доступа: https://zakon.ru/blog/2013/11/18/delo_gyorgyulyu_germaniya_vybiraet_mir_s_espch

of the ECHR when interpreting national law, especially in the case of a re-examination of the case on which the ECHR has spoken. At the same time, however, priority provisions of national law should not be violated.

"Administrative bodies and courts cannot get rid of constitutional duties and the binding force of law and law (Gesetz und Recht)..., referring to the decision of the ECHR. However, the law also provides for the obligation to take into account the guarantees of the Convention and the decisions of the ECHR as part of a methodologically sound interpretation of the law. Both the refusal to take into account the decision of the ECHR, and the straightforward "enforcement" (Vollstreckung) of this decision, contrary to the law of a higher rank, can thus violate fundamental rights in combination with the rule of law (Rechtsstaatsprinzip), "concludes the Constitutional Court.

This is especially true for areas of law, such as family law, which themselves have the goal of balancing the fundamental rights of various individuals (father, son, foster family, etc.). The task of national courts is to carefully integrate the decision of the ECHR into the relevant field of law.1

The Court of Justice of the European Communities ensures that legislation interprets and applies fundamental treaties. In accordance with the Lisbon Treaty, it consists of the European Court, the court of first instance and specialized courts.

The Court of Justice of the European Communities has two crucial functions:

– verification of compliance of instruments of European bodies and national governments with treaties (legal proceedings in cases of violation of rights, inaction, invalidation);

– the issuance of court orders in response to requests from national courts with an interpretation or assessment of the legality of certain provisions of EU legislative acts (recommendations for preliminary orders).

The European Court of Justice in Luxembourg has established that the "communitarian integration method" program established by the EU Treaty also extends to family law.

It is believed that the role of European family law is mainly related to ensuring the implementation in one state of the decision adopted in another, as well as in determining which country has jurisdiction to consider a particular case. It is assumed that European family law does not have the ability to establish substantive law, for example, who has the right to guardianship or access.

4. European Commission on Family Law

A new organization created by the European Union has appeared on the international "market" of legal organizations, which are traditionally dominated by the National Conference of State Commissioners for the

Unification of State Laws (NCCUSL) and the American Law Institute (ALI). Previously, there was no analogue to acts issued by NCCUSL or model acts and principles developed by ALI in European law. And this legal vacuum in September 2001 was filled by the European Commission on Family Law, thanks to the private initiative of scholars from 22 countries of the European Union, experts in the field of family law and comparative law. The European Commission on Family Law (hereinafter – CEFL) was established.

Over time, it became clear that the normal functioning of the EU is impossible without the unification and harmonization of family law. Significant differences in the national laws of European countries governing the institution of the family greatly complicate the process of regulating cross-border family relations. Since the beginning of the 1990s, European legal conferences have been held focused on a comparative analysis of the family law of the EU states.

They raise relevant issues in the field of national family law of the EU states, international family and inheritance law by the Council of Europe[7]. Of particular note is the Hague Conference on Private International Law[8]. At these conferences, conventions, resolutions and principles of family law are developed[9].

The European Commission on Family Law is an independent organization and consists of two groups: an organizing committee and an expert group. The organizing committee forms an expert group and coordinates the work of CEFL. Members of the organizing committee are simultaneously members of the expert group[10].

The expert group is composed of experts in the field of family and comparative law from most member states of the European Union with the involvement of experts from other European countries, such as Norway and Switzerland.

The European Commission on Family Law has initiated a research project aimed at cross-border cooperation in resolving family conflicts that arise between family members – citizens of the European Union.

The main objective of the CEFL is to establish the principles of European family law and develop the most effective institutions and means of harmonization and unification of family law in the European Union. The principles are considered as the most suitable means for harmonizing family laws in Europe, since when developing them, the CEFL carried out an in-

[7] D. Schwab et al. (eds.), Entwicklungen des europäischen Kindschaftsrechts, 1994.

[8] Der Schutz der Familienwohnung in europäischen Rechtsordnungen, 1995.

[9] Familiäre Solidarität- die Begründung und die Grenzen der unterhaltspflicht unter Verwandten im europäischen Vergleich, 1997.

[10] Family law and children's rights. Режим доступа: at http://www.coe.int.

depth and comprehensive comparative study on the one hand, and when they were approved, they were guided by the principle of expediency. We believe that the developed basic principles of legal regulation of various family relations can serve as a reference system for national, European and international legislations and significantly facilitate the task of states in regulating cross-border family relations.

Regarding the accepted results, the CEFL believes that this is one of its main tasks in order to identify the criteria on which the choice is based. As a result, principles are developed that are comments or, one might even say, something like arguments about the choice of individual provisions in the content of family normative acts that states need to adopt. The principles of family law are developed by the CEFL on the basis of a comprehensive comparative analysis of international law and EU law. One of the main tasks of the CEFL is to develop, based on the results of this study, general criteria for family law.

As a result, not only the principles were adopted, but a reasoned justification was given why this or that principle was adopted. In fact, the most "best", more "functional" or "effective" rule for regulating certain family relationships is proposed.

CONCLUSIONS

As a result, the principles of CEFL provide guidance on the development of a strategy aimed at harmonizing family norms, and can serve as the basis for legislators in their efforts to modernize their family laws.

To date, several groups of principles have been developed.

The first group of principles was published in 2004. They are devoted to the legal regulation of divorce, division of property and maintenance relations of former spouses. In its structure, this group of principles consists of two parts: the first part is devoted to divorce, and the second to the procedural issues of property relations of spouses.

The second group of principles is devoted to parental relationships. The first and second areas of activity of CEFL are interconnected and regulate issues that should be resolved in all jurisdictions of the EU countries. The legal institutions governing parental and marital relations have been modernized over the past few decades, taking into account EU regulations and conventions aimed at legal regulation of family cross-border relations.

The third group of principles is devoted to the legal regulation of the matrimonial property regime.

The first and third areas of activity of CEFL are also interrelated, because the problems arising between persons cohabiting with each other are almost identical to the problems arising between spouses (former spouses).

At the present stage, CEFL efforts will be directed to the legal regulation of new forms of cohabitation, including informal cohabitation. The aim of this stage of activity is to create a European model that is most effective for regulating extramarital cohabitation.

The working language of CEFL is English. Only the black text of the letter of principles is formulated in English, French and German. These different versions are equally valid. Dutch, Spanish and Swedish translations have been added to the respective publications.

CEFL does not limit itself to the development of general principles, but also organizes legal conferences by the family on a regular basis in order to present its results to a wider scientific level[11]. Under the auspices of the CEFL, international conferences on family law are organized. So, the first scientific conference was held on December 11–14, 2002 in Utrecht and was dedicated to the prospects for unification and harmonization of family law in Europe. The second conference again takes place in Utrecht from December 9 to 11, 2004, however, the first steps of integrating European family law as a whole were already discussed at the academic level. The third conference was organized by CEFL in conjunction with the Faculty of Private Law at the University of Oslo in Norway from June 7–9, 2007. Conference proceedings are published in the European journal Family Law (www.intersentia.be).

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DOI https://doi.org/10.36059/978-966-397-168-1/29-45

SOME PROBLEMS OF LEGAL ADAPTATION OF UKRAINE IN THE CONDITIONS OF EU INTERNAL MARKET (IN CONTEXT OF AGREEMENT ON ASSOCIATION OF UKRAINE WITH EU)

Kharytonov Ye. O.

INTRODUCTION

By signing the agreement on association with the EU Ukraine promulgated its objective to become a future member of EU, actually declaring the adoption of European values. In this connection the importance of such factors as the ability of our society to accept European basic civilizational values (liberalism, individualism, human rights, private property, freedom of contract etc.), without which real progress is impossible, increased. After ratification of agreement in September 16, 2014, the process of European integration of Ukraine passed in a practical phase, which in the field of law makes the task of legal adaptation to conditions of the EU internal market.

Although the problems of adaptation of national legal systems in Europe, bringing national legislation in line with European standards have repeatedly been the subject of scientific analysis[1] many of them remain insufficiently studied. As a consequence scientific researches in this field do not lose their relevance. Thus one of the most important problems of adaptation is a research in the field of private law, a concept of which is an integral part of European civilization, including axiological guidance for those wishing to join the EU. Furthermore, a legal adaptation of "participants" to the terms of the EU internal market should be in this area.

[1] Сучасні проблеми адаптації цивільного законодавства до стандартів Європейського Союзу : Матеріали І Міжнародної науково-методичної конференції. Львів, 2006. Вип. 1. 514 с.; Проблеми систематизації приватного права України та Європи : моногр. / За заг. ред. Ю.В. Білоусова. К. : Науково-дослідний інститут приватного права і підприємництва АПрНУ, 2009. 204 с.; Грищак С.В. Теоретичні основи адаптації законодавства України до законодавства Європейського Союзу / С.В. Грищак // Форум права. 2012. № 4. С. 273–275; Середа Т.М. Проблеми адаптації законодавства України до законодавства Європейського Союзу [Електронний ресурс] / Т.М. Середа // Юридичний часопис Національної академії внутрішніх справ. 2012. № 1(3). С. 50–56. Режим доступу: http://nbuv.gov.ua/UJRN/aymvs_2012_1(3)__7; Хоменко О.О. Діалог сучасних правових систем. Адаптація правової системи України до європейського права / О.О. Хоменко // Європейські студії і право. 2011. № 3. Режим доступу: http://eurolaw.org.ua/docs/2011_3/txts/13-Homenko.pdf; Сучасні проблеми порівняльного правознавства: зб. наук.праць / за ред. Ю.С. Шемшученка, Я.В. Лазура. ; упор. О.В. Кресін, М.В. Савчин. Ужгород-Київ: "Говерла", 2015. 216 с.

Among the most important issues, which have to be settled in this area, we should clarify: the legal nature of adaptation; the object of this adaptation; conditions and principles of the adaptation.

1. Algorithm of adaptation of Ukraine to the EU legal system

It should be noted, that although problems of adaptation of legislation and legal systems in recent years have been the subject of studies of native jurists[2], the term "adaptation" is still poorly understood and seems to be outside investigation of adaptation. So features and the essence of the concept of "legal adaptation" should be studied in this research.

Getting to the matter, first of all, we have to establish whether the concept of "adaptation of legislation" and "legal adaptation" are identical.

In the practice of national legislative bodies it is traditionally said about "the adaptation of Ukraine's legislation to the legislation of the EU" (Law of Ukraine "On the State Program of Adaptation of Ukraine's legislation to the legislation of the EU" March, 18, 2004 № 1629, Decree of Cabinet of Ministers of Ukraine (October, 15, 2004 № 1365) "Some issues of adaptation of legislation of Ukraine to the legislation of the EU" and others.). This approach is reflected in scientific publications[3].

But the term "EU legislation" is often expanded, making it identical with the "acquis communautaire"[4], which, including legislative acts, were adopted inside the three pillars of the EU, but is not limited by them. Thus, the Strategy of Ukraine's integration into the European Union states that: "The aim of Adaptation of Ukraine's legislation to legislation of the EU is to get closer to the modern European system of law"[5]. Thus, although it is said about the adaptation of "Ukraine's legislation to legislation of the EU", the

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[2] Грищак С.В. Теоретичні основи адаптації законодавства України до законодавства Європейського Союзу / С.В. Грищак // Форум права. 2012. № 4. С. 273–275; Середа Т.М. Проблеми адаптації законодавства України до законодавства Європейського Союзу [Електронний ресурс] / Т.М. Середа // Юридичний часопис Національної академії внутрішніх справ. 2012. № 1(3). С. 50–56. Режим доступу: http://nbuv.gov.ua/UJRN/aymvs_2012_1(3)__7; Хоменко О.О. Діалог сучасних правових систем. Адаптація правової системи України до європейського права / О.О. Хоменко // Європейські студії і право. 2011. № 3. Режим доступу: http://eurolaw.org.ua/docs/2011_3/txts/13-Homenko.pdf

[3] Грищак С.В. Теоретичні основи адаптації законодавства України до законодавства Європейського Союзу / С.В. Грищак// Форум права. 2012. № 4. С. 273–275; Середа Т.М. Проблеми адаптації законодавства України до законодавства Європейського Союзу. / Т.М. Середа // Юридичний часопис Національної академії внутрішніх справ. 2012. № 1(3). С. 50–56. Режим доступу: http://nbuv.gov.ua/UJRN/aymvs_2012_1(3)__7

[4] Петров П.Д. Інституційний механізм адаптації законодавства України до законодавства ЄС. [Електроний ресурс]. – Режим доступу: http://old.minjust.gov.ua/4748

[5] Петров П.Д. Інституційний механізм адаптації законодавства України до законодавства ЄС. [Електроний ресурс]. – Режим доступу: http://old.minjust.gov.ua/4748

adaptation " legislation of Ukraine to the legal system of the EU" is meant. This "extension" creates additional difficulties. Moreover, the terms "law" and "legal system" are used virtually identical[6].

The situation seems to be a consequence of the fact that positivist, "regulatory" approach still prevails in the characteristics of law in domestic legal doctrine. This approach is a cause why the law is understood as an amount of mandatory rules of law that are reflected and enshrined in legislation. However, the ensuring of functioning of a society as a complex dynamic system is just one of the areas of legal regulation. But law, as a phenomenon of civilization, is also intended to be a carrier of higher principles, fundamental values of civilization, which have to realize the historical destiny of the society related with the statement in it the forces of reason, high humanitarian principles.

Thus, the law not only reflects the demands of civilization by giving legal view and realization of them, but also serves as a factor of expression of person, his or her creativity and self-development[7]. Thus the law can be defined as a civilization category, which simultaneously serves as an element of social and political order and an element of social consciousness, which is part of the human mind and its outlook, reflecting the idea of individuals and the society of justice, goodness, humanity and so on. This allows us to consider the law in general, and private law, in particular, as a concept (conceptus. lat. – thought, idea, definition), which is understood here as a set of ideas expressed verbally about a social phenomenon. The definition of the concept is aimed at transmitting the meaning of a word, which this concept affects in accordance with the elements that make up this concept[8].

It can be concluded, when understanding the law in this way and considering it as a part of a legal system, that legal adaptation is not limited only to harmonization "of the legislation of Ukraine to the legislation of the EU", and is inherently more complex and therefore it must be considered as the adaptation of the domestic concept of law to the concept of the European law in general, and private law in particular.

Legal adaptation is a form of interaction of legal systems, type of "legal acculturation", which is understood as a process of mutual influence and as the result of the influence of cultures on each other, borrowing the phenomenon from one environment and implementation of it in a different environment, the process of borrowing, implemented in the assimilation of innovations by the

[6] Хоменко О.О. Діалог сучасних правових систем. Адаптація правової системи України до Європейського права. // http://eurolaw.org.ua/docs/2011_3/txts/13-Homenko.pdf

[7] Алексеев С.С. Право : азбука – теория – философия : Опыт комплексного исследования / С.С. Алексеев. М. : Статут, 1999. С. 200, 219, 221, 224.

[8] Бержель Ж.-Л. Общая теория права / Пер.с фр. М., 2000. С. 342

group (person, people)[9]. To be precise, legal acculturation is a universal concept that characterizes it as grafting one legal system to another[10], any borrowing of some elements in other legal systems (some people prefer the term "legal (juridical) transplantations"[11]). In turn, it can be said about the universal concept of acculturation as following: reception, legal expansion, simple borrowing, adaptation and more. However, we understand legal adaptation as an adaptation of own legal system (its elements) to another similar legal system.

The success of legal adaptation depends on the convergence of legal systems, which determines the necessity of taking into account the properties of the latter that relate to the areas where the adaption takes place. So, it is reasonable to consider the complex of problems associated with the definition of private law, keeping in mind that the latter can be considered both as a sphere and as an object of adaptation.

The category of private law depends on European civilization for its existence and characteristics and, therefore, contains valuable guidance for those wishing to join the EU. At the same time, despite lengthy discussions on the notion and nature of the European law, private law, the influence of these concepts on the legislation of Ukraine, etc., in regard to their characteristics there are numerous differences. It stipulates the need to determine what the law of the EU is and whether the domestic concept of civil rights and legislation are able to adapt to the conditions of the EU internal market, what principles of adaptation are.

While defining the essence of the term and notion of "European law", we believe that they can mean an expressed verbal presentation, rational and emotional perception of human rights as a part of the "European world" (European civilization), where the man exists, feeling himself a part of it, whereas, the designation of the "EU law" is characterized by a set of legal rules, regulations and other legal means (the discussions in the European Parliament regarding the Community legislation and the like), which regulate the processes of European integration and of the EU activity.

The above mentioned is related to the "European law" and "The Law of the European Union" as a whole, but fails to fully account for the features of the "private sphere" of existence of law. Therefore, there is a need to clarify the nature of private law as a phenomenon that defines the legal position of a private individual in a society.

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[9] Юридическая аккультурация и управление профессиональной юридической деятельностью. Режим доступу: http://advocatkuzmin.ru/ articles/107-article25

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[11] Watson A. Legal Transplants: An Approach to Comparative Law. / A. Watson. Edinburgh : Scottish Academic Press, 1974. 106 p.; Watson A. Evolution of Western Private Law (Expanded Edition). / A. Watson. – Baltimore, London : Johns Hopkins University Press, 2000. 320 p.

Before you characterize a civil society, it is worth mentioning about the existence of the position, according to which every social and political system corresponds to a particular basic model of such a society, which in each country is evident in the national and specific form, as universal and purely national cultural and historical elements are involved in the formation of national identity and political culture of the people[12]. However, the presence of "purely national cultural and historical elements" does not mean creating a "special basic model of the civil society". Dealing with such phenomena not only the presence of universal and national and special elements must be taken into account but individual ones ("specific determinative") as well. If the universal applies to all socio-political categories, the individual determines the characteristic of only certain types that may be taken as the basis of other systems (i.e. to serve as the "base" for them), but it does not lose its genetic entity because of that. So it can become the "base" for borrowing and be adapted, but it does not become a "special basis" because of that. There cannot be its "special basic model" in the society where there are no democratic relations and which does not recognize the existence of private relationships. Civil society is a phenomenon (force) that exists in a democracy (democratization space). Such forces as: the political elite; the economic community (the business); the sphere of legislation; the State bureaucracy co-exist with it. The last two components, which are based on the general principles of the system of governinment, are the substance of every modern democratic system. All the rest are certain organizations and groups of people who provide a democratic system of a specific nature. Thus, when economic and political community consists mainly of people involved and of the institutions aiming at gaining power or profit, a civil society is the sphere of action of ordinary people who join forces to express their interests, protect and implement their daily requirements[13].

The indicated circumstances lead to consideration of civil society through the prism of liberalism and the market[14]. The view from the standpoint of liberalism necessitates consideration of peculiarities of human component of a civil society[15]. This refers to the type of a person that was formed on the

[12] Требін М. Західна модель громадянського суспільства: концептуальний підхід / М. Требін // Гілея : науковий вісник. 2013. № 75. С. 253.

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[14] Джин Л. Коэн, Эндрю Арато Гражданское общество и политическая теория : [пер. с англ.] / Общ. ред. И.И. Мюрберг. – М. : Весь Мир, 2003. С. 7.

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ground of division of labor because of its regulator – the market[16]. E. Gellner proposed the category of a "modular man", the implementation of which allows to accentuate, that the establishment of civil society provides unique opportunities to achieve individualization and simultaneous creation of political associations that balance the state, but do not enslave its members. The emergence of a modular man made possible the emergence of a civil society[17]. The market causes the appearance of a modular man, and a set of modular individuals creates a civil society. A civil society, as a certain kind of social reflection of the market system, "recodes" the imperatives of the market into formulae of freedom, and formulae of freedom are ionscribed into social imperatives of democracy. Its main lever of coordination of demand and supply diversity, pluralism of views and positions, bringing them into the system unity (equilibrium), is harmony (social contract)[18].

Assessing a civil society as a product of harmonization of interests and relations between private individuals acting in market conditions, as its characteristic features, may be considered the fact, that it: 1) appears as a the result of agreement between private parties that correspond the notion of a "modular man", 2) has liberalism as its basis, 3) exists in the conditions of a developed market, 4) apprehends the formula of freedom as social imperatives of democracy, 5) has human relationships, activity of democratic and liberal character as foundation, 6) is regarded primarily as a behavioral and institutional phenomenon (as opposed to "social capital")[19]. The state does not control a civil society, but if it is a rule-of-law state, it must secure conditions for its functioning and life activity[20], as the principle of priority functioning of a civil society regarding state power becomes more and more typical for the general dynamics of development of contemporary world civilization[21]. This separates a civil society from both the state and the economic structures that

[16] Сміт Адам. Добробут націй: Дослідження про природу та причини добробуту націй / пер. з англ. О.Васильєва, М. Межевікіної, А. Малівського. наук. ред. Є. Литвин. К. : Port-Royal, 2001. С. 11–15.

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[21] Оніщенко Н. До питання про пошук балансу у співвідношенні громадянського суспільства та держави: теоретико-методологічні аспекти / Н. Оніщенко // Право України. 2014. № 4. С. 55; Колодій А. Громадянське суспільство: ознаки, структурні елементи, співвідношення із державою / А. Колодій // Право України. 2014. № 4. С. 9–12.

allows it not only to play the role of opposition in terms of authoritarian regimes, but also revive its critical potential in terms of liberal democracy[22]. In this case rigid "binding" of concepts "civil society" and "state" to one another disappears, and thus there is the capacity to consider the latter as a variable component that promotes or hinders the development of a civil society.

In determining the nature of adaptation to these principles of functioning of the sphere of private law, the problem of methodological character arises, due to the fact that the interaction of a state with a civil society to a great extent is provided through public law, rather than private law. As a civil society alone can not cope with the conflicts of the variety of interests of people and their groups to reconcile the unmatched interests, etc., for this purpose the state is formed by establishing legal connections and relationships that create control structures and determine the procedure of their activity and cooperation. Public authority should create optimal conditions for the normal functioning of a civil society, protect it, promote conflict resolution. The basis of their relationship is ideology that could be called "person-centered"[23] and that is reflected in the metaphorical characterization: "Democratic state power – a "night watchman" in building "of the person that self-perfects". It is an effective and active textbook of freedom, physical and spiritual beauty of a person[24]. The indicated concerns the security of both human rights and freedoms and the functioning of the market, that is the correlation of a civil society and private law, making people truly free, giving everyone the opportunity to choose their purpose[25]. At the first government encroachment on the economic freedom all the political and legal freedoms turn into deceit[26].

Adaption to the conditions of the EU internal market, which lives by the rules laid down, requires clear understanding of the existence of the general problem of choice between a private law (humanitarian) approach and a public law approach (state-regulatory). The prospect of choice is that the replacement of the market with the planned economy takes away freedom and

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[22] Джин Л. Коэн, Эндрю Арато Гражданское общество и политическая теория : [пер. с англ.] / Общ. ред. И.И. Мюрберг. М. : Весь Мир, 2003. С. 7.

[23] Лотюк О.С. До питання співвідношення громадянського суспільства і держави / О.С. Лотюк // Часопис Київського ун-ту права. 2014. № 2. С. 80.

[24] Оніщенко Н.М. До питання про відповідальність держави перед громадянським суспільством / Н.М. Оніщенко, С.В. Стоєцький, С.О. Сунєгін // Часопис Київського ун-ту права. 2014. № 2. С. 11.

[25] Фридрих А. фон Хайек. Познание, конкуренция и свобода / А. фон Хайек Фридрих. СПб. : ПНЕВМА 1999. С. 58.

[26] Людвиг фон Мизес Индивид, рынок и правовое государство (антология работ Л. Мизеса) / под ред. Д. Антисери и М. Балдини. СПб. : Пнема, 1999. С. 129.

leaves only the right to obey. For this option is unacceptable, we must recognize that the state serves as a regulator "on request concerning all the concepts described above." The above mentioned concepts are correlates that complement each other in a democratic society, mediating such areas as: socio-political (civil society), economic (market), legal (private law).

These circumstances should be taken into account when determining the algorithm of adaptation of Ukraine to the EU legal system (at the present stage it looks like legal adaptation to the conditions of the EU internal market, which lies primarily in the perception and acceptance of the concept of private law). Meanwhile the problems of ideological, mental compatibility, etc. should be solved, without which the desired result of adaptation of consciousness, legal thinking, legal doctrine, legislation and finally the concept of law (in particular, private law) can not be achieved.

2. Domestic experience in adapting to European values

The subject matter of the article can not dwell on these matters in detail, but still the brightest areas of such adaptation are worth mentioning. As the first of these "civilizational compatibility" is to be mentioned because it affects the ability to adapt to European values in general and to the field of private law in particular.

Therefore it is necessary once again to refer to civilizational dominants of Ukraine, peculiarities of the formation of which are related to the fact that in the course of most of its history it was situated on the verge of "East – West", being a typical country of Uniate traditions according to its character, while being a reflection facilitated by the lack of territorial cohesion in the World outlook.

The dominant ideas were greatly influenced by the peculiar features of the Ukrainian national mentality[27], which was formed on the ground of close interaction of three cultures – ancient, Scythian-Sarmatian and Slavonic[28]. Their archetypes were perceived mentally from Kievan Rus. They also added Scandinavian features over time[29] The mentality algorithm of Kyivan Rus was significantly affected by the acceptance of Christianity in its Byzantine option. However, the people officially taking the Byzantine orthodoxy have retained

[27] Смітюх Г.Є. Україна сакральна : минуле, сьогодення, майбутнє / Г.Є. Смітюх, В.В. Стрілецький. Київ : Знання України, 2006 р. 36 с.

[28] Стражний О.С. Український менталітет. Ілюзії. Міфи. Реальність / О.С. Стражний. К. : Книга, 2008. С. 44–46, 95, 77, 89-90; С. 127–130, 168; С. 172.

[29] Стражний О.С. Український менталітет. Ілюзії. Міфи. Реальність / О.С. Стражний. К. : Книга, 2008. С. 44–46, 95, 77, 89-90; С. 127–130, 168; С. 172.

mental archetypes of previous generations and gave it to their descendants[30]. A significant degree of distinctive mentality of Ukraine from Byzantine mentality and Western permanent reflections are due to this occasion. Although the mentality of Kyivan Rus was different from Western European mentality of early Middle Ages, it did not accept Byzantine mentality in the full scope either, assuming the character of the original and fairly contradictory. The drift toward the "Byzantines" was prevented by the Tatar-Mongol invasion, which was accompanied by the growing power and expansion of Muscovy largely due to the Kievan Rus. This caused a natural resistance of ethnic groups living on its territory, and therefore their consolidation (particularly mental) in the process of opposing to the expansion.

At the beginning of the sixteenth century, the events clearly aimed at reapprochingt with the West were taking the place in the cultural field. In 1632 Kyiv Mohyla Collegium, which became the first Ukrainian university, where young people from Ukraine and other countries received education in the European standard, was created. However, the position of the Academy, as the opponent of Catholicism, contributed to the development of its ties with German culture.[31] However, cultural ties with Protestants did not mean the termination of contacts with Polish Catholics. Therefore, we can not consider a simplified approach to the influence of Poland and attitude to it[32]. It would be wrong to consider the confessional disputes as a confrontation between the West and East of Ukraine, based on the fact that the Polonization entailed catholization and geographical proximity to Russia helped to strengthen Orthodoxy. Or rather we will say that throughout Ukraine there was a weave of western and eastern Christian traditions in one or another their manifestations. With such civilizational achievements and the desire not to lose cultural contacts with the West (and inherent not only the West but also lands near the Dnieper) Ukraine entered the New time.

Overall, at the end of XVIII and the beginning of XIX century, the national revival happend on Ukrainian territories (in both western and eastern parts). In XIX century, the democratic and antimonarchical movements were developing spreading liberal socialist doctrine. At that time, works by Taras Shevchenko, Ivan Franko, Lesia Ukrainian and other writers, scientists and public figures were characterized by using the antique motives of Ancient Greek and Roman philosophy, research and study of natural rights of a person, justice, fate and

[30] Стражний О.С. Український менталітет. Ілюзії. Міфи. Реальність / О.С. Стражний. К. : Книга, 2008. С. 44–46, 95, 77, 89-90; С. 127–130, 168; С. 172.

[31] Нічик В.М. Києво-Могилянська академія і німецька культура / В.М. Нічик. К. : Укр. Центр духовн. культури, 2001. С. 56.

[32] Рябчук М. Польща, польський, поляки / М. Рябчук // Сучасність. 1998. № 11. С. 138–147.

deprivation. The basis of the political and legal views of many prominent thinkers of Ukraine of the time, such as M. Drahomanov, was human rights, freedom and free development, autonomy of the individual. Thus Drahomanov had the history of Ancient Rome as the basis for the study of these issues.

However, the realization that a real chance to preserve the unity of the society and the state was a union was gradually emerging. When not biased, it is difficult to deny that each of them (Krevska, Ostrivska, Vilensko-Radomska, Horodelska, Cracowsko-Vilenska, Melnitska, Lublinska, Brestska, Hadiachska) had its positive features and often provoked opposition of not only the representatives of the orthodox community, but magnates, who were dissatisfied with their being removed from the issues of redistribution of power[33]. Eventually, instead of merging a split took place by the confessions: on the one hand – Orthodox magnates, the majority of the clergy and popular masses (impressive unity of popular masses and oligarchs), on the other hand – former hierarchy who supported the king and their supporters, who understood the need for the Union. The attempts to unite Christian churches ended with their crushing, because then instead of two churches, the three churches emerged: the catholic, the orthodox and the Uniate (Greek Catholic).

The situation, that developed, affected the Ukrainian legal system, which had undergone influence both of West and East. However, despite the short-sighted political decisions which led to the loss of statehood, the legal tradition relied essentially on the oriental influence.

After the accession of Ukraine to the Moscow State according to March Articles Hetman territory was not supposed to apply Moscow's legislation, and "ex rights": customary law, Polish-Lithuanian legislation and Magdeburg Law were expected to be kept valid. In preparing the assembly "Rights, by which malorossiysky people are to litigate" (1743) its drafters used the Roman and Germanic sources, Statutes of the Grand Duchy of Lithuania, Polish legislation, customary law and judicial practice of Ukraine[34]. The trend persisted in the preparation of "Collection of Ruthenia rights in 1807" (first draft Civil Code), which contained more borrowings from the Western law.

[33]Унія і уніати в польській і слов'янській культурах : Матеріали Краківської міжнародної наукової конференції (17–19 грудня 1992 р.) // Слово і час. 1993. № 3. С. 57; Паславський І. Берестейська унія і українська християнська традиція. Львів: Вид-во Отців Василіян "Місіонер", 1997. Паславський І. Берестейська унія і українська християнська традиція / І. Паславський. Львів : Отців Василіян "Місіонер", 1997. 64 с.; Гадяцький трактат [перкл. з польськ.] / В. Шевчука. К. : Записки Наукового товариства імені Т. Шевченка. Т. 89. Львів, 1909. Режим доступу: http://movahistory.org.ua/wiki/Гадяцький трактат.

[34] Права, за якими судиться малоросійський народ. 1743 / НАН України, Інститут держави і права ім. В.М. Корецького, Інститут української археографії та джерелознавства ім. М.С. Грушевського ; упоряд. К.А. Вислобоков ; відп. ред. та авт. передм. Ю.С. Шемшученко. К. : [б.в.], 1997. 547 с.

Besides 515 of references to the Statut of the Grand Duchy of Lithuania, there were 457 references to the "Saxon Svichado (Mirror)", 224 – to the right of Kholmsk, 58 to Magdeburg Law. Thus, the basis of this bill was the Lithuanian, German and Polish right. As for the territories of Ukraine, that were under the power of Austro-Hungary, Poland, Romania etc., there acted laws of that state which was formed within the Western tradition of law.

On such background the formation of principles of concept of private law was carried out on Ukrainian territories, which began in XIX century, foremost, in their Western part. In spite of powerful influence of German jurisprudence the Western tradition of private law in the reception of Ukraine looked, foremost, as an Austrian civil doctrine. In its interpretation O.M. Ogonovskiy, who aimed at an adaptation of Austrian civil doctrine to Ukrainian legal comprehension played a considerable role for Ukraine.[35] S.S. Dnistryanskiy created the scientific works in the sphere of civil law and on materials of Austrian legislation[36].

On the whole, Western Ukrainian tradition of private law did not create an original legal conception in this industry and the development of this conception took place in the general mainstream of legal researches of that time. Consequently, Western Ukrainian concept of private (civil) law was formed in the general context of the development of Western tradition of private law, being historically and genetically related to the last.

Referring to the Ukrainian territories which became part of the Russian empire, the adaptation to the Western law there was sometimes actual in the connection with the attempts of the mother country to adapt oneself to the European values and legal achievements in the second half of XIX century. Such attempts were halted by the events of 1917, after which the soviet power began actively to destroy the legal system which had existed before. However, it did not avoid the attempts of the "limited" adaptation (borrowings). In particular, such attempts took place in the first codification of soviet civil legislation, when borrowing from the legislation of the European countries really took place.

Hereupon, the Civil code of RSFSR, adopted on October, 31 in 1922[37] (that served as a standard for CC of Ukraine), imitated German CC (BGB), in

[35] Огоновський О. Система Австрійського права приватного / О. Огоновський. Львів : Науки загальні і право річеве, 1897. 336 с.

[36] Дністрянський С. Причинки до реформи приватного права в Австрії / С. Дністрянський // Часопись правнича і економічна. Львів, 1912. Р. 7. Т. 10. С. 1–111; Цивільне право [Текст] : пер. С. Дністрянського. Відень, 1919. Т. 1. 1063 с.; Коваль А. Засадничі погляди Станіслава Дністрянського на основи права та держави / А. Коваль // Вісн. Львів. ун-ту. Сер. юридична. 2012. Вип. 55. С. 74–78.

[37] Братусь С.Н. Становление гражданско-правовой концепции регулирования имущественных отношений между социалистическими предприятиями в период НЕПа / С.Н. Братусь // Сов. государство и право. 1987. № 11. С. 51.

its structure, many legal decisions and others like that. As P.I. Stuchka admited: "According to its essence our Civil code does not differ from those forms of bourgeois civil law, which repeat the formulas of the Roman law on the whole and were created about two millenniums ago"[38].

The most interesting thing in the soviet experience is that it confirmed not only the possibility of borrowing from the legislation of other countries, which was based on other conceptual basis, but also the flimsiness of such borrowings. An exception was the cases, when they referred to property relations (for example, inheritance) which arose out of the field of ideological battles. However, it is necessary to notice that in this case (as well as the later one, at the attempt of adaptation to "common to all mankind values", "to the mechanisms of progress"[39] during Perestroika), Ukraine, without regard to active scientific researches of its scholars, came forward not as a subject of adaptation, but as a user of already prepared (prepared in the USSR) product. Therefore, Ukraine's own experience of legal adaptation was gained after the proclamation of its independence.

At that time the civil relations were regulated by the legislative acts of former Soviet Union, and also by the majority of acts of the URSR, that continued to operate in that part which did not conflict with the legislation of Ukraine. At the beginning of the 90s of XIX century a significant amount of legislative acts were accepted in Ukraine, conceptual basis of which was an aspiration of the legal providing of sovereignty of a person, equalization of legal position of a person and the state, and others like that. Evidently, the lack of lawmaking of that time was largely due to its unsystematic character. Thus, the development of the concept of civil legislation of Ukraine began, basing on the European concept of law that was based on the ideas of civil society and the rule of law[40]. However, researches forecast the harmonization of Ukrainian legislation with the European one as a long and complex process. Due to the adoption of some provisions of the Commercial Code and the Family Code the Civil concept as a single Code of private law suffered some losses.

Although these losses were felt, the core of the Civil Code of Ukraine as "passionate" in essence (i.e, one that was created for the future, on a modern conceptual framework as a code of civil society, rule of law and the code of private law, with current European trends and experiences) gives reason to

[38] Стучка П.И. Социалистическое хозяйство и советское право / П.И. Стучка // Революция права. 1927. № 1. С. 10-11.

[39] Бутенко А.П. Идти назад – к механизмам прогресса / А.П. Бутенко // Государство и право. 1992. № 4. С. 78.

[40] Кодифікація приватного (цивільного) права України / за ред. А. Довгерта. К. : Укр. центр правн. студій, 2000. 336 с.

believe that the losses in question can be eliminated in the process of legal approximation of Ukraine to the terms of the EU internal market.

In choosing the destinations for such adaptation, the Draft Common Frame of Reference (DCFR) – Research "Project general reference scheme" – "Principles, Definitions and Model Rules of European Private Law"[41], should serve as guidelines by which it is planned to solve a number of methodological issues. Central to the idea of DCFR is the rejection of direct regulation of relations in the private-sector. Instead, DCFR is seen as a project that could provide ideas of European private law to a new ground by increasing mutual understanding and promoting collective discussion of problems of private law in Europe[42].

CONCLUSIONS

The major problem associated with the adaptation of Ukraine to the terms of the EU internal market is the definition and the legal nature of adaptation. The latter can not be reduced to "legislative approximation", but it is a broader concept, for which all cases of adjustment of its own legal system (cells) to another axiologicaly close legal system should be effectively covered in the process of adaptation of domestic law to the concept of European general concept of law and private law in particular.

Successful adaptation depends on the legal compatibility of legal systems, which leads to the need to consider the properties of the latter, concerning areas of adaptation. In particular, the adaptation in the field of private law should be made taking into account the fact that the latter is a European concept, and therefore involves not only borrowing norms of legislation, but also the values on which the concept of private law correlates with the civil society, developed market and so on.

An essential issue is also establishing principles of adaptation of the national concept of civil law and civil law provisions of Ukraine to principles of European law, since it is on this basis that practically all important adaptation of national legislation to the European concept of law is made.

[41] Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of reference (DCFR). Full Edition. Prepared by the Study Group on a European Civil Code and the Research Group on EC Pri-vate Law (Acquis Group) / Ed. by Christian von Bar and Eric Clive. Vol. I–VI. Munich, 2009.

[42] Кристиан фон Бар Предисловие к российскому изданию // Модельные правила европейского частного права. [пер. с англ.] / Кристиан фон Бар, Эрик Клив, Паул Варул ; Науч. ред. Н.Ю. Рассказова. М. : Статут, 2013. С. 23, 25.

SUMMARY

The article considers the issues of legal adaptation of the Ukrainian legislation and the domestic legal system to the EU internal market on the basis of the Association Agreement between Ukraine and the EU. Such issues as the nature of legal adaptation of the object, the conditions and principles as well as the concept of this adaptation are considered. The ratio of the concept of adaptation of the right to the concept of law in general and the European private law, in particular, using axiological approach are studied. The defining features of private law, the main correlators, such as civil society and market economy, the methodological basis of private law, which is liberalism, are characterized as well. Answers to the questions such as: Is there a "civilizational compatibility" in these jurisdictions? Is it a problem of Ukrainian mentality to adapt to European values? Does the legal adaptation mean the compatibility of legal systems? What is the role of civil society in the process of European integration (see it through the prism of liberalism and the internal market)? How was the basis of the concept of private law in Ukraine formed in XIX – XXI centuries?

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24. Кузнєцова Н. Громадянське суспільство, держава, приватне право : проблеми співвідношення та взаємодії / Н. Кузнєцова // Право України. – 2014. – № 4. – С. 63–70.

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32. Стражний О.С. Український менталітет. Ілюзії. Міфи. Реальність / О.С. Стражний. – К. : Книга, 2008. – 368 с.

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49. Кристиан фон Бар Предисловие к российскому изданию // Модельные правила европейского частного права. [пер. с англ.] / Кристиан фон Бар, Эрик Клив, Паул Варул ; Науч. ред. Н.Ю. Рассказова. – М. : Статут, 2013. – 989 с.

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DOI https://doi.org/10.36059/978-966-397-168-1/46-60

ADAPTATION OF LAW AS THE MODE OF THE INTERACTION OF LEGAL SYSTEMS

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INTRODUCTION

The influence of some legal systems on others and the interaction there of has long attracted the attention of jurists. The most popular the subject-matter of special studies investigate the influence of one law on another was the reception of Roman law, especially of scholarly inquiries from the Middle Ages onwards, and, after them, during the Great European codifications.

Analysis of the conceptions expressed in the process of investigating the influence of Roman law on the legal systems of western Europe seems inadvisable given that the very process of borrowing ideas and provisions of Roman law already have been the subject-matter of special scholarly works and received proper illumination there[1].

Therefore we dwell merely on basic provisions relating to understanding the essence of the reception of Roman law in Europe.

Productive was the reception of Roman law in the late Middle Ages, when the views of Thomas Aquinas became the methodological foundation thereof. His concepts concerning the correlation of natural (divine) law and human (positive) laws, and also that it was necessary only to comply with those secular laws which were not contrary to natural law, actually served as the basis of the reception of Roman law in the form of practical application.

In the process of discussions relating to the suitability of Roman law for application in law-creation and legal life which took place before and during the great European codifications of the eighteenth and nineteenth centuries, European jurists formulated a number of propositions important in principle with regard to comprehending the essence of the phenomenon of the reception of Roman law (chiefly, of a compromise character).

Savigny insisted that law is never formed according to one's wish because it is a product of the development of the people's spirit which is revealed in the history of a people, in connection with its religion, culture, and so on.

[1] Муромцев С. Рецепция римского права на Западе. М.: Тип. А. И. Мамонтова и К, 1886.; Бек В.А. Рецепция римского права в Западной Европе: автореф. дисс. … канд. юрид. наук. Львов, 1950.; Харитонов Є.О. Рецепція римського приватного права (теоретичні та історико-правові аспекти). Одеса, 1997; Харитонов Є.О., Харитонова О.І. Рецепції приватного права: парадигма прогресу. Кіровоград: Центр.-Укр. вид-во, 1999; Томсинов В.А. Рецепция Римского права в Западной Европе". *Древнее право.* 1998. №. 1. С. 169–175.

Considering law in its historical development, Savigny and his pupils concentrated efforts on studying the Roman law of antiquity as set out in sources systematized by Justinian, supposing that this treasure house of imperishable legal values after proper processing might be applied directly as law in force. The task of jurists is merely to order, process, and improve abstract concepts[2].

Rudolf von Jhering[3], a consistent opponent of von Savigny, believed on the basis of an understanding of law as the direct product of life that ever greater changes in social life entail changes in the domain of law. He emphasized in so doing that not only national forces and the potential of each people have importance, but also the encounters thereof with others, borrowing. A people craving national exclusivity thereby condemns itself to stagnation. The task of the modern jurist is not only to create, but also to destroy, that is, discard the unnecessary and obsolete. The general methodology was then defined: Durch das römische Recht über aber das römische Recht hinaus[4].

These conceptual approaches became the foundation for discussions when codifying German civil law. The conception of the Civil Code (BGB) was formed in a competition between the "Romanic-Pandectian" and "Germanic" approaches. After a mitigation of the Romanic principles, a draft was adopted in 1896 by a Union Council and confirmed by the Emperor. He entered into force on 1 January 1900. The actual preparation, discussion, and adoption thereof became a reflection of the comprehension of the essence of the reception of Roman law at the turn of the centuries.

1. General provisions on the reception of Roman private law

It should be noted that the interest of jurists of the Russian Empire in the reception of Roman law had a "dual" character. On one hand, this phenomenon they investigated as being inherent in Western culture. The significance of Roman law was determined by the fact that it comprised a vital, practical element of modern positive legislation and was the basis for a single science of civil law. "Reception was the mastery of Roman law by other peoples".[5] It was regarded as an element of a more general process of borrowing the achievements of a highly-developed ancient culture, and as a legal phenomenon, the borrowing of its provisions was explained by the need

[2] Новгородцев П.И. Историческая школа юристов. СПб.: Лань, 1999. С. 101–108.

[3] Иеринг Р. фон. Историческая школа юристов. В кн.: Савиньи Ф.К. Система современного римского права: пер. Г. Жигулин. 2011. С. 73–101.

[4] Иеринг Р. фон. Дух римского права В кн.: Избранные труды. СПб., 2006. Т. II. С. 37–38.

[5] Азаревич Д.И. Из лекций по римскому праву. Одесса, 1885. С. 103; Азаревич Д.И. Значение римского права. Одесса, б.г.

to use “more precise” norms for the regulation of a number of relations than those which existed in customary law of the majority of western European countries.

On the other hand, the subject-matter of scholarly studies was the problem of establishing the significance of Roman law for the legal system of the Russian Empire. M.L. Diuvernua, justifying the advisability of Russian jurists having recourse to Roman law, among its advantages he named its universality and abstractness, stressing that Roman law is the “most universal law” among other systems of law suitable for application in different countries[6]. These conclusions found practical confirmation in the process of preparing the draft Civil Code in the Russian Empire. The drafting work became an important factor in the growing interest in Roman law and the investigation there of from the standpoint of possible use of its merits when improving legislation in force. On the whole, the fact of the reception of Roman law in Russia during the nineteenth and early twentieth century’s generates no doubts among researchers[7].

We may conclude that the conception of the reception of Roman law in European jurisprudence was formulated before the end of the nineteenth century and that it was the result of a comprehension of the essence of this phenomenon and evaluations of the possibility of its use in the process of preparing codifications, especially in the domain of civil law of the eighteenth and nineteenth centuries.

In the early twentieth century studies in this domain were fewer: the western vision of the essence of the reception of Roman law on the whole had been formed. The subject- matter of research became determining the place of Roman law in the culture of Europe, the reception of Roman law in individual countries, under special conditions, and so on[8]. The existence of a crisis in this domain was recognized and was a turning point in the quest for new orientations of research[9].

The situation was otherwise in Eastern Europe, where the Soviet State arose whose legal doctrine was based on a Marxist-Leninist world outlook which denied succession of socialist law from the “law of an exploitative society”. Therefore, the question of the reception of Roman law did not arise,

[6] Дювернуа Н. Значение римского права для русских юристов. Ярославль: Тип. Г. Фальк. 1872. С. 14.

[7] Летяев В.А. Рецепция римского права в России XIX-начала XX в. (историко-правовой аспект): автореф. дисс. … доктора юрид.наук. Саратов. 2001.

[8] Koschaker P. Europa und das römische Recht. 1958.

[9] Koschaker P. Die Krise des römischen Rechts und die romanistische Rechtswissenschaft. 1938.

which predetermined a lessened interest in the last and in general in researching the achievements of "presocialist" systems of law.

The renaissance of studies of Roman law and its reception occur in the USSR only from the mid-1980s, when political, social, ideological, and legal reforms conditioned the enhanced interest of society in general humanitarian values, the heritage of other systems of world outlook, law, and so on.

The majority of jurists assessed the reception of Roman law from traditional positions, describing it as a phenomenon typical for all of continental Europe and Scotland and consisting of the comprehension and mastery of the Roman legal heritage as law in force[10] or as a phenomenon which relative to the position of Roman law in feudal and bourgeois Europe represented a renewal of actions, borrowing, selection, processing, and mastery[11].

The general reception of Roman law is evaluated as a phenomenon reflecting the influence of this "mother" legal system on the law of later times, a result of which was the forming and improving of modern European legal systems. In Ukrainian civilistics on the whole positive evaluations of this phenomenon predominate, to which the appearance of new studies in this field attests, the defense of a doctoral dissertation devoted to the reception of individual institutions of Roman law (S.D. Grin'ko), and so on.

The attitude towards the reception of Roman law in modern Russian jurisprudence is equivocal. Together with recognition of the influence of Roman law on the legislation of the Russian Empire of the nineteenth and early twentieth centuries and stating the similarity of legal norms, institutions, and so on in Roman and modern Russian civil law[12] (as impartial foreign researchers noted)[13], there are critical, even cautionary, assessments of the possibility of this phenomenon[14], attributing to it (indeed, the reception of law in general) the significance of a result of negative ideological influence.

The law not only is among the elements of the socio-political system, but also is an element of social consciousness comprising the spiritual world of man and his world outlook. Law arises in inseparable linkage with religion; then is acquires greater socio-political importance and a philosophical and professional legal comprehension and substantiation; and finally, law becomes an element of social and individual consciousness in the context of the

[10] Дождев Д.В. Римское частное право. М., 1996. С. 4.

[11] Косарев А.И. Римское право. М.: Юридическая лит-ра, 1986. С. 110.

[12] Яковлев В.Н. Древнеримское и современное гражданское право России. Рецепция права. 2-е изд. Ижевск, 2004-2005. 2 тома.

[13] Авенариус М. Римское право в России, пер.с нем. Д.Ю. Полдников. М.: Академия, 2008.

[14] Новицкая Т.Е. К вопросу о так называемой рецепции римского права в России. *Вестник Московского университета*. 2000. № 3. 2000. С. 121–134.

development of the respective civilization. Because this process is repeatable, just as cycles of civilization can be repeated, the reception of law occurs.

A key moment of characterizing the reception of law is an understanding thereof as part of a general process of renaissances and contacts between a living civilization and a civilization that has receded into the past. Objectively it cannot fail to be a repetitive phenomenon, which is conditioned by the cyclical character of the development of civilizations and the repetition of renaissances and declines. Because the renaissance of the heritage of one culture by another civilization is not a unique event but a historically repetitive process, the reception of law is a repeating phenomenon.

Having regard to the foregoing, the reception of law may be defined as the renaissance thereof, perception of the spirit, ideas, and main principles, and also basic tenets of the law of preceding civilizations by subsequent civilizations at a certain stage of their development in the context of the general process of cyclical renaissances. We have in view not the simple borrowing of the text of legal norms, institutions, and the like, but the perception of basic categories, principles, and conceptions.

In noting the great role of the reception of law (especially Roman) in improving legal systems and ensuring the succession of law with its assistance, we should take into account that this provided a link between legal systems only (vertically) (and merely to a certain extent "horizontally" in derivative receptions). Thus there is the question of the means, or forms, of the interaction of legal systems.

One category which first deserves attention of investigators is "legal acculturation". Various views exist with regard to its definition. However, most widespread is an understanding thereof as a rather complex process. The process of acculturation is defined as:

… the process of mutual influence and the result of this mutual influence of cultures on one another, or the borrowing of a phenomenon from one milieu and introducing it in another milieu, including acclimatization. Consequently, acculturation is a process of borrowing and the borrowing itself as a result – the borrowed object. In other words, acculturation is a process of borrowing expressed in the mastery of innovation by the borrowing group (or individual, people) and adaptation to this"[15].

Sometimes acculturation is regarded as an element of social administration which most influences social life in the domain of law-creation and law-application[16].

[15] Кузьмин И.А. Юридическая аккультурация и управление профессиональной юридической деятельности. Режим доступу: Advocatkuzmin.ru/ articles/107-article25

[16] Кузьмин И.А. Юридическая аккультурация в системе социального управления: автореф. канд. социологических наук. М., 2002.

The following definition is rather successful: legal acculturation is a relatively autonomous process of continuous interaction of legal systems assuming the use (depending on cultural and historical conditions) of methods differing in the nature and force of impact, a necessary result of which is change of the initial legal culture (or individual elements thereof) or one or both societies coming into contact[17]. Understanding legal acculturation broadly, the author also singles out such forms thereof as borrowing and reception of law[18].

Sofronova defines legal acculturation as the process of mutual influence of legal systems. She singles out "legal borrowing as a variety of legal acculturation, which assumes the transfer and preservation of legal elements without any changes"[19]. The position of Sofronova with regard to the correlation of the concepts of "acculturation" and "reception" is interesting. She noted that reception, understood as only voluntary, is a universal variant of acculturation and a perception of another's legal culture not imposed by force. As a generic indicator one may name the unilateral character of borrowing effectuated solely at the initiative of the recipient. Two types of reception are distinguished: (1) horizontal reception: the perception of legal institutions within the framework of a simultaneously operating PSO; (2) vertical borrowing, when there is a change of socio-economic formation assuming the extensive perception of diverse legal phenomena[20].

In our view, in this position a confusion of concepts is permitted. Insofar as reception, as noted above, is a perception by later legal systems of elements of systems which receded into the past, horizontal reception is impossible by definition. Instead, one may speak of borrowing by one legal system from another.

In evaluating the prospects for the use of the category of acculturation for forming a theory of interaction (or influence) of legal systems, one may assume that the most suitable for this is an understanding of legal acculturation as a universal concept which characterizes this as the infusion of one legal system into another[21]. Some authors in defining legal acculturation as any carrying over of legal forms to another legal milieu distinguish such

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[17] Абрамов А.Е. Правовая аккультурация (на примере Испании в период Римской Республики): дис.... канд. юрид. наук : 12.00.01. Владимир, 2005. С. 7-8.

[18] Абрамов А.Е. Правовая аккультурация (на примере Испании в период Римской Республики): дис.... канд. юрид. наук : 12.00.01. Владимир, 2005. С. 14.

[19] Софронова С.А. Правовое наследие и аккультурация в условиях правового прогресса общества: автореф. дис. … канд. юрид. наук: 12.00.01. Нижний Новгород, 2000. С. 23.

[20] Софронова С.А. Правовое наследие и аккультурация в условиях правового прогресса общества: автореф. дис. … канд. юрид. наук: 12.00.01. Нижний Новгород, 2000. С. 27.

[21] Софронова С.А. Правовое наследие и аккультурация в условиях правового прогресса общества: автореф. дис. … канд. юрид. наук: 12.00.01. Нижний Новгород, 2000. С. 199.

forms of the last as legal expansion (which is forcible) and reception (voluntary perception of elements of another legal system). Legal expansion is linked with legal transplanting[22]. We note in this connection that the concept "legal transplants", introduced into scholarly discourse of comparativistics[23] rather long ago, usually is used to designate any borrowings from other legal systems (although sometimes it is used in the meaning of "one of the types of reception"). In other words, they look like a category, in our view, which actually is identical to the concept of "legal acculturation" and different from the concept "reception"[24].

Thus, one may conclude that these days at the stage of forming a general theory of interaction of legal systems there is no precise, generally-recognized difference of such categories as "legal acculturation", "reception", "legal transplants", "borrowing", and so on.

In our view it would be justified to use the broadest universal term-concept to designate "legal acculturation", by which one should have in view any borrowing of elements of some legal systems by another. The designation "legal transplants" (although the last in the Ukrainian tradition has a certain natural technical hue) is possible. The term-concept "reception of law" rather precisely characterized the borrowing of elements of legal systems of the past by later systems. As regards the borrowing by legal systems one from another which coexist in time (horizontal borrowing), possibly this type of acculturation it would be advisable to call the "interaction (or mutual influence) of legal systems".

2. Examples of borrowing by different legal systems

To complete this article we offer examples of borrowings of law by different legal systems in the style of the greatly respected Alan Watson. We recall in particular the borrowing (or reception and interaction) of the law of Antiquity of the achievements of the legal systems of the Near East.

Some students of the history of European law have been critical of the borrowing by the Greek and Romans of laws from peoples who ruled in the Near East: Sumerians, Hittites, Assyrians, Babylonians. However, the evident influence is acknowledged on the forming of European law by the Law of Moses, which initially through the Catholic Church and later especially through the Reformation was extensively perceived by Protestant States[25]. We believe that the fact of influence on the forming of Roman law of norms of the ancient

[22] Третьякова О.Д. Конвергенция в праве: юридическая экспансия. К., 1998. Т. 5. 2002.

[23] Watson A. Legal Transplants: An Approach to Comparative Law. 1974; 2d ed.; 1993. Books. 24. Режим доступу: https://digitalcommons.law.uga.edu/books/24

[24] Watson A. Legal Transplants and European Private Law, 2000.

[25] Аннерс Е. История Европейского права. М.: Наука, 1996. С. 21.

Egyptian, Near Eastern, and other civilizations requires no complex argumentation. The Roman *jus gentium* was nothing other than the aggregate of norms borrowed by the Praetorians from the law of States which proved to be in the sphere of political, economic, or cultural influence of Rome (including Egypt, States of the Near East, and others). Therefore, one may assert that the respective legal systems could not fail to interact with Roman law.

As regards Greece, it is logical to assume that trade and cultural links of early Antiquity and the creation of numerous Greek colonies during the period of "great Greek colonization" of the seventh to sixth centuries bc could not occur without the interaction of legal systems. This also is true of the Hellenist-Eastern syncretism of the Macedonian period. Having regard to the said culture, we shall try to establish the existence of echoes from the spirit, ideas, and legal solutions, and then find an answer to the question whether and when the interaction of legal systems occurred.

Logically, one should begin with the Sumerian local civilization, which existed from approximately the second half of the fourth millennium bc. States belonging to it (the last of them, Achmaemenid Persia, ceased to exist under the blows of the Army of Alexander of Macedonia in 331-330 bc) during his thousand years of history repeatedly entered into contacts with the Hellenic world and Rome. In approximately the sixth to the fifth centuries bc the process of the interaction of these cultures (with the predominance of the Near Eastern tradition) became more active, influencing various aspects of the civilization of Antiquity.

We believe one should speak in the domain of law about the "Near Eastern influence", or, more precisely, the reception of Near Eastern law, and not the interaction of legal systems because European law at that time lagged behind significantly in development. The "archives" of ancient texts written on clay (tablets) found by archaeologists in Mesopotamia testify to the existence in ancient times not only of laws, but to the significant practice of their application, especially in the sphere of trade: texts of contracts, judicial decisions, and the like. The laws of the small city-State Eshnunna date from the twentieth century B.C. Even earlier is the Code of Ur-Nammu, which operated from about 2112 to 2095 B.C.

The Code of Ur-Nammu astonishes for its precise formulation of the basic idea of law, which comprises the essence of law to the present time. The Preamble to the Code notes that its purpose is the "establishment in the country of justice and the eradication of arbitrariness and lawlessness". In our view, one may see in this formulation the sources of the idea of a rule-of-law State or, in any event, of certain principles of the last. The idea of a legal and partially de facto equality of private persons is rather precisely expressed in this Code: these laws are introduced so that "an orphan does not become the

booty of the wealthy, and a widow the booty of the strong", "to "judge by just laws", to "make judicial decisions permanent".

Indeed, the ruler Ur-Nammu was not original in the formulations of his laws: as follows from the inscriptions found in Lagash and made about 2350 bc, then the Ur-Nammuians "restored freedom" and by the force of the laws established by them arranged that no "priest of supply entered the garden of the mother of a poor peasant" and that when "the son of a poor man sets a net, no one will take his fish".

However, we are more interested not in these ancient civilizations themselves and their law, but in the possible link between the law of these cultures and Antiquity. It is unlikely that the Code of Ur-Nammu could have exerted direct influence on the forming of legislation of the ancient Mediterranean. This also is true of the code of laws of the ruler Lipit-Ishtar, of the Isin Dynasty, and the code of laws from Ennusha. Obviously, there must be some connecting, mediating link: a tradition which would take into account principles inherent in Sumerian law and existing in a State or group of States that might have contacts with ancient civilization. We refer to a reception of the law of Near Eastern systems in the law of Antiquity.

The reception of law by Ancient Greece is no less a clear example. On the whole by his laws Solon began the creation of the systematic law of Athens which expressed together with other norms the determining spirit of this city-State. He was concerned with legal enlightenment: his laws written on wooden blocks were placed in the city so that each had the possibility to be familiar with their content[26].

From the legal point of view, the reforms of Solon marked the completion of rule which was effectuated through the mediation of decrees not provided for and not permanent and the commencement of rule with the assistance of written, stable law. So stable that five centuries later Cicero had the complete right to assert that the laws of Solon are, as earlier, in force in Athens[27].

Sparta was the antipode of Athens in the realm of legal regulation, the chief competitor not only in politics, but also in ideology.

According to Herodotus, the Lacedonians had the worst laws in comparison with all other Hellenes. They communicated neither among themselves nor with foreigners on these matters. Only when Lycurgus received from the Delphi Oracle so-called "Rhetra", which is treated variously: either the laws proper of Lycurgus, or divine sanction for them to be drawn up (Herodotus, 1.65). In any event, the desire to place a sacral foundation under the collection of legislation, which we encountered in speaking of Mesopotamia, Judea, and Egypt, was expressively set

[26] Беккер Ф. Мифы древнего мира. Саратов: Надежда, 1995. С. 187.
[27] Дюрант В. Жизнь Греции. М.: КРОН-ПРЕСС, 1997. С. 126.

out. Indeed, Herodotus gives another version: "Lycurgus brings his laws from Crete. Here we again encounter an interesting phenomenon: the wish to "add solidarity" to law-creation efforts by means of a reference to a foreign origin. Something similar occurs when defining the genesis of Roman law (Laws of the Twelve Tables).

With regard to Roman law in jurisprudence the thought is embedded of the absolute predominance of it over all other legal systems of that time and the uniqueness of the phenomenon of the forming of Roman private law, which over time became the basis of virtually all European systems of law (although the fact is not denied of the borrowing of legal solutions from foreign law, which led finally to the creation with the assistance of the Praetorians of the *jus gentium*, which over time became an element of Roman private law). As a rule, the testimony of Roman sources fixed in the Digests of Justinian (1.2.2.4) concerning the derivative nature of the first codification in Rome – the Laws of the Twelve Tables – is critically perceived: many specialists believe that reference is being made merely to inheriting the "Greek fashions" and underpinning own laws with the authority of Hellenic law[28]. And although some do not doubt that the *decemviri* sent a commission of three persons to Greece in order to study the laws of Solon[29], but the majority of Romanists do not take into account the "Greek trace", stating that the *decemviri* simply "elaborated" the Laws of the Twelve Tables.

We believe that in assessing the genesis of Roman private law, one should recall the remark of Utchenko about the erroneousness of deprecating the originality of Roman culture and of underestimating the process of the penetration into that culture of Hellenist influences. One should also note the erroneousness of portraying these influences as "purely Greek" because the culture of the East was introduced in Rome via Greece[30].

Taking into account the peculiarities of the development of local proto-ancient civilizations and their interaction with ancient cultures provides a basis for asserting that together with the reception of certain world outlook, ethical legacies of the East, during Antiquity the reception of law occurs, in which Greece acts as the middleman. We believe that this does not reduce at all the importance of the achievements of the jurisprudence of Ancient Rome; however, it does make it possible to justly assess the trends of development of the legal systems of Europe.

The concepts of Roman society concerning justice, good, and evil, orderliness and abuses, and so on were formed under the influence of ethical

[28] Покровский И. А. История Римского права. СПб.: Издательско-торговый дом Летний Сад, 1998. С. 121.

[29] Пухан И., Поленак-Акимовская М. Римское право. М.: Зерцало, 1999. С. 21-22.

[30] Утченко С.Л. Древний Рим. М.: Наука, 1969. С. 218.

tenets of ancient Greek philosophy. According to the well-known utterance of the Roman poet, Horatio, Greeks taken into captivity themselves captured the victors. This occurred because Hellenist philosophical thought elaborated the doctrine, synthesized views which responded not only to common trends in the development of ancient civilization, but better expressed the aspirations of Rome and the essence thereof to the times. In this capacity stoicism crossed into Roman philosophy[31]. With its assistance the philosophical base was brought under the Roman ideal of the good citizen, *vir bonus*, and the cosmopolitanism of the Stoics was transformed into an ordinary version for Romans concerning the advisability and necessity of the existence of their State as a world State[32]. Epicureanism was also popular in Rome with its accessible doctrine that for happiness one needs only honor and justice, and on this basis one may enjoy life and display concern for own advantage. Societies arise at the initiative of people who try to ensure self-defense, mutual assistance, and exchange of knowledge and services. Society should be based on compliance by all of its members with an agreement not to do harm to one another and to assist the weak[33].

CONCLUSIONS

In assessing the principles of the Roman philosophy of law from the positions of their correlation with those principles which had been formulated much earlier in the ethics of Hellenism, and even earlier in the civilizations of the Near East, we may justly conclude with regard to the reception of the last in the law of Rome which occurred in the context of the general Renaissance of Greek culture. To be sure, they were developed and modernized with respect to the needs of Roman (Late Antiquity) civilization. This is an indicator of reception which, as noted above, distinguishes it from restoration, evocation, and so on.

The adaptation of these moral and ethical principles and legal norms to morality, needs, and mentality of the Romans also occurred. Under the influence of Stoic philosophy, the Roman jurists elaborated the doctrine of natural law; the view of the Epicureans found reflection in the recognition of individualism and sovereignty of the person, as grounds for the origin of the right of private ownership and certain other institutions of positive law.

It is interesting to note that Ulpian suggested a solution which fundamentally changes the boundaries of defining subjects of law: “A slave may not be from the standpoint of civil law a party to a contractual obligation;

[31] Асмус Б.Ф. Античная философия. М.: Высшая школа, 1976. С. 454.

[32] Утченко С.Л. Политическая учения Древнего Рима. III-I вв. до н. э. М.: Наука, 1977. С. 89–92.

[33] Titus Lucretius Carus, De rerum natura. Libri VI, 1473.

however, in the natural law aspect, he may oblige and be obliged" (D.44.7.14). In the context of this study, attention should be drawn to the similarity of the methodological approaches of Ulpian and Solon, and even earlier, the creators of the law of Babylon, who thought virtually in the same manner. Thus, we have an example of the reception of the principles of an ancient system of law in a later legal system when determining the status of a person, it being especially interesting that in either instance a struggle of principles of natural and "normative" law occurs.

The characteristic peculiarities of the law of Ancient Rome together with the genesis of its philosophy testify to the process of the Greek Renaissance, which occurred at the turn of the millennia a reception of law took place, in the course of which Greece acted not only as a recipient, but as a link which mediated the reception of Near Eastern law. The reception of law occurred in various forms, among which the leading role was played by the perception of the philosophical foundation and ideas of natural rights of the private person. However, the borrowing of certain legal solutions of principle also occurred, and the introduction of individual institutions, categories, and concepts of Greek law, and so on.

Interesting examples of borrowings of law exist with regard to Byzantium. Justinian's systematization may be characterized as the aggregate of codification (code) and attempts to receive Roman law (especially private) which proceeded in the form of a compilation of fragments from Roman sources (digests and Institutes). This first attempt at reception of Roman law created the foundation for its further receptions in various forms, in different countries, various civilizations. Students of the history of Byzantium drew attention to the fact that supposedly in foreseeing the future impoverishment of spiritual life and the decline of Enlightenment, Justinian rescued for the future the majestic fruits of the creativity of the Roman people in the sphere of legal consciousness, thanks to which western peoples gradually departing from barbarism, were imbued with the idea of the rule-of-law State and completed the reception of Roman law[34].

An instance of borrowing from other legal systems with a view to improving own legislation in the East is mentioned in the *Ecloga ton nomon* or the *Ecloga Leonis* of the Byzantine Emperor Leo III. Although the Ecloga is criticized because it mixes together extracts from the Digest, Institutes, Code, and compilations of agricultural, maritime, and military law, and also the Commandments of Moses, edited and presented as legal norms, from the standpoint of the issues addressed in the present article, they are a remarkable example of the interaction of legal systems.

[34] Кулаковский Ю.А. История Византии. СПб., 1996. Т. II. С. 268.

SUMMARY

The article considers the problem of adaptation of law as the mode of the interaction of legal systems. It analyzes the conception of the reception of Roman private law. It is mentioned that the reception of Roman law is relegated to the most noteworthy phenomena in the development of European civilizations during the last millennia and a half. Occurring in various forms, against the background of the operation of different geopolitical, economic, social, and spiritual factors, they reflect the general trend of the cyclical development of cultures which consists in forming so-called "universal human values". In assessing the principles of the Roman philosophy of law from the positions of their correlation with those principles which had been formulated much earlier in the ethics of Hellenism, and even earlier in the civilizations of the Near East, we may justly conclude with regard to the reception of the last in the law of Rome which occurred in the context of the general Renaissance of Greek culture. To be sure, they were developed and modernized with respect to the needs of Roman (Late Antiquity) civilization. This is an indicator of reception which distinguishes it from restoration, evocation, and so on.

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34. Утченко С.Л. Древний Рим. М.: Наука, 1969. 324 с.
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DOI https://doi.org/10.36059/978-966-397-168-1/61-81

PECULIARITIES OF THE PHENOMENON OF EMOTIONAL BURNOUT SYNDROME AMONG EMPLOYEES OF THE NATIONAL POLICE OF UKRAINE

Kisil Z. R.

INTRODUCTION

Professional activities of National Police employees are always accompanied with considerable psycho-emotional stress, professional stress and risk, psychological traumatism. The stressful nature of the work of the National Police officers, as well as the negative determinants of professional activity, occasionally lead to the emergence of a negative phenomenon – emotional burnout, and the consequence of their activity under conditions of constant influence of stress factors is the loss of positive professional motivation, manifestation of various neurotic reactions, mental and physical health disorders. Most scientists-police officers are inclined to believe that 70% of police officers who have used guns during the fulfillment of their official duties take the decision to quit from service for five years because they have experienced a significant mental injury. Research of this category of persons revealed that they had post-traumatic stress disorder (60%), and every third police officer had excessive emotional and psychological stress (36%), functional impairment (49.7%)[1].

Special conditions of professional activity of the employees of the National Police of Ukraine, namely: risk-taking activity with unpredictable consequences (injury, wounds), communication with antisocial elements, permanent mental and physical overload – lead to intensive and large-scale development of emotional burnout, and therefore to professional deformation. The activities of the police are characterized by a significant negative emotional saturation, when during their professional duties it is necessary to restrain their negative emotions, and emotional unloading is mostly postponed for an indefinite period of time. The emotional burnout, according to most scholars, is defined as "... the acquired stereotype of emotional response most often within the limits of professional behavior. On the one hand, it allows a person to dose and economically use energy resources, and on the other hand – it can negatively influence the performance of his professional activities, relations with partners in the sphere of communication and service"[2].

[1] З.Р. Кісіль, В.В. Середа. Юридико-психологічні засади запобігання професійній деформації працівників правоохоронних органів. Львів: ЛьвДУВС, 2016. 847 с.

[2] С.Д. Максименко, В.С. Медвєдєв. Юридична психологія: особистісно-діяльнісний підхід. К.: Слово, 2017. 405 с.

Researching the phenomenon of emotional burnout among police officers, scientists-policemen came to the conclusion that this phenomenon is, so to speak, "infectious", since most of the policemen who are prone to this syndrome eventually become misanthropic, negativist, and despondent to their own success. Being in constant interaction with colleagues, who are also under the influence of stress factors, they can turn them into a group of "burning out".

It is clear that the emotional burnout syndrome arises as a result of accumulation of negative emotions over many years, the performance of official functions under conditions of uncertainty, risk and stress, and as a rule, leads to psychological and emotional exhaustion of an employee. We believe that the empirical study of the phenomenon of emotional burnout among the employees of the National Police of Ukraine is extremely relevant, since psycho-emotional well-being of law enforcement officers is one of the main determinants of the quality and efficiency of their professional activities.

Despite the considerable scientific interest in the "emotional burnout" syndrome of law enforcement officers that is primarily due to the pragmatic problem of improving the effectiveness of the Ministry of Internal Affairs of Ukraine unfortunately, it was not given proper attention. The thorough scientific and theoretical basis in our study of the "emotional burnout" syndrome is grounded on the position, scientific ideas, doctrinal positions set forth in scientific research by both foreign and national scholars – Kh. Aliyev, M. Burysh, A. Vydaya, M. Ginzburg, S. Gramling, G. Greenberg, G. Dion, F. Jones, M. Dmytrieva, L. Kytayev-Smyk, N. Levytska, G. Lozhkina, M. Leiter, D. Lewis, S. Maksymenko, L. Maltsa, E. Makhera, V. Nikonova, G. Nykiforova, V. Orla, M. Smulson, V. Snetkov, T. Formanyuk, H. Freidenberger, as well as questions of the methodology of its diagnostics (they were studied, in particular, by V. Boiko, N. Vodopianova, S. Jackson, K. Maslach, T. Ronginskaya, O. Starchenko and others).

Thus, recalling the structure and content of the syndrome of "emotional burnout," we will focus on the scientific researches of K. Maslach, S. Jackson, V. Shaupheli, T. Formaniuk, V. Boiko, L. Karamushka, N. Nazaruk. Considering all manifestations of the syndrome of "professional burnout" through the prism of various indirect determinants, we summed up the findings of famous scientists in the field of legal psychology, among them: S. Beznosov, A. Budanov, L. Vasiliev, I. Vashchenko, A. Dulov, K. Zlokazov, L. Kolodkin, V. Kolomiets, H. Langerok, K. Leonhard, I. Maksymov, V. Medvedev, N. Mityurina, M. Monakhova, S. Rainkin, A. Ratinov, V. Robozerov, A. Rosh, G. Ryabov, L. Ternovsky, V. Samarin, A. Svencytsky, Yu. Strigunenko and others. With regard to the determinants of the emergence of the "emotional burnout" syndrome, the main empirical

data was based on the work of V. Orel, T. Zaichikova, K. Malysheva, N. Bulatevich. In the study of the development of algorithm of methods and means of prevention and correction of the consequences of the syndrome of "emotional burnout," we will turn to the scientific researche of I. Ostopoltsiy, I. Sergeyev, L. Karamushka, T. Zaychikova, N. Nazaruk. Regarding the peculiarities and specifics of the study of the syndrome of "professional burnout" of the workers of the law enforcement agencies, we take into account the scientific works of S. Beznosov, S. Borisov, A. Budanov, S. Vyshnichenko, Z. Kisil, A. Krapivin, B. Medvedev, A. Molchanov, B. Novikov, Y. Potapchuk, O. Timchenko, O. Khairulina.

The purpose of the article is to reveal the psychological peculiarities of the emotional burnout syndrome of the personnel of the National Police of Ukraine (on the example of the study of employees of the National Police of Ukraine).

Tasks:

1) to characterize the determinants of the "emotional burnout" syndrome among the employees of the National Police of Ukraine;

2) to clarify the meaning of the concept of "emotional burnout" syndrome, taking into account the professional scope of the activities of the staff of the National Police of Ukraine;

3) to diagnose the level of formation of the syndrome of "emotional burnout" among the employees of the National Police of Ukraine;

4) to determine the effect of the "emotional burnout" syndrome on the results of the professional activity of the National Police employees of Ukraine.

Methods of research.

To accomplish our research objectives, we have applied a whole range of methods and techniques of cognition that are caused by the peculiarities of the syndrome of "emotional burnout" and the specifics of the professional environment of the police officer. Taking into account the fact that the "emotional burnout" syndrome of the workers of the National Police of Ukraine is manifested as a complex and multifunctional phenomenon, the reliability of its study is directly proportional to the methods that will be used. In order to obtain the most objective results, a systematic approach, based on the interdisciplinary implementation of general scientific, special-scientific and concrete scientific methods of cognition, has been applied. Thus, the complex application of the mechanism of the theory of normative description of the activities of the staff of the National Police of Ukraine, the fundamental doctrinal provisions of the psychological theory of personality, the theoretical foundations of legal deontology will help to comprehensively clarify the

essence of the syndrome of "emotional burnout", its dynamics, determinants of occurrence and basic manifestations.

The application of the methodology of structural functionalism allowed to isolate the law-enforcement sphere as a component of the socio-cultural field and, based on the analysis of its functions in this system, to consider the environment of the police as a phenomenon that has a systemic structure, and in the study of the syndrome of "emotional burnout," this allowed to reveal not only the structure of its internal mechanism and the action of its individual determinants, but also their interconnection at different levels. Application of this approach contributed to the study of substantive content and organizational "multilayer" syndrome of "emotional burnout", a thorough dialectical relationship of its determinants in the structure of a complex holistic organism.

The synergetic method was also actively used, since this approach involves understanding the phenomenon under research, which has a nonlinear causal nature, taking into account the logic of the effect of random fluctuation. A policeman as a social subject (with all the set of rights, duties, professional settings and, at the same time, personal interests and mental properties) is a non-linear open system that constantly interacts with the environment, taking from the last information, treating it and dictating the results of such a study with the hope that this environment will understand and fulfill its orders.

Concrete scientific methods necessary for the study of the "emotional burnout" syndrome among the workers of the National Police of Ukraine, were distinguished as follows: 1) "diagnostics of the level of emotional burnout" (V. Boiko); 2) "determination of mental burnout" (O. Rukavishnikov); 3) the methodology of K. Maslach and S. Jackson; 4) the method of "burnout" syndrome in the professions of the "man-man" system (G. Nikiforov); 5) a method of "evaluating personal burning potential" (J. Gibson); 6) the method of "studying the" burnout syndrome"(J. Greenberg); 7) multi-factor personal questionnaire by R. Kettella (No. 105), (16PF – questionnaire). The above methods primarily aim at finding out the determinants and stages of the "emotional burnout" of a policeman; study of the syndrome of "emotional burnout" in the professions of the "man-man" system; study of the main manifestations of emotional burnout among the policeman on the interpersonal, personal and motivational levels.

In addition to these techniques, empirical methods for collecting information, such as surveillance and diagnostics, were used, which, in turn, are used by means of questioning, questionnaires, and testing.

Officers of the security police (35 people), special police (29 people), patrol police (38 people) and criminal police (43 people), including 17 – females, 128 – males took part in the empirical study. The respondents under

study were aged from 20 to 30 years old, service life at the time of the study was: up to three years – 59 people, from 4 to 5 years – 86 people.

Results and discussions.

The syndrome of "emotional burnout" should not be considered as a phenomenon of the present, because this phenomenon always existed in various forms, determined by different conditions. For the first time, the term "burnout" ("emotional burnout") was used in 1974 to describe the psychological state of exhaustion, its own uselessness in the professions of the "man-man" system, by the American psychiatrist H. Freidenberger.

Despite the long history of continuous attempts to explore the syndrome of "emotional burnout" as a complex psychological phenomenon, in the scientific literature there are conceptual differences in the concept itself, this phenomenon still remains the subject of scientific and practical interest. Currently, most scientists consider the emotional burnout as "... the result of the influence of a complex of stress factors"[3]. V. Boiko regards emotional burnout as "... the developed mechanism of psychological protection in the form of total or partial exclusion of emotions (reduction of their energy), which is a reaction of a person to certain psycho-traumatic influences, that is, it refers to the acquired stereotype of emotional, most often emotional behavior"[4]. T. Zaichikova believe that "... continuous or progressive imbalance in conditions of intense activity inevitably leads to professional burnout as a consequence of uncontrolled stress"[5].

Thus, in the opinion of K. Maslach, H. Freidenberger "emotional extinction" is interpreted as "... a state of physical, mental and emotional exhaustion caused by long-term stay in emotionally overburdened situations of communication"[6]. M. Salanova, V. Shaupheli and others believe that "emotional burnout" is "... a two-dimensional model consisting, firstly, of emotional exhaustion and, secondly, of depersonalization, that is, the deterioration of the attitude towards others, and sometimes to himself[7]. V. Boiko, K. Maslach, R. Burke, T. Formaniuk and others note that this

[3] Орел В.Е. Исследование феномена психического выгорания в отечественной и зарубежной психологии // Проблемы общей и организационной психологии. Ярославль, 1999. С. 76–97.

[4] Бойко В.В. Синдром "эмоционального выгорания" в профессиональном общении. 2-е изд. СПб.: Сударыня, 2001. 434 с.

[5] Технології роботи організаційних психологів / За наук. ред. Л.М. Карамушки. К.: Фірма "ІНКОС", 2005. 366 с.

[6] Maslach, C., Goldberg, J. Prevention of burnout: New perspectives // Applied and Preventive Psychology, 1998, V.7, pp. 63–74.

[7] Schaufeli, W.B., Salanova, M., Gonzalez-Roma, V. and Bakker, A.B. The measurement of engagement and burnout and A confirmative analytic approach // Journal of Happiness Studies, 2003, V. 3, pp. 71–92.

phenomenon should be regarded as "... a three-component system consisting of emotional exhaustion, depersonalization and reduction of personal personality achievements"[8, 9, 10, 11, 12]. N. Vodopianova emphasizes that "... professional destruction of the person, which manifests itself in the form of persistent mental experiences, as well as changes in the quality, structure and content of professional activity..."[13].

A number of other scientists in their scientific research have proved that "... in the case of insufficiency of indicators of professional reliability of the subject of professional activity, incompleteness of his mental regulation, exceeding the stress factors of the threshold of his stress resistance, the duration of such influence, the qualitative characteristics of personal professional reliability and disability can be deteriorated and are transformed to a level of personal deformation, first of all – professional burnout"[14].

Professional activities of police officers are always accompanied by extreme and risky situations. Scientific inquiries from foreign authors give grounds for arguing that extremely difficult conditions for the activities of police officers sometimes lead to violations of mental activity, the emergence of post-traumatic stress disorder, sometimes unjustified aggressiveness, predisposition to unlawful behavior, manifestations of professional deformation. Taking into account the destructive effect of emotional burnout on the personality and professional activity of the staff of the National Police of Ukraine, we have analyzed the scientific developments of foreign scientists and practitioners regarding the identification of extreme and stressful situations that arise when performing professional tasks by the police of the UK, the United States police, the United Nation Civilian Police, and Germany.

G. Gudyonson, R. Adlam cite a table of 45 stress factors that arise in the professional activities of the UK policemen. So, in their opinion, the dominant stresses include: the seizure of hostages by terrorists; release of hostages;

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[8] Бойко В.В. Синдром "эмоционального выгорания" в профессиональном общении. – 2-е изд. СПб.: Сударыня, 2001. 434 с.

[9] Maslach C.M. Job burnout: new directions in research and intervention // Current Directions in Psychological Science, 2003, V. 12, pp. 189–192.

[10] Burke, R.J., Greengalass, E. A longitudinal study of psychological burnout in teachers // Human Relations, 2003, V. 48 (2), pp. 187–202.

[11] Maslach, C., Leiter, M.P. The truth about burnout: How organization cause personal stress and what do about it. San Francisco, CA: Jossey-Bass, 1997. 197 p.

[12] Форманюк Т.В. Синдром "эмоционального сгорания" как показатель профессиональной дезадаптации учителя // Вопросы психологии. 1994. № 6. С. 57–63.

[13] Водопьянова Н.Е., Старченкова Е.С. Синдром выгорания: диагностика и профилактика. 2-е изд. СПб.: Питер, 2008. 336 с.

[14] Maslach, C., Schaufeli, W.B., Leiter, M.P. Job Burnout // II Annual Review of Psychology, 2001, V. 52, pp. 397–422.

confrontation with an armed criminal; dangerous confrontation with the objects of professional activity; the end of the riots; uncertainty in supporting the partner; committing acts that are outside the legal field, etc.[15, 16]

J. Cueil gave a table of stress potential (144 situations) which may occur to a US police officer. So, according to the US police, the most extreme situations include: the death of a partner while performing professional duties; colleague's suicide; the use of weapons for killing; murder committed by a policeman; getting injured or wounded while performing their duties, etc.[17]

O. Telichkin distinguishes between 50 situations that are the most stressful during the service of the UN Civilian Police. So, of the 15 situations noted by the author, seven are related to the security issue; five – to the problems of relations with colleagues; three – to the intimate-personal sphere. Often, among the personnel of the UN Civilian Police there are the following stressful situations, namely: the seizure of hostages by terrorists; death, injury of colleagues; situations of uncertain nature; antisocial behavior of colleagues; local residents' attack on unit employees[18].

G. Litvinova, investigating the socio-psychological support of police in Bavaria, highlighted the most stressful situations which police officers often face, namely: the death of a colleague; getting injuries while performing professional tasks; release of hostages; counteracting criminals; carrying out professional activities in case of uncertainty and risk to life; colleague's suicide; maintaining law and order in times of unrest; application of measures of physical coercion or special means or weapons for killing, etc.[19]

According to the results of our survey, the most typical extreme and stressful situations that are often encountered by workers of the National Police of Ukraine are identified. Criminal police officers often encounter the following stressful situations, namely: communication with representatives of the criminal subculture; the need to handle a large number of cases; conflict, and sometimes aggressive communication with recidivists; conflict communication in the field of professional activity; chronic fatigue and exhaustion; lack of time for the family. Police officers often encounter the

[15] Seligman, M., Csikszentmihalyi, M. Positive Psychology: An introduction // American Psychologist, 2014, V. 55, pp. 5–14.

[16] Kurtz, D. Burnout Among Police Officers: Differences In How Male, Female Police Officers Manage Stress May Accentuate Stress On The Job // American J. of Criminal Justice, 2008, V. 2, pp. 17–26.

[17] Свон Р.Д. Эффективность правоохранительной деятельности и ее кадровое обеспечение в США и России. СПб. : Алетейя, 2000. 296 с.

[18] Покровский Н.В. Организация психологической поддержки персонала полиции за рубежом. Режим доступу https://psyinst.moscow/biblioteka/part=articleid=1734

[19] Литвинова Г.А. Социально-психологическое обеспечение деятельности полиции Баварии (Германия) // Юридическая психология. 2010. № 3. С. 32–36.

following stressful situations: long-term communication with antisocial elements and inadequate people; communication with aggressive citizens during mass events; application of measures of physical coercion, special means and weapons for killing; the need to take decision independently in case of the absence of information and time; low level of cohesion in the group. For employees of the security police, special police and police of special purposes, the following situations are of a stressful nature, namely: death of colleagues; getting injured or wounded; application of measures of physical coercion, special means and weapons for killing; detention of criminals; long-term communication with inadequate citizens; processing at the same time considerable amount of information; chronic fatigue and exhaustion; communication with convicted or recidivists; sometimes conflict communication with direct managers in the field of professional activity; low level of cohesiveness in the group; observation of human losses; lack of time to take a decision. Thus, according to the results of the survey, the activities of the National Police staff of Ukraine on the level of extremism should be built in the following sequence: security police, special police and police of special purposes – 9 points; patrol police – 8 points; criminal police – 7-8 points.

Therefore, based on the objectives of the study, analysis of scientific research, we can formulate preliminary generalizations: firstly, the content and conditions for the professional activities of police officers, especially the tasks assigned to them, determine the nature of the functional state of the body of the law enforcement officer and, as a consequence, the effectiveness of professional activity; secondly, a significant level of stress factors, their excessive influence and duration can cause emotional burnout, including professional deformation; third, emotional burnout is primarily a dynamic process, which arises as a result of prolonged stress in the absence of control by the policeman of his own functional state; fourth, the emergence and development of emotional burnout is caused by a set of interconnected determinants, namely: professional, organizational and personal, which are directly related to the specifics of law enforcement activities.

After analyzing various approaches, the notion of “emotional burnout of the employee of the National Police of Ukraine” should be considered as a reproduction of a state of physical or psycho-emotional exhaustion suffered by a police officer due to the long-term inclusion into a medium-intensity psychological trauma. Therefore, we conducted research based on the stages of the formation and manifestation of the syndrome of “emotional burnout of a police officer” by finding out the determinants of its occurrence.

For singling out the main determinants of the emergence of the “emotional burnout” syndrome among the National Police officers, a valid methodology

by V. Boiko was used. Thus, the respondents were asked to answer 84 questions that reveal the features of one of the three components of the "emotional burnout" syndrome, namely:

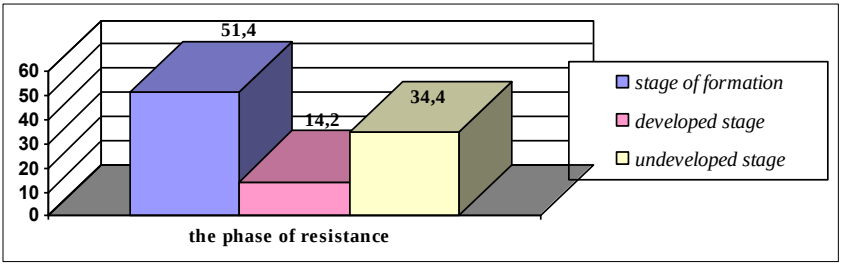
1) stress – manifested in a constant sense of chronic fatigue, emotional exhaustion, dissatisfaction with the professional activity performed, the dynamic development of anxiety and depression;

2) resistivity – characterized by excessive emotional exhaustion, manifested in an inadequate situation in an emotional response, emotional and moral disorientation, and sometimes reduction (simplification) of professional duties;

3) exhaustion – characterized by a state of mental, emotional exhaustion (devastation), leveling of personal achievements in professional activity, the dynamic development of psychosomatic and psycho-vegetative diseases.

As a result of the analysis of respondents' responses, the following results were obtained (see Figures 1–3).

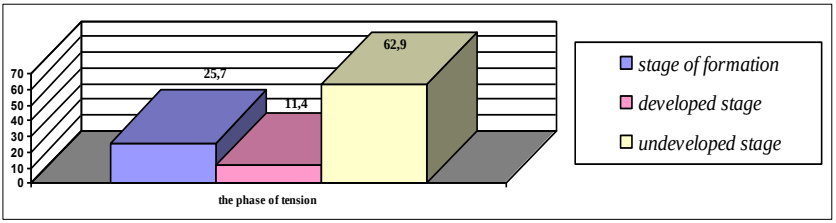
Thus, the phase of resistance is characterized by a sufficient level of formation (the stage of formation is 51, 4%, the developed stage is 14,2%) (see Diagram 1), which accompanies a kind of psychological resistance and blocking of memories from conscious memory; more than half of our respondents are presented as individuals who are at the stage of the formation of resistance.



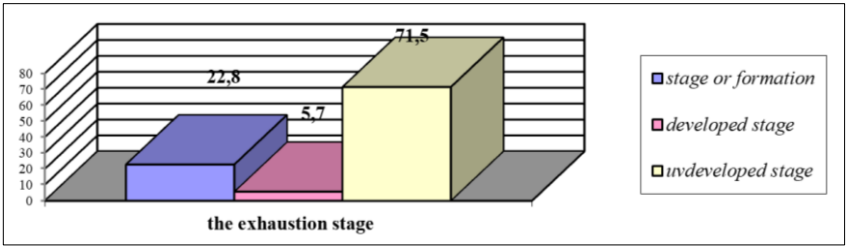
Diag. 1. Indicators of the formation of the resistance phase

11% of respondents are characterized by a high rate of development of the first component – "stress" (see Diagram 2), internal emotional sense of discomfort. At the same time, the majority of respondents are just at the stage of unformed anxiety (apparently, given to the insignificant period of work in police system).

6% of respondents are distinguished by a high level of the third component "exhaustion" (see Diagram 3). And in this case even more respondents appeared on the unformed stage of professional fatigue, which may be due to their physiological youth or age.



Diag. 2. Indicators of the formation of the tension phase



Diag. 3. Indicators of the formation of the exhaustion phase

The analysis of the results suggests that the development of "emotional burnout" syndrome among police officers is manifested through the domination of the second component – "resistance": the "emotional burnout" syndrome is not formed among 67% of respondents, 24% are at the stage of formation; and for 9% of policemen it has already been formed. So, almost a tenth of young and potential police professionals could not develop the stability of their psyche to influence of environment, the ability to resist negative factors, to form a kind of social resistance.

To diagnose the manifestation of the "burnout" syndrome on the three main levels (interpersonal, personal, and motivational), the method "determining mental "burnout" was used (O. Rukavishnikova). This methodology contains of 72 positions regarding the senses associated with work, which correspond to three scales: 1) psycho-emotional exhaustion, 2) personal separation, and 3) professional motivation. The results of the research according to O. Rukavishnikov's method showed that 62% of the respondents had the third component – "professional motivation", which suggests that the development of mental burnout is at a level slightly higher than the average.

In order to study the tendencies of negative attitude towards himself as a professional, leveling of professional achievements and self-esteem by the police officers, the method "burnout syndrome in the system of professions

“a man-a man” was used, which provides answers to 22 questions, which, in turn, are systematized according to three subscales: 1) emotional exhaustion; 2) depersonalization; 3) reduction of personal achievements. The survey showed that 56% of the respondents are characterized by the domination of the third component – “reduction of personal achievements”; 30% are characterized by the domination of the second component – “depersonalization”; 14% – confirmed the presence of the first component – “emotional exhaustion”. The obtained results of the survey indicate that among respondets there are tendencies to negative self-assessment of personal capabilities and leveling out the results of their professional activity, deformation of relations with their colleagues and with the objects of professional activity, which can be presented in frank manifestations of cynicism.

After statistical processing of the results of the correlation analysis according to Pearson’s criterion we established certain regular relationships between emotional burnout by the method of V. Boiko and individual-personal qualities by R. Kettel, namely:

1) the inversely proportional relationship between the stress phase and courage ($r = -0.419$ at $p < 0.05$), which gives grounds for asserting the desire of the police to “stay in the shadows”, and tension and uncertainty in their actions in risky situations;

2) inversely proportional relationship between the resistance phase and self-control ($r = -0.352$, at $p < 0.05$) and courage ($r = -0.470$ at $p < 0.01$), which indicates that the police who are in a state of resistance sometimes do not control their actions, violate discipline, allow manifestations of arbitrariness, are easily subjected to panic, they have intrinsic signs of internal conflict;

3) is directly proportional to the relationship between the resistive phase and the internal stress ($r = 0.334$ at $p < 0.05$), which shows signs of anxiety, tension and sometimes even irritability among those who are emotionally exhausted;

4) inversely proportional relationship between the exhaustion phase and courage ($r = -0.418$, with $p < 0.05$) and openness ($r = -0.400$ at $p < 0.05$); these results confirm the assumption that respondents who experience a state of emotional exhaustion, are characterized by indecisiveness, isolation, lack of flexibility in communicating with different categories of citizens.

In the process of correlation analysis, applied to the information obtained by A. Rukavishnikov’s method and the multifactor personal questionnaire by R. Kettel, we established:

1) the inversely proportional relationship between the scale of “personal separation” and courage ($r = -0,374$ at $p < 0,05$), indicating that the surveyed respondents to a certain extent are socially unadapted, they have a high level of irritability and lack of endurance in communication;

2) a direct proportional relationship between the scale of "reduction of personal achievements" and emotional stability ($r = -0.445$ at $p < 0.01$), self-control ($r = -0.397$ at $p < 0.05$) and courage ($r = -0.380$ at $p < 0.05$), which is a vivid indication that the police sometimes experience professional incompetence, they are prone to mood instability and almost complete lack of control over their psycho-emotional state.

The results of the correlation analysis show that the police officers living with the "emotional burnout" syndrome show such individual and personality traits as: constant internal tension, fear in making independent decisions, low self-control and emotional instability.

The groups of respondents also carried out a comparative analysis according to Student's T-criterion, the main criterion of which is the period of service (see Table 1). It is clear that over the years (and hence, with the experience gained, or with adaptation or admission), all the indicators of emotional burnout somewhat decrease, demonstrating a decrease in the level of tension, resistibility and exhaustion.

Table 1

Average value and standard deviation of phases of emotional burnout by V. Boiko

Period of service	Tension		Resistance		Exhaustion	
	average value	deviation	average value	deviation	average value	deviation
group № 1 (period of service – until 3 years)	34,2	±22,4	48,3	±17,6	31,4	±18,0
group № 2 (period of service from 4 to 5 years)	24,9	±21,6	43,6	±16,2	24,6	±12,0

In the process of comparative analysis according to the method of "Diagnostics of the level of emotional burnout" (V. Boiko), it was revealed that in two groups of studied respondents the phase of exhaustion is not formed, although in group № 1 there are tendencies for its formation. The second component – the "phase of resistance" – is in the formation stage in both groups. In addition, all three phases are more expressed in group № 1. In our opinion, this is due to the fact that this category of respondents is at the stage of adaptation to the new conditions of professional activity of law-enforcers, and they still do not feel (and therefore do not perceive) changes in their psychological and emotional states.

To determine the relationship between individual characteristics and signs of emotional burnout, a factor analysis was used. According to the manifestation of these signs, the types of emotional burnout among the employees of the National Police are distinguished. Three factors have been identified, the cumulative set of which is over 63% (see Tables 2–4).

Table 2

Factor 1 "Anxiety-Exhausted Type"

Factor 1							
Anxiety-Exhausted Type							
Scale	Enxiety and depression	Dissatisfaction with yourself	Emotional detachment	The experience of traumatic circumstances	Drawing into a cage	Expansion of the sphere of saving of emotions	Reduction of professional duties
received indicator	0,822	0,797	0,765	0,721	0,656	0,652	0,587
Weight	5,2712						
% of dispersion	43,921						
Cumulative %	43,921						

According to the results of the study, it can be argued that this type of police officers is characterized by highly expressed anxiety-depressive symptoms, caused by the risky and stressful nature of their professional activities. Work under the influence of stress factors causes a sense of constant tension, dissatisfaction with their actions and professional knowledge, and sometimes even an awareness of the falsity of the chosen sphere of activity. The state of dissatisfaction causes a significant level of stress, which leads to a weakening of the general tone, a decrease in the level of psycho-emotional state.

Table 3

Interpretation of Factor 2 "Morally Disorientated Type"

Factor 2				
Morally Disorientated Type				
Scale	emotional and moral disorienta-tion	expansion of the sphere of saving of emotions	tension	drawing into a cage
received indicator	0,777	-0,534	0,325	-0,300
Weight	1,189			
% of dispersion	9,910			
Cumulative %	53,832			

Factor 2 – "morally-disorientated type" – demonstrates a 10 per cent dispersion indicator, showing the presence of the signs of personality disorientation and moral defects. Thus, the emotional and moral defect in this category of workers explains why it is extremely difficult for them to communicate in the field of professional activity, since they relate to the moral virtues of another person with distrust or caution. The moral disorientation among this category of respondents is caused by the following determinants: the lack of ability to distinguish between good and bad, to recognize the benefits and harm in the actions of citizens. The combination of moral defect and moral disorientation actually causes the formation of a syndrome of "emotional burnout," which, in turn, is manifested in the indifference towards the fate of objects of professional activity and apathy to fulfill their direct professional duties. Therefore, during their professional activity, they experience a certain emotional exhaustion and constant tiredness.

Table 4

Factor 3 "Emotionally-Selective Type"

Factor 3		
Emotionally-Selective Type		
Scale	Inadequate selective emotional response	Resistance
Received indicator	0,784	0,519
Weight	1,087	
% of dispersion	9,056	
Cumulative %	62,888	

The third factor – "emotionally-selective type" – found 9,1% of dispersion among respondents. This category of respondents is characterized by inadequate understatement of the manifestation of emotional states and the lack of desire to establish emotional contact with the objects of professional activity. The oppression of the manifestation of emotional attitude to the working situations leads to significant emotional exhaustion, the dynamic development of psycho-emotional protection, and then – isolation. The formation of emotional closure leads to severe fatigue, the policeman becomes indifferent and outsider, which eventually may develop into cynicism and a demonstration of the pattern of action.

In a situation where the emotional burnout of police officers is a widespread phenomenon, work on its prevention and overcoming should have its own strategy, which involves targeting the tasks set; taking into account really existing processes and contradictions in social life that contribute to the

existence of this phenomenon; definition of the main directions of prevention and counteraction of emotional burnout of workers; the formulation of goals, methods and means of this activity. The comprehensive prevention of emotional burnout by the National Police employees of Ukraine should include a number of measures designed to improve: the organization of professional psychological training of employees in order to increase motivation for effective service activities; legal regulation of professional activity; taking organizational and managerial measures.

In scientific researches devoted to problems of emotional burnout and prevention of its development, emphasis is placed on the implementation of preventive and precautious measures. Thus, I. Freudenberger, O. Skovholt note that the more the emotional exhaustion develops, the greater part of the personality and its life it is striking[20, 21]. A study by J. Coster, R. Norcross, B. Farber motivates the need to prevent emotional burnout, since it is the best way to counteract it, rather than treat it[22]. The findings of J. Coster, R. Norcross, B. Farber's research are supported by the scientific findings of researches regarding the ability to permanently eliminate the employee's emotional burnout, although W. Paine, B. Farber, L. Kytayev-Smyk note that it is impossible to cure emotional burnout in general[23]. N. Pokrovsky, studying the foreign experience of psychological support for police officers, notes that "... the extreme nature of the activities of police services inevitably generates a significant amount of psycho-traumatic reactions among police officers. Therefore, three basic components of the post-traumatic support program are proposed: prevention, which mainly includes measures to ensure adequate selection of employees, their education, stress inoculation, as well as professional psychological training, psychological support in the subunits in extreme conditions and rehabilitation – post-crisis intervention and correction of consequences of mental trauma"[24].

The majority of foreign countries have developed a strategy of psychological support for police officers, aimed at creating the best conditions for police fulfillment of operative and service duties. Thus, in Germany, the

[20] Skovholt T.M. The resilient practitioner: Burnout prevention and self-care strategies for counselors, therapists, teachers, and health professionals. Boston : Allyn & Bacon, 2001. 286.

[21] Freudenberger H. Burnout: The high cost of high achievement. New York : Anchor, Doubleday, 1980. 240.

[22] Shift work and sleep: the Buffalo Police health study / Luenda E. Charles, Cecil M. Burchfiel, Desta Fekedulegn et al. // Policing: An International Journal of Police Strategies & Management. 2007.Vol. 30, Issue 2. Pp. 215–227.

[23] Aldwin C.M. Stress, coping, and development, Second Edition: An Integrative Perspective. New York : Guilford, 2007. 432 p.

[24] Покровский Н.В. Организация психологической поддержки персонала полиции за рубежом. Режим доступу https://psyinst.moscow/biblioteka/part=articleid=1734

Central Psychological Police Services, which carry out a number of psychological support measures for the activities of policemen designed to mitigate the negative impact of professional work on the psyche and health of police officers, have been founded and successfully operate; teaching methods of auto-training and psychological relaxation. In Spain, psychological support for policemen involves conducting psychological counseling and providing practical assistance to the police in case of professional complications; providing a full range of psychological services that are related to stress; conducting both individual and group consultations. During psychological support of the US police, much attention is being paid to the development of special psycho-preventive and psycho-correction programs. The main components of the program of psychological support of policemen are the formation of the concept of the phenomenon of emotional burnout; learning skills for non-violent communication and facilitation; development of self-regulation skills and autogenic training.

In the United Kingdom, during the psychological support of police officers, in addition to psycho-preventive and psycho-corrective measures, cognitive technologies aimed at the rational sphere of the personality of the police officer and emotional technologies, which are aimed at displacement, substitution and sublimation of negative emotions and painful feelings, are widely used.

According to the results of empirical research (factor analysis) three types of police are distinguished: “anxiety-exhausted type”, “morally-disorientated type” and “emotionally-selective type”. The anxiety-exhausted type is characterized by the dominance of anxiety and repression, the factors of which are stressful and risky professional activities, sometimes it can even lead to frustration with the profession.

Morally-disorientated type is characterized by the presence of moral defects and a certain level of disorientation of the individual, which is manifested in the inability to adequately assess the moral and ethical features of other individuals, respectively, accompanied by indifference and apathy to perform their professional duties. Some alienation in the performance of professional duties generates fatigue and exhaustion.

Emotionally-selective type is characterized by a decrease in emotional response, as well as emotional detachment from professional significant situations. Such workers are characterized by the closeness and active formation of the system of psychological protection. As a result, such a policeman feels constant fatigue, indifference and detachment in the performance of his professional duties.

In order to prevent the emotional burnout of employees of the National Police of Ukraine, practical psychologists of the Ministry of Internal Affairs

of Ukraine carry out a series of measures that can be grouped into two large groups: 1) providing assistance at the organizational level; 2) providing assistance at the personal level. Thus, at the organizational level, practical psychologists of the Ministry of Internal Affairs of Ukraine carry out:

1) monitoring the capacity of the law enforcement team to identify persons who have signs of a syndrome of "emotional burnout";

2) development of correctional and preventive programs:

– "Pre-crisis prevention", aimed at accurate and effective prevention of possible adverse outcomes of the personal or professional crisis of the employee of the National Police of Ukraine;

– "Actual prevention", aimed at accurate and effective prevention of negative consequences of professional activity among employees of the National Police of Ukraine.

Assistance to employees of the National Police of Ukraine at the personal level is carried out through group and individual work. The group work involves conducting a training seminar in three directions: 1) informative and cognitive, which consists in conducting mini-lectures, the main task of which is the formation and development of knowledge on issues that reveal the essence, structure, levels and determinants of the syndrome of "emotional burnout"; 2) diagnostic, which allows law enforcement officers to master a set of diagnostic tools that allow to identify the presence of a syndrome of "emotional burnout"; 3) corrective-developing, is to apply the following forms of work, such as brainstorming ("brainstorming"), role-playing game, discussion, method of analysis and diagnostics of the situation; problematic (problem-searching) method; work in small groups; projective method. Individual prevention of the syndrome of "emotional burnout" is carried out in two stages, by analyzing: 1) the official situation; 2) their own emotional and physical condition.

The outlined model reflects a complete set of activities aimed at preventing and overcoming the "emotional burnout" syndrome among National Police staff of Ukraine. But, despite the fact that there is a system of measures aimed at preventing and overcoming the "emotional burnout" syndrome among the employees of the National Police of Ukraine, there is a need to improve preventive work in the units. Taking into account a huge experience of both Ukrainian and foreign scientists who studied the syndrome of "emotional burnout", as well as the urgent problems of practice, we consider it advisable to develop a unified system of preventive measures to overcome the "emotional burnout" syndrome among employees of the National Police of Ukraine.

CONCLUSIONS

1. The concept of "emotional burnout of a policeman" is defined as the reproduction of a state of physical or psycho-emotional exhaustion by a police officer due to a long-term inclusion in a psychological trauma of moderate intensity.

2. The results of the empirical study suggest that the "emotional burnout" syndrome is not widespread among the questioned employees of the National Police of Ukraine because it is not formed due to various objective (for minor period of years) and subjective reasons (age physiological characteristics). It was established that the police officers, classified in the group № 1 (with seniority up to 3 years), fall into the risk zone of the syndrome of "emotional burnout".

3. The "emotional burnout" syndrome of the police officers, as confirmed by the respondents, is manifested through the domination of the component of "resistance" (as a kind of protective, although sometimes unconscious, reaction of the human body, manifested in inadequate, selective emotional response and can lead to emotional isolation, marginalization, indifference and cynicism).

4. Correlation analysis of the results of the empirical research has demonstrated the presence of statistically significant relations on the scale of methods, namely, between the indicators of emotional burnout (at different phases) and personal parameters: tension, closure, self-control, courage and emotional instability.

The applied methods of data processing of empirical research have given values to our scientific research in the context of distinguishing types of emotional burnout according to factor loadings, among which we can distinguish "anxiety-exhausted type", "morally-disorientated type" and "emotionally-selective type". Thus, we can characterize the peculiarities of the formation of emotional burnout among the staff of the National Police according to the presented type.

5. Taking into account the preliminary conclusions and the specifics and stressful features of the law enforcement activity, it is expedient to give the police opportunity for emotional recovery at the initial stages of their service. Otherwise, emotional exhaustion may become a professional deformation, and society may receive police terror instead of a high-quality and effective protection of law and order.

SUMMARY

The article is dedicated to the problem of the "emotional burnout" syndrome among the employees of the National Police of Ukraine. An overview of the basic scientific and theoretical foundations of the research, the most important

of which is the justification of the content of the basic concepts of this phenomenon within the framework of psychological science, is given.

The analysis of the employees' of the National Police of Ukraine activities peculiarities and their influence on the occurrence of the "emotional burnout" syndrome symptoms is provided. It is noted that the specificity of the employees' of the National Police of Ukraine activities differs in that it contains a large number of situations with high emotional saturation and the cognitive complexity of interpersonal communication, and this, in turn, requires a significant contribution from the policemen to establish trusting relationships and the ability to manage the emotional tension of business communication in the field of their professional activity. It is revealed that special conditions of the employees' of the National Police of Ukraine professional activity, namely: the risk-taking nature of activities with unpredictable consequences (wounds, injuries), communication with antisocial elements, permanent mental and physical overload, often lead to mental activity deviation of a policeman, occurrence of post-traumatic disorders, propensity to deviant behavior and professional deformation, increased conflicts, aggressiveness, etc.

It has been revealed that the general feature and cause of the "emotional burnout" syndrome of the employees of the National Police of Ukraine is the presence of an internal conflict among the requirements of the Ministry of Internal Affairs of Ukraine, the attractiveness of working there, expectations and real possibilities of a policeman. It has been defined that the syndrome of "emotional burnout" is: the reaction of a policeman's organism and psychological sphere, which arises as a result of prolonged exposure to stresses of medium intensity, caused by his professional activity; the result of an unmanageable long-term stress; a mental state characterized by the emergence of emotional emptiness and fatigue caused by professional activity, and combines emotional emptiness, depersonalization and reduction of professional achievements; a type and precondition of professional deformation of a person.

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DOI https://doi.org/10.36059/978-966-397-168-1/82-97

FINANCIAL DECENTRALIZATION AS A FUNDAMENTAL CONDITION FOR INDEPENDENCE OF LOCAL AUTHORITIES

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INTRODUCTION

The issues of decentralization are relevant from the standpoint of different legal sciences, particularly financial and legal. The democratic transformations taking place in Ukraine, the activation of the processes of formation of civil society institutions and the building of a democratic, social and legal state require a combination of all directions of modernization of contemporary Ukrainian society and an effective improvement of the mechanism of state power, which in turn requires adequate financial support.

When the state became independent, the processes aimed at the formation and development of local self-government, according to the European model, became more active, moving away from subordination of local authorities to state authorities, as it used to be during Soviet times.

Over the years of independence, the concept of local authorities has changed several times. Back in December of 1990 (later in the version of March 26, 1992), the Law "On Local Councils of People's Deputies, Local and Regional Self-Government" was adopted, according to which the councils were limited to the functions of local and regional self-government. Meanwhile the executive functions were transferred to the representatives of the President of Ukraine in the regions and districts, as well as in the cities of Kyiv and Sevastopol. The reform of local government was suspended since February 1994, when the Verkhovna Rada adopted the Law "On the Formation of Local Authorities and Self-Governance" and returned power to local councils and their executive committees. After the adoption of the Constitution of Ukraine, the executive power in the regions and districts of Kyiv and Sevastopol was transferred to local State Administrations, that became accountable to and controlled by the executive bodies of a higher level. The powers of local State Administrations are defined by the Constitution of Ukraine by Article 119 and the Law of Ukraine "On Local State Administrations", adopted on April 9, 1999[1]. In accordance with this Law, heads of local State Administrations are appointed by the President of Ukraine on the submission of the Cabinet of Ministers of Ukraine for the term

[1] Про місцеві державні адміністрації. Закон України від 9.04.1999 р. *Відомості Верховної Ради України.* 1999 № 20-21. St. 190.

of office of the President of Ukraine. Candidates for the positions of the heads of District State Administrations shall be nominated by the heads of the respective Regioanl State Administrations and submitted to the Cabinet of Ministers of Ukraine. The norms of the Law stipulate that the powers of the heads of local State Administrations may be terminated by the President of Ukraine in the following cases: the resignation of the head of the relevant Regioanl State Administration; submission of the Prime Minister of Ukraine; impeached credibility by a majority of votes from the members of the relevant council; on the initiative of the President of Ukraine.

The Constitution of Ukraine contains a separate section devoted to local self-government. However, the constitutional norms have been further developed in the Law of Ukraine "On Local Self-Government", adopted on May 21, 1997[2]. Where the territorial community of villages, settlements, cities is defined as the basis of local self-governance, both directly and indirectly, through villages, settlements, city councils and their executive bodies. As well as through district and region councils representing the common interests of territorial communities of villages, settlements and cities.

The development of Ukraine as an independent state with European values requires improving the quality of public administration in various areas of state policy, the formation of effective local self-government based on decentralization of power and the availability of appropriate financial support. Market transformations that take place in Ukraine require new approaches to formulating the state policy of regional development and reforming of local self-government. The vector of reforms in Ukraine in this direction has been the processes of financial decentralization as the most effective form of public finance management, which fully corresponds to a new system of social relations, built on market principles, as well as processes of democratization of all areas of society's life. Financial decentralization is one of the fundamental conditions for the independence and viability of local authorities. Yet decentralization of decision-making processes increases the opportunities for local authorities to participate in the development of their own territory. It also promotes effective provision of public services through a close matching of expenditures of local authorities with top priority needs.

1. Local Public Authority: New Challenges in the Financial Decentralization

Today, the decentralization of public authority in Ukraine is stipulated by the necessity of transition to a modern European model of public administration, refusal of centralized administration, new paradigm of

[2] Про місцеве самоврядування. Закон України від 9.04.1999 р. *Відомості Верховної Ради України*. 1997 No. 24. Art. 170

governance in the country, organizations at the territorial level of state power and local self-government with the essential financial support for the relevant transformations.

Generally, the issue of changing relations between power and subordination has been attracting the attention of scientists and practitioners for a long time. After all, humanity has not yet come up with a better way other than to manage a country with the help of money. In addition, where there is power, there are also public funds, and it is the bodies of public authority, which are involved in drafting, reviewing, approving, executing the budgets, reporting on their implementation, monitoring compliance with budget laws and issues connected with responsibility for violations of both tax and budgetary laws. Therefore, when relevant changes within the authorities emerged, there was a need to change the approaches to the formation, distribution and use of public funds.

An important step towards the formation and development of a rule-of-law state and civil society is the formation and development of local public authorities. The purpose of state policy in the field of decentralization is to move away from the centralized model of governance, to ensure the financial capacity of local public authorities and to build an effective system of territorial organization of authorities in Ukraine. The current stage of Ukraine's development, the ongoing constitutional reform, integration with the European Union requires a new understanding and meaning of the role of local public authorities, especially when it comes to the issue of financial decentralization.

Local public authorities, depending on their functional purpose, have two components: the power of local bodies of state executive power and authorities of local self-government bodies. The basis of the first one is about the necessity to ensure the fulfilment of the state functions on a certain territory, and the basis of the second one is about the necessity of the local community to manage local affairs.

A significant step in the development of local self-government was the adoption of the Constitution of Ukraine on June 28, 1996. Art. 140 states that: "Local self-government is the right of a territorial community – residents of a village or a voluntary amalgamation into a village community of residents of several villages, settlements and cities – to independently resolve local issues within the Constitution and laws of Ukraine"[3]. Article 143 of the Constitution stipulates that the territorial communities of villages, settlements, cities, directly or through the local self-government bodies, manage the property of

[3] Конституція України від 28.06.1996 № 254к/96-ВР. *Відомості Верховної Ради України.* 1996. № 30. ст. 141

the communal ownership; approve socio-economic and cultural development programs and control their implementation; approve budgets of the relevant administrative and territorial units and control their implementation; establish local taxes and fees in accordance with the law; ensure the holding of local referendums and the implementation of their results; form, reorganize and liquidate communal enterprises, organizations and institutions, as well as control their activities; solve other issues of local importance, which by law are assigned to their competences.

In 1997, the Law of Ukraine "On Local Self-Government in Ukraine" was adopted, after the introduction of which, the problems of lack of autonomy for local self-government bodies and the necessity of decentralization became increasingly frequent[4].

The law establishes a norm according to which "local self-government in Ukraine is considered to be a right guaranteed by the state and the ability of the territorial community, particularly the inhabitants of the village or the voluntary amalgamation of the villagers of several villages, settlements, cities – independently or under the responsibility of local authorities and officials of self-government bodies to resolve issues of local importance within the Constitution and laws of Ukraine". The territorial community, in accordance with the law, is inhabited by permanent residents within a village, a settlement, a city that is an autonomous administrative and territorial unit, or a voluntary consolidation of residents of several villages having a single administrative centre.

The system of local self-government according to Art. 5 of the Law of Ukraine "On Local Self-Government" includes:

– territorial community;

– village, settlement, city councils;

– village, settlement, city heads;

– executive bodies of village, settlement, city councils;

– a village elder (starosta);

– district and regional councils representing the common interests of territorial communities of villages, settlements, cities;

– bodies of self-organization of the citizens.

The state policy of Ukraine in the field of local self-government is based on the interests of the citizens of territorial communities and envisages the decentralization of power. That is, the transfer of a significant part of powers, resources and responsibilities from the bodies of executive power to the bodies of local self-government. The basis for this policy is the provisions of

[4] Про місцеве самоврядування : Закон України від 9.04.1999 р. № 280/97-ВР. *Відомості Верховної Ради України.* 1997. № 24. Ст. 170.

the European Charter of Local Self-Government and the best world standards of social relations in this area.

The legal basis for a radical change in the system of government and its territorial basis at all levels began to emerge in 2014.

So, on April 1, 2014, a local self-government reform was launched, based on the provisions of the European Charter of Local Self-Government. It is implemented on the basis of the Concept of Reform of Local Self-Government and Territorial Organization of Power. After that, an Action Plan regarding its implementation was approved, which gave rise to the reform.

In order to implement the provisions of the Concept and the objectives of the Action Plan, it was necessary, first of all, to make appropriate amendments to the Constitution of Ukraine, as well as to formulate a package of new legislation.

Changes to the Constitution first of all had to solve the issue of creating executive bodies of regional and district councils, reorganization of local state administrations into the bodies of control and supervision, and give a clear definition of the administrative-territorial unit, which is a community.

With the efforts of Ukrainian practitioners and scholars, the draft amendments to the Constitution were made and proposed to a broad public discussion. These changes were supported by the community and highly appreciated by the Venice Commission.

Unfortunately, however, political circumstances did not allow the Verkhovna Rada of Ukraine to accept the changes of the Constitution, regarding the decentralization, submitted by the President of Ukraine.

Therefore, the Government launched the reform in 2014 within the framework of the current Constitution.

During this time, the basic package of new legislation has already been formed and is in operation, and top-priority legislative initiatives are being implemented. This applies to the Laws on Amendments to the Budget and Tax Codes of Ukraine. Due to these changes, financial decentralization took place: local budgets have grown by 123.4 billion UAH in recent years: from 68.6 billion in 2014 to 192 billion UAH in 2017[5]. The Law "On Voluntary Amalgamation of Territorial Communities" enabled the formation of a capable basic local self-government. By the beginning of September 2018, 838 amalgamated territorial communities have already been formed. Among them 133 ATCs are waiting for the appointment of the first elections, and 3839 former local councils have been included in these ATCs[6]. International experts

[5] Приходько В.П., Єгорова О.О. Децентралізація в Україні: https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/19803/1/Децентралізація_для%20сайту.pdf

[6] https://decentralization.gov.ua/about

consider such pace of inter-municipal consolidation as very high. The law also introduced the Institute of Village Elders (starosta) in ATC, which represents the interests of rural residents in the community council. There are already 780 elders in the ATC villages, and almost 1.8 thousand people are acting elders. The Law of Ukraine "On Cooperation of Territorial Communities" has created a mechanism for solving common problems of communities: utilization and recycling of garbage, development of a common infrastructure, etc. So far, 263 cooperation agreements are already being implemented. This mechanism was used by 1050 communities. The Law of Ukraine "On the Principles of State Regional Policy" created the conditions for state support for regional development and community infrastructure development during the reform, which is confirmed by an increase of 39 times. A number of other Laws, such as: The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Decentralization of Authorities in the Field of Architectural and Construction Control and Improvement of Urban Development Legislation" and the number Laws on the Empowerment of Local Self-Government Bodies and Optimization of the Administrative Services have also contributed to financial decentralization, which allowed to delegate the appropriate level of authority that provide basic administrative services to the bodies of local self-government. Among them: registration of residence, issuing of passport documents, state registration of legal entities and individuals, entrepreneurs, NGOs, marriage registration, proprietary interest, land issues etc.

The main task of the reform is to achieve an optimal division of powers between local governments and executive authorities at different levels of the administrative and territorial system on the principles of subsidiarity and decentralization. The first step towards implementation of the reform was the task regarding the financial decentralization, which began with the adoption of amendments to the Budget, Tax Codes and other legislative acts of Ukraine.

If we refer to the researches of European scholars, the relevant legal literature reveals the content of fiscal decentralization through the following three aspects:

– Decentralization of expenditures: providing local self-government with financial resources to fulfil tasks and functions;

– Decentralization of incomes: the consolidation of the list of revenues by the local self-government, sufficient for proper and qualitative fulfilment of the tasks and functions set for the relevant level of local self-government, and the right to independently establish their size;

– Procedural and organizational independence: the right to independently formulate, approve, execute financial plans, estimates, budgets, provide reporting and control under the responsibility of bodies and officials of local self-government bodies.

In our opinion, this vision is not just about the understanding of decentralization but rather understanding of local government itself. If a totalitarian country, which does not have local self-government, starts the processes involving the development of the rights of territorial communities or other territorial entities, then in this case, we can speak of the decentralization of power. That means, the state transfers some of its functions to the local level.

If local government already exists, if budget legislation attaches relevant incomings (fixed, personal, regulating revenues) to budgets of different levels, if expression of will is conducted at local level (through elections, referendums), then this means that the government is already decentralized.

Then the following contradiction may arise: the state seeks to minimize the transfer of budget funds to local level (saying, there are personal and fixed revenues of local budgets, then let local governments create conditions for their growth, and inter-budget transfers should become an additional source of income). At the same time, the Cabinet of Ministers is very active in the creation amalgamated territorial communities and thus supports direct inter-budget relations between the state and such communities.

It seems that someone is keen to give a part of the inter-budget transfers to local levels bypassing other bodies, budgets, etc.

The conclusion of some scholars may seem to be interesting that even after the amalgamation, the majority of territorial communities will hardly be able to become financially self-sufficient. The planned average size of the rural communities of Ukraine with 9 thousand citizens, even in such high-income countries as Finland, did not allow to perform a wide range of functions.

Experience of foreign countries shows that the optimal performance of health care functions is possible in a community of more than 20 thousand people, and educational functions in more than 50 thousand citizens. This means that even amalgamated territorial communities need additional tools for combining efforts with other communities to perform a number of functions.

It should be noted, that according to the legislation, the budget system of Ukraine consists of the State Budget and Local Budgets. Local budgets are the budget of the Autonomous Republic of Crimea, regional, district budgets and budgets of local self-government. If earlier, the budgets of local self-government were considered as the budgets of territorial communities of villages, their associations, settlements, cities (including city districts) then in 2015 they were supplemented with a new component, that is the budgets of the amalgamated territorial communities[7].

[7] Про внесення змін до Бюджетного кодексу України та деяких інших законодавчих актів України. Закон України від 10.02.2015 № 176-VIII. *Відомості Верховної Ради України*. 2015. № 16. ст. 107.

In 2017, Art. 5 of the Budget Code was supplemented by paragraph 2 saying: the budgets of amalgamated territorial communities are considered to be the budgets of these communities established in accordance with the law and a prospective plan of the formation of community territories, as well as budgets of amalgamated territorial communities, recognized by the Cabinet of Ministers of Ukraine as effective budget, established by law[8].

Effective organization of relations in the budget system is one of the most important and complicated tasks of public finance in each country. The main problems of the relationship between the state budget and the budgets of local self-government bodies are redistribution of budgetary resources, due to objective differences in the levels of social and economic development of separate territories and the need for financial equalization with the aim of providing constitutional guarantees to the population, regardless of the place of residence. Inter-budgetary relations are an important factor in equalizing the development of territorial communities, which ensures equal access of citizens to public services regardless of location.

Formation and implementation of local budgets depends essentially on solving their balancing issues, which is the result of unresolved issues regarding the ratio of fiscal centralization and decentralization. At the same time, problems of budgetary equalization derive from the disproportion and imbalance of the financial base of local self-government. It is budgetary decentralization, that anticipates the connection of the list of revenues to the local self-government bodies, which is sufficient for proper fulfilment of the established powers and functions, as well as the right to independently establish the norms of their incomings to the relevant local budgets.

Balancing local budgets of one level, which can not be carried out only by delimiting their revenues and expenditures, is achieved through the budget regulation, that is, redistributive processes within the budget system. Such redistribution is carried out between the State Budget and local budgets. In other words, fiscal regulation can be defined as an activity aimed at balancing budgets of all levels and types. Budget regulation is an extremely complicated and responsible activity within the budget system, it belongs to a special place in the inter-budgetary relations. In the process of budget regulation, many tasks are being solved, the most significant among them are:

– to achieve conformity between different types of expenditures and revenues of local budgets, that is, their balancing;

– to ensure equal incomes for preventing interruptions in the financing of expenditures;

[8] Про внесення змін до Бюджетного кодексу України. Закон України від 07.12.2017 № 2233-VIII. *Відомості Верховної Ради України*. 2018. № 2. ст. 8

– to create interest for local self-government bodies in the full mobilization of incomes in their territory;

– to provide independence in the use of additional funds received in the process of implementation of local budgets;

– to implement financial equalization.

2. Amalgamated Territorial Communities as a Component of the Budget System of Ukraine

The Law of Ukraine "On Voluntary Amalgamation of Territorial Communities", adopted in 2015, allowed, in addition to existing ones, to create new amalgamated territorial communities with their own budgets, which funds are allocated directly from the State Budget of Ukraine[9]. The law regulates relations that arise in the process of voluntary amalgamation of territorial communities of villages, settlements, cities, as well as voluntary joining to the amalgamated territorial communities. According to Art. 10 of the Law, the state provides financial support for the voluntary amalgamation of territorial communities of villages, settlements, cities and joining to the already amalgamated territorial communities by providing the community with funds in the form of subventions for the formation of the appropriate infrastructure in accordance with the plan of socio-economic development of such territorial community. Proposals for providing financial support to the amalgamated territorial community shall be submitted by the relevant Regional State Administration upon submission of the the village, settlement, city councils of the amalgamated territorial community to the Cabinet of Ministers of Ukraine not later than July 15 of the year preceding the budget period, which prescribes such financial support.

The total amount of financial support in accordance with the law is distributed among the budgets of the amalgamated territorial communities in proportion to the size of the community and the number of rural residents in such territorial community with equal significance of both of these factors. Moreover, the total amount of subventions for the formation of the corresponding infrastructure of the amalgamated territorial communities is determined by the law on the State Budget of Ukraine, and the procedure for providing subventions from the State budget to amalgamated territorial communities is established by the Cabinet of Ministers of Ukraine.

However, as it has been confirmed by the experience of using inter-budget transfers since the adoption of the Budget Code, the procedure for providing the transfers did not create sufficient incentives to increase the revenues of

[9] Про добровільне об'єднання територіальних громад : Закон України від 5 лютого 2015 року № 157-VIII. *Відомості Верховної Ради України.* 2015. № 13. Ст. 91.

local self-government bodies, did not facilitate the search for additional reserves and attract alternative sources, but encouraged consumers' sentiments.

The reform of decentralization gave impetus, by increasing the number of territorial communities, to the formation of local self-government, as the most capable and the most citizen friendly institution of power. The voluntary amalgamation of territorial communities allowed the newly formed local self-government bodies to obtain the corresponding powers and resources that previously belonged to the cities of regional significance.

The interests of citizens living in the territory of the amalgamated community are now represented by the elected head, deputy corps and executive bodies of the community council that ensure the exercise of the powers provided by law in the interests of the community. In the settlements that are part of the amalgamated community, the right of residents to local self-government and rendering of services to citizens is ensured by their elected elders.

The increase and amalgamation of communities is carried out by voluntary amalgamation, taking into account the opinion of citizens. It is obligatory, when planning community building, to determine potential community resources for economic and social development and the possibility to provide quality services to the residents.

The state stimulates the process of voluntary amalgamation by financial support for the formation of the necessary ATC infrastructure: in 2017, the subvention amounted to 1.5 UAH billion, in 2018 it was 1.9 UAH billion. Due to this financial support, 366 ATCs implemented 2 046 projects in 2017[10].

Services available to the citizens are ensured through the formation of a network of centres for administrative services, 723 of them are currently operating in Ukraine.

Thus, the new legislative framework has greatly enhanced the motivation for inter-municipal consolidation in the country, has created the right legal conditions and mechanisms for the formation of capable territorial communities of villages, settlements, cities, which unite their efforts in solving urgent problems. Also, a new model of financial support for local budgets, which received some autonomy and independence from the State Budget, has already justified itself.

The Cabinet of Ministers has determined support for the decentralization reform in Ukraine as one of the priority tasks that will contribute to the

[10] Реформа децентралізації. Урядовий портал : https://www.kmu.gov.ua/ua/diyalnist/reformi/reforma-decentralizaciyi

development of local government and economic development of the country as a whole. The year of 2018 should become crucial for the formation of the basic level of local self-government: by the end of the year, most of the existing small local councils can unite, and thus become able to assume most of their powers, use resources properly and bear responsibility for their actions or inactivity in front the citizens and the state. This will create a solid foundation for the next steps in the reform of local self-governance and will also help accelerate health, education, social services, energy efficiency and other sectors. Whether all this succeeds, time will show.

Today, in order to improve the legislative framework, the following significant laws are going to be adopted: The Law "On Service in Local Self-Government Bodies" (new edition), which will ensure equal access to services in local self-government bodies, enhance the prestige of service in the local government authorities, motivation of local servants to develop community and personal effectiveness; the Law "On the Principles of the Administrative-Territorial System of Ukraine" (the bill is ready for consideration in the Verkhovna Rada). The latter defines, under the current Constitution, the principles of functioning of administrative-territorial structure of Ukraine, the types of settlements, the system of administrative-territorial units, the bodies of state power and bodies of local self-government regarding the issues of administrative and territorial organization, the procedure for the establishment, liquidation and changes of the boundaries of administrative territorial units and residential areas, operation of the State Register of Administrative Units and Settlements of Ukraine. Regarding the management of land resources within the territory of the amalgamated territorial communities, this bill should introduce the principle of the general jurisdiction of the ATC in terms of land relations and give power to use of the lands located beyond the settlements.The Law regarding state supervision over the legitimacy of decisions of local self-government bodies. Another law pending for approval is "On urban agglomerations", the norms of which will determine the organizational and legal basis for the formation of urban agglomerations by territorial communities of villages, settlements and cities, including the amalgamated territorial communities, the principles and mechanisms of interaction of territorial communities within urban agglomerations, as well as forms of support by the state.

Thus, the constitutional principles of local self-government have been established in Ukraine as well as the European Charter of Local Self-Government has been ratified and a number of basic legal acts have been adopted that create legal and financial bases for the activities of local self-government bodies. However, since the adoption of the Constitution of Ukraine and basic legal acts on local self-government, its development was

actually implemented only at the level of territorial communities of the cities of regional significance. So far as the vast majority of territorial communities, due to their small territories and extremely weak material and financial resources, was incapable of performing all powers of local self-government bodies. The system of local self-government today does not meet the needs of society. The functioning of local self-government bodies in most of the territorial communities does not ensure the creation and maintenance of favourable living environment necessary for the full individual development, personal fulfilment, protection of human rights, high-quality, accessible administrative, social and other services in the respective territories[11].

It is early to talk about successful reforms at the first stage, but it is clear that deferment is no longer possible. The next step that should be taken is to amend the Constitution regarding decentralization, which is necessary for the further implementation of the reform and its completion.

The peculiarities of forming budgets of the amalgamated territorial communities are as follows.

Firstly, ATCs budgets have inter-budget relations with the State Budget.

Inter-budget transfers are divided into:

1) basic subsidy (transfer from the state budget to local budgets for horizontal equalization of fiscal capacity of territories);

2) subventions (*subventions* – inter budget transfers for special purpose to be allocated in the order determined by the body responsible for the decision of granting a subvention). The Budget Code does not have a term subsidy (a subsidy is a financial aid provided by the state from the budget funds, as well as special funds for legal entities and local government bodies). This is a form of assistance for the targeted individuals, provided by using budget funds or trust funds. However, one of the principles of the budget system is the principle of subsidiarity, according to which the distribution of types of expenditures between the State Budget and local budgets, as well as among other local budgets, is based on the need for maximum realization of the provision of guaranteed services to their immediate consumers.

3) reverse subsidy (funds transferred to the State Budget from local budgets for horizontal equalization of the fiscal capacity of territories);

4) additional subsidies.

That is, the volume of inter-budget transfers is approved for the ATCs' budgets according to the Law on the State Budget for the plan year. This is a basic subsidy, an educational subvention, a medical subvention, other subventions and grants, if there are reasons for granting and receiving the

[11] Концепція реформування місцевого самоврядування та територіальної організації влади в Україні : Розпорядження Кабінету Міністрів України від 1 квітня 2014 р. № 333-р.

corresponding inter-budget transfers (Articles 97, 99, 100, 102, 103-2, 103-4 and 108 of the Budget Code[12]).

It should be noted that the budgets of non-amalgamated communities do not receive inter-budget transfers from the State Budget.

Secondly, except for the budget incomes received before the ATCs' amalgamation, 60% of the personal income tax is credited to their budgets. Previously, this tax was credited to the district budget.

The list of revenue sources for ATC budgets is defined by Articles 64 (general fund), 69-1 (special fund) and 71 (budget development) of the Budget Code.

Thirdly. Except for expenditures of self-government powers, the ATCs budgets will finance expenditures that are delegated by the state, namely: expenditures for maintenance of institutions of the public sector – education, culture, health care, physical culture and sports, social protection and social provision (the list of expenditures is defined in Articles 71, 89 and 91 of the Budget Code).

The source of financing expenditures is both coming from the revenues secured for the ATCs budgets the by the Budget Code and inter-budget transfers from the State Budget (basic subsidy, educational and medical subventions, other subsidies and subventions).

Thus, ATCs budgets are involved in horizontal equalization of fiscal capacity.

This system of equalization suggests that basic subsidies (80 percent of the amount needed to achieve the indicator of 0.9) will be provided to local budgets with a level of taxable capacity (average income per inhabitant) below the 0.9 average for Ukraine in order to increase their level of security.

In case if the level of taxable capacity of the ATC budget ranges from 0.9 to 1.1 among the average indicators for Ukraine, then horizontal equalization of the taxable capacity is not carried out.

At the same time, ATC budgets (as well as other local budgets interrelating with the State budget), in which the level of taxable capacity is above the 1.1 national average indicator in Ukraine, the parts of the revenue are being transferred to the State Budget (reverse subsidy). At the same time, funds are not withdrawn in full extent, as it used to be with the system of balancing of local budgets, but only 50 percent of the excess of the taxable capacity index of 1.1 in relation to the average in Ukraine.

It should be noted that the reverse subsidy is a source of funding for the basic subsidy.

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[12] Бюджетний кодекс від 8 липня 2010 року № 2456-VI. *Відомості Верховної Ради України.* 2010. № 50-51. Т. 572.

At the same time, as in other budgets (oblast, district and cities of oblast significance), equalization is carried out with only one tax, that is personal income tax. This issue is regulated by Art. 99 of the Budget Code. The rest of the payments remain in full possession of the local authorities.

Also, the ATCs' councils have the right to make local borrowings to their budgets, both local and inner ones, including loans from international financial organizations. Borrowings are made for the development budget and funds are directed to implementation of investment programs (projects) aimed at the development of communal infrastructure, the introduction of resource-saving technologies, creation, increase or renewal of strategic objects of long-term use or objects that ensure the implementation of the tasks of city councils, aimed at satisfying the interests of the population of their communities.

In addition to the specific features of the ATC budgets, there is a number of features for applying the provisions of other articles of the Code for the first planned budget period after the amalgamation. Such features are defined in paragraph 38 of the Final and Transitional Provisions of the Code.

CONCLUSIONS

Today, local self-government bodies, using financial decentralization tools, provide sustainable local economic development. First of all, financial decentralization encourages local self-government bodies to fill local budgets with their own fixed income. Such as: land payment, property tax, among legal entities, there is also the so-called fourth group paid by farmers who lease land. In addition, 5% of alcohol sales, fuel, lubricants and tobacco are paid to local budgets. For this money, local government was able to implement infrastructure projects for the development of territories during the year.

At the same time, the fact of inefficient use of funds at the local level is observed. First of all, this is about the absence of development projects. This tendency means that local self-government bodies do not always understand the main goal of decentralization reform, which is to improve the quality of life in communities.

Taking into account the high risks of corruption while using budget funds, it is relevant to introduce mechanisms for monitoring the activities of local self-government bodies, both from state authorities and from the community residents.

In the conditions of budget decentralization there is a need for proper control over the work of the authorities of different levels in the process of planning and execution of their budgets, management and use of financial resources.

To solve this problem, it is necessary to ensure effective preliminary and current financial control over their activities, and to ensure the maximum

transparency of local government activities and its control by the public, involving the citizens as much as possible in making managerial decisions and promoting the development of forms of direct democracy. Adhering to the rules of the European Charter of Local Self-Government, it is necessary to have a maximum balance between the principles of control over the activities of local self-government bodies and autonomy of local authorities. The state must control the legitimacy of community decisions, thus the state's influence must be strengthened. Moreover, it is better to provide overall control by a single body, not by many. After all, when there are many controlling bodies it is hard to speak about the integrity of local self-government.

The reform should give impetus to the full development of communities, the opportunity to improve life in every populated area and in the country as a whole and allow citizens to manage the place of residence by themselves.

SUMMARY

The article deals with the peculiarities of implementation of financial decentralization. It has been determined that financial decentralization is one of the fundamental conditions for the independence and viability of local authorities. Yet decentralization of decision-making processes increases the opportunities for local authorities to participate in the development of their own territory. It also promotes effective provision of public services through a close matching of expenditures of local authorities with top priority needs. The new challenges of financial decentralization of local public authorities are considered. Attention is drawn to the amalgamated territorial communities as part of the budget system of Ukraine. The peculiarities of forming budgets of the amalgamated territorial communities are analyzed. The article emphasizes on the necessity for proper control over the work of the authorities at different levels in the process of planning and execution of their budgets, management and the use of financial resources under the conditions of budget decentralization.

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DOI https://doi.org/10.36059/978-966-397-168-1/98-109

ESSENCE AND CONTENT OF THE CATEGORY "TRUTH OF THE NORM OF ADMINISTRATIVE LAW"

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INTRODUCTION

Recently, on the pages of the national academic legal-administrative literature, quite a lot of attention has been paid to the applied aspects of administrative-legal subject-matter. In particular, the public administration or administrative-legal support in one or another sphere of public relations – medicine, education, economy, entrepreneurship, agriculture, customs, administration of taxes and fees, etc. – has become the subject of dissertations. From time to time, the research has been focused on the problems of forms and methods of public administration (especially as regards control and supervision issues).

At the same time, the doctrine of administrative law tries to substantially modernize the theoretical foundations of this public sector (the so-called general part of administrative law), which form its basis. Among the modern scholarly inquiries of such kind (at the level of the theses for obtaining a scientific degree of a Doctor of Laws (Higher Doctorate)) it is especially worthwhile to mention relevant research by R.S. Melnyk ("The system of administrative law of Ukraine", 2010)[1], O.I. Mykolenko ("The place of administrative procedural law in the system of legal knowledge and the system of law of Ukraine", 2011)[2], T.O. Matselyk ("Subjects of administrative law", 2014)[3], Yu.V. Pyrozhkova ("The theory of functions of administrative law", 2017)[4], I.V. Bolokan ("Realization of the norms of administrative law")[5], V.V. Yurovska ("Methods of administrative law, legal

[1] Мельник Р.С. Система адміністративного права України: дис. … докт. юрид. наук: 12.00.07. Харків, 2010. 415 с.

[2] Миколенко О.І. Місце адміністративного процедурного права в системі юридичних знань та системі права України: автореф. дис. … докт. юрид. наук: 12.00.07. Запоріжжя, 2011. 40 с.

[3] Мацелик Т.О. Суб'єкти адміністративного права : автореф. дис. ... докт. юрид. наук: 12.00.07 "Адміністративне право і процес; фінансове право; інформаційне право". Ірпінь, 2014. 40 с.

[4] Пирожкова Ю.В. Теорія функцій адміністративного права: дис. … докт. юрид. наук: 12.00.07. Запоріжжя, 2017. 544 с.

[5] Болокан І.В. Реалізація норм адміністративного права: проблемні питання теорії та практики: дис. … докт. юрид. наук: 12.00.07. Запоріжжя, 2017. 549 с.

theoretical and praxeological aspects", 2018)[6] and some other studies that analyzed the basic categories of administrative law.

Without understating the importance of highly specialized scholarly inquiries, we will note that the fundamental academic research not only lays the theoretical foundation for applied research papers, but also forms vectors of perspective law-making and directs the law-enforcement practice along the lines of the modern European standards of jurisdictional activity, takes the scientific approach as their basis, etc. Proceeding from the above, we believe that it is reasonable to further deepen the existing theoretical knowledge in the domain of administrative law, entering into a discussion with adherents of different approaches, and, within the limits of an academic dispute, meet the challenges with which the discipline of administrative law is tasked.

It is in the framework of the academic discussion that we would like to consider an issue highly relevant for the administrative-legal doctrine which concerns such a property of the norms of administrative law as their truth. We emphasize that the above-mentioned subject matter is insufficiently studied on the pages of administrative-legal literature, however, several papers by S.V. Shahov have come to our attention, where the researcher, as can be seen from their content, examines the effectiveness of the norms of administrative law and reveals the essence of the truth of the legal norms within the limits of the issues raised by him[7]. As a matter of fact, having got acquainted with the aforementioned works of the author, we came to the conclusion that it is necessary to discuss the question of the truth of the administrative-legal norm, to study the content and essence of this legal category and are ready to enter into an academic dialogue with him in this regard.

The aim is to determine the content and essence of such a property of the norms of administrative law as their truth on the basis of analyzing the opinions of individual legal scholars.

1. A generalized analysis of the category of "truth"

To begin with, we would like to emphasize that we fully share the idea that truth is the most important, permanent substantive characteristic of the

[6] Юровська В.В. Методи адміністративного права: теоретико-правові та праксеологічні аспекти: дис. … докт. юрид. наук: 12.00.07. Запоріжжя, 2018. 428 с.

[7] Шахов С.В. Про необхідність переосмислення змісту ознак правової норми, як передумова перегляду властивостей адміністративно-правових норм. *Науковий вісник Ужгородського національного університету. Серія "Право"*. 2016. № 41. Том 3. С. 97–103; Шахов С.В. Ефективність адміністративно-правової норми: аналіз етимології категорії та співвідношення з іншими суміжними поняттями. *Науковий вісник публічного та приватного прав*а. 2018. № 3. С. 170–176; Шахов С.В. Умови ефективності адміністративно-правових норм: поняття та класифікація. *Jurnalul juridic naţional: teorie şi practică*. 2018. № 6. С. 68–74.

administrative-legal norm. For the sake of the research completeness and the correct presentation logic, one should turn to the question of the etymology of the word "truth." According to the modern Ukrainian dictionaries, "truth" is: 1. The same as veracity. 2 Moral ideal, justice. 3. True knowledge that correctly reflects the actual reality in the minds of people. 4. Provision, statement, judgment, verified by practice, experience. In turn, the word "true" means: 1. Such that corresponds to the truth; right, truthful. 2. Valid, authentic, genuine[8].

As can be seen even from the naïve linguistic understanding of these words, the content of the category "truth" holds a philosophical meaning, which is confirmed by a number of philosophical encyclopedic sources. For example, in some of them, it is indicated that truth is a philosophical gnosiological characteristic of thinking in its relation to its subject, and the thought is called true (or truth) if it agrees with the subject[9]. That is why, as S.V. Shahov rightfully points out, it should be recognized that the interpretation of the word "truth" as a category undoubtedly evaluative in its nature depends on the approach of the researcher both to the subject, the truth of which is being established, and to the criteria of truth, chosen by the author as a certain frame of reference[10].

In the legal sciences, in addition to the aforementioned S.V. Shahov, truth in the law is also investigated by other scholars, first of all, theorists of law. V.V. Tykhonova rightly argues that the existence of various evaluations of the importance of this problem, interpretations of the category of "truth" in relation to law in general, and the norms of law in particular led to the appearance of three main approaches to understanding this issue. A characteristic feature of the first approach is that most scholars, investigating the attributes, the nature, types of legal norms, leave the problem of their truth beyond the scope of their research. Representatives of the second approach, called differentiated, in particular L.F. Cherdantsev, believe that only some types of legal norms can be considered in terms of the category of truth: norms which are tasks, goals, principles, definitions, while the attributing norms reflect the interests and will of the law-making body[11].

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[8] Великий тлумачний словник сучасної української мови / уклад. і голова ред. В.Т. Бусел. К.; Ірпінь: ВТФ "Перун", 2001. p. 514.

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[11] Черданцев Л.Ф. Специфика правового отражения. *Правоведение*. 1973. № 2. P. 102-103; Тихонова В.В. Проблема истинности норм права: основные теоретические подходы. *Правовые проблемы укрепления российской государственности*. [сборник статей]. Томск, 2012. Ч. 53. P. 70.

The third approach, strictly speaking, entails considering the truth as a mandatory characteristic of the norm of law. For example, the detailed justification of this position is given by O.A. Lukasheva, who believes that when deciding on the application of the criterion of truth one must proceed from the whole set of characteristics of the norm, which always expresses an evaluation of the social reality, social relations and situations that are subject to legal effect; the existing and the proper are always dialectically combined in the essence of the norm. However, as the scholar rightly emphasizes, the inclusion of the norm in a normative legal act does not always testify to its truth, since an inaccurate and incomplete knowledge of objective reality is possible, as well as the loss of this property by the norm due to the fact that social relations are developing dynamically[12].

In turn, V.K. Babaiev, reflecting on the norm of law as a true judgment, writes that all legal norms, whether they are definitive, regulatory or protective, are true if they meet certain internal and external requirements. The essence of the requirements of the internal nature, which are the main, constitutive ones, cannot be considered in isolation from the intellectual and will content of the legal norm. The intellectual moment, as noted in the legal literature, is an ideal reflection in the legal norm of regulated social relations, the will moment represents the active ("executive") beginning[13].

Thereafter, according to V.K. Babaiev, the norm of law has to: first, correctly reflect the state of social relations, which is the subject of legal regulation, and secondly, make a correct legal evaluation of them. In terms of the definitive norms, this is manifested in the fact that certain social relations are defined as lawful or unlawful, the attributes are indicated that characterize them as such. In the regulatory norms, legal evaluation is made of the rights and obligations of the participants of the jural relations, their scope and compliance are provided; in protective norms the scope of penalties is determined. External requirements are those that are applied to the publication of legal norms, their formatting, printing. A legal requirement that meets these requirements is true[14].

V.V. Tykhonova, studying the problem of the truth of the legal norms, believes that its further elaboration involves, first of all, the identification of those conditions that lead to the maximum full and accurate reflection of social realities and demands of social development in the norms, which is the most important condition for the effectiveness of legal regulation and

[12] Лукашева Е.А. Право, мораль, личность: Монография. М.: Наука, 1986. p. 37–40.

[13] Алексеев С.С. Проблемы теории права, т. 1. Свердловск: Изд-во Свердл. юрид. ин-та, 1972. p. 218.

[14] Бабаев В.К. Норма права как истинное суждение. *Правоведение*. 1976. № 2. p. 36.

promotes improvement of the legal basis for the organization and functioning of the state structure[15].

By contrast, V.M. Baranov points out that the truth is an objective property of the legal norm, expressing the proven by the practice of socialist construction degree of the aptitude of its content and form in the form of cognitive-evaluative image to adequately reflect the type, form, level or element of the development of progressive human activity[16]. "That legal norm is true, which harmoniously reflects the activity that has reached the desired degree of maturity. At the same time, the very activity reflected by the legal norm must enjoy the harmony of purpose, motive, means and results. "Reunification" of these two types of harmony will necessarily lead to the creation of a true legal norm. And, on the contrary, disharmony in any of the above-mentioned constituents will necessarily lead to a "failure" of legal regulation"[17]. However, along with the above-mentioned altogether correct and convincing judgments, V.M. Baranov, in relation to the relationship of interest and the norm of law, argues that the latter is not only a measure of interest, but also a code by which interest is deciphered. The social significance of the legal norm, as the scholar writes, is a function that has given rise to the public interest. Proceeding from this, the theorist of law emphasizes that those legal norms are true, which correctly and fully express the objectively true interests of the state[18].

In turn, S.V. Shahov writes that he is convinced in the opposite: "... the legal norm is true only when it reflects not the interests of the state, but the interests of the society as a whole and of an individual in particular. Of course, there are cases when the interests of the state or society and the individual do not coincide, but in this case the legal norm should ensure that the interests of the private individual are taken into account." As an example, the expert in the field of administrative law points out the relevant provisions of Law of Ukraine on November 17, 2009, "On Alienation of Land Plots and Other Objects of Immovable Property Located on Them in Private Ownership for the Social Needs and on the Grounds of Social Necessity" which provide for the corresponding

[15] Тихонова В.В. Проблема истинности норм права: основные теоретические подходы. *Правовые проблемы укрепления российской государственности*. [сборник статей]. Томск, 2012. Ч. 53. P. 71.

[16] Баранов В.М. Истинность норм советского права. Проблемы теории и практики. Саратов: Изд-во Сарат. ун-та, 1989. P. 231.

[17] Баранов В.М. Истинность норм советского права. Проблемы теории и практики. Саратов: Изд-во Сарат. ун-та, 1989. P. 183.

[18] Баранов В.М. Истинность норм советского права. Проблемы теории и практики. Саратов: Изд-во Сарат. ун-та, 1989. P. 162.

amounts of compensation in cash or transfer to the ownership of another equivalent land or immovable property that has been alienated for public needs or for reasons of public necessity. Thus, according to S.V. Shahov, the general rule of the truth of the legal norm, from which there are certainly some exceptions, is a reflection in the legal norm of interests of both society as a whole and an individual in particular[19].

In another publication, the expert in the field of administrative law emphasizes that the truth of the norms of administrative law is one of the key conditions for their effectiveness[20].

2. Content of the category of the truth of the administrative legal norms. Criteria and indicators

First of all, we would like to emphasize that the above-mentioned reputable scholar should undoubtedly be supported in his claim that the truth of the norms of administrative law is a condition for its effectiveness, because the truth is an independent, separate characteristic of the legal norm that determines its essence. This idea is in a certain way congruent with the point of view of V.M. Baranov, who argues that truth is the determining primary property in relation to the effectiveness of the legal norm. Truth, as the scholar observes, implies finding out how the content of the legal norm meets the needs for progressive social development, how accurately it expresses social relations, universal human, national, personal interests, and, the effectiveness of the legal norm, in turn, makes it possible to establish the degree to which the legal norm fulfills its purpose, define the result of its action. According to V.M. Baranov's interpretation, with which one can generally agree, the effectiveness of the legal norm serves as one of the "indicators" of the degree of truth of the rule of law. At the same time, V.M. Baranov absolutely accurately emphasizes that the true norm of law can be both effective and ineffective. For example, one can hardly speak of the effectiveness of even an undoubtedly true norm, if the authorized person implements it not actively or does not apply it at all[21].

While sharing the opinion of the renowned scholar, we would like to note that, in fact, the degree of effectiveness of administrative law depends on the completeness and accuracy of reflection in it of the

[19] Шахов С.В. Про необхідність переосмислення змісту ознак правової норми, як передумова перегляду властивостей адміністративно-правових норм. *Науковий вісник Ужгородського національного університету. Серія "Право".* 2016. № 41. Том 3. Р. 100.

[20] Шахов С.В. Умови ефективності адміністративно-правових норм: поняття та класифікація. Jurnalul juridic naţional: teorie şi practică. 2018. № 6. Р. 72.

[21] Баранов В.М. Истинность норм советского права. Проблемы теории и практики. Саратов: Изд-во Сарат. ун-та, 1989. Р. 288–290.

material and spiritual conditions of society. The more adequately the norms of the administrative law reflect the combination of social and personal interests, and the processes of social development, the higher the effectiveness of administrative legal norms is.

However, while in general sharing the idea of the human-centrism in administrative law, we cannot unequivocally agree with the other beliefs of the esteemed author. We would like to emphasize that S.V. Shahov's view on the subject contains contradictions between the content of truth *per se* and the methods and results of its ascertainment (true / not true). In other words, if one proceeds from the formulation proposed by the scholar, the truth of a norm can be ascertained only if it concerns the interests of the society or a specific person. However, as is known, clearly not all the norms of administrative law based on the essence of their purpose concern the interests of the society or an individual citizen. For example, what truth (in the interpretation of S. V. Shahov) can one speak about in relation to those norms, which, for instance, only register certain legal facts, while not affecting the so-called operational legal arrangements?

Furthermore, if we try to assess the truth of a specific norm of administrative law, we need to be guided by some indicators and criteria, but unfortunately, S.V. Shahov does not mention them. However, we will not take upon ourselves the responsibility for the unequivocal answer to this question either, instead we will only try to kindle the interest of the academic community in resolving the issue.

We would like to point out that the word "criterion" in the encyclopaedic literature is defined as: 1) the basis for the evaluation, definition or classification of something; measure[22], and an "indicator" means 1) evidence, proof, an attribute of something; 2) representative data on the results of some work, a process; data about achievements in something. Data that indicates the amount of something; 3) phenomenon or event on the basis of which it is possible to draw conclusions about the course of some process; 4) quantitative characterization of the properties of the product (process)[23]. In this context, O.M. Kurakin's view should be supported, according to which, in legal science, the term "criterion" serves as the basis for classification, and is a peculiar focus of evaluation. At the same time, if we consider this term as an attribute, then the category

[22] Великий тлумачний словник сучасної української мови / уклад. і голова ред. В.Т. Бусел. К.; Ірпінь: ВТФ "Перун", 2001. P. 596.

[23] Великий тлумачний словник сучасної української мови / уклад. і голова ред. В.Т. Бусел. К.; Ірпінь: ВТФ "Перун", 2001. P. 596.

"indicator" should be determined as the absolute or relative value of this attribute, the degree of quality of its condition[24].

Proceeding from the above, and also considering the fact that efficiency is the property of the norm of administrative law, which is based on its truth, the criterion (one of them) of such truth will be the degree of effectiveness of the legal norm, and indicators will be specific statistical data, confirming or refuting its effectiveness and, consequently, the truth. Interestingly, in part this idea is congruent with the point of view of the Soviet scholar V.K. Babaiev, who argued that the criterion of the truth of the legal norms is the enforcement of the rights and law-enforcement practice. At the same time, the true nature of the legal norm is manifested through its effectiveness[25]. A similar view can be found in the works of V.V. Tykhonova[26] and R.O. Halfina[27].

In addition to all the above-mentioned, it is obvious to us that the truth of the norms of administrative law, as a completely evaluative category, does not imperatively have to reflect the interests of a particular citizen. This does not mean that in this case we reject the principle of the rule of law or treat it somehow differently than other authoritative scholars. It should be emphasized that in this matter it is only necessary to place accents more properly. In particular, we propose, in determining the essence of this category, to rely on the compliance of the norm with the demands of social development. It is commonly known that social development is nothing more than a process which involves, on the one hand, people, social groups, social institutions, and, on the other hand, objective conditions that become the framework of their goals, activities and results. Social development is the process of an evolution of a unified social organism, characterized by irreversibility, purposefulness and consistency[28]. The objective conditions (demands) of the development of society include the territory, climate, the level of the economy, the state of social institutions (family, education and science, judicial and law

[24] Куракін О.М. Аналіз співвідношення категорії "ефективність правового регулювання" і суміжних понять. *Актуальні проблеми вітчизняної юриспруденції*. 2016. № 2. Р. 9.

[25] Бабаев В. К. Норма права как истинное суждение. *Правоведение*. 1976. № 2. р. 37.

[26] Тихонова В.В. Проблема истинности норм права: основные теоретические подходы. *Правовые проблемы укрепления российской государственности*. [сборник статей]. Томск, 2012. Ч. 53. Р. 69–71.

[27] Халфина Р.О. Критерий истинности в правовой науке. *Советское государство и право*. 1974. № 9. Р. 23–25.

[28] Некрасова Н.А., Некрасов С.И., Садикова О.Г. Тематический философский словарь. М.: МГУ ПС (МИИТ). 2009. Р. 154.

enforcement systems, systems of public administration), mentality, consciousness, world outlook, etc.

In turn, it should be noted separately that social needs, as an integral part of human needs, include socio-economic (creating conditions for a competitive environment and business development, respect and protection of the private property institution, state and social concern for those members of society who are unable to realize the principle of self-sufficiency, etc.) as well as moral and spiritual needs (the human need for self-improvement, self-development, justice, etc.)[29].

Thus, it is not unreasonable to determine the truth of the administrative legal norm in terms of such initial data that reveal social needs at a certain stage of the development of society, namely: the developmental level of economic and industrial relations, the state of the environment and ecology in general, the state of social and political institutions (family, education and science, medicine, judicial and law enforcement systems, public administration systems, etc.), the status of an individual in the society and the level of protection of their rights and interests on the part of the state, the mentality, consciousness, world outlook of the society, etc.

CONCLUSIONS

Thus, in our understanding, the truth of the norm of administrative law is its property, which characterizes the degree of compliance of the norm with the demands of social development, the full reflection in it of public relations, regulated by administrative law.

We would like to emphasize that the author of this publication will consider his task fulfilled if the content of the paper kindles a genuine academic interest in the reader and fosters a desire to enter into a discussion.

SUMMARY

The aim is to determine the content and essence of such a property of the norms of administrative law as their truth on the basis of analyzing the opinions of individual legal scholars.

Methods. The validity of the theoretical claims, recommendations for further academic research into the topic, the reliability of the results are ensured by the use of a set of philosophical, general and special scientific methods applied in legal research. The dialectical method of scientific knowledge is used as the main general scientific method.

[29] Сильвестрова Т.Я. Генезис и сущность общественных потребностей: дис. … доктора философ. наук: 09.00.11 Чебоксары, 2006. Р. 172.

Results. It is noted that the truth of the norm of administrative law is a condition for its effectiveness. It is pointed out that the degree of effectiveness of the administrative-legal norm depends on the completeness and accuracy of reflection in it of the material and spiritual social conditions. The more adequately the rules of the administrative law reflect the combination of social and personal interests, the processes of social development, the higher the effectiveness of administrative-legal norms is.

Taking into consideration the fact that efficiency is the property of the norm of administrative law, which is based on its truth, the author has assumed that the criterion of such truth will be the degree of effectiveness of the legal norm, and indicators will be specific statistical data, confirming or refuting its effectiveness and, respectively, the truth.

The opinion is expressed that the truth of the norms of administrative law, as a an absolutely evaluative category, does not have to imperatively reflect the interests of a particular citizen. This does not mean that in this case the author refuses the principle of the rule of law or interprets it somehow differently than other authoritative scholars. It is suggested when defining the essence of this category to start from identifying if the norm satisfies the needs of social development.

The author has determined the truth of the administrative-legal norm in terms of the initial data, which reveal the social needs at a certain stage of development of society, namely: the level of development of economic and industrial relations, the state of the natural environment and ecology in general, the state of social and political institutions (family, education and science, medicine, judicial and law enforcement systems, public administration system, etc.), the status of an individual in the society and the level of protection of their rights and interests by the state, mentality, consciousness, worldview of the society, etc.

Conclusions. Based on the results of the analysis performed, the author proposes to understand the truth of the norm of administrative law as its property, which characterizes the degree of compliance of the norm with the needs of social development, the full reflection in it of the public relations, regulated by administrative law.

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DOI https://doi.org/10.36059/978-966-397-168-1/110-128

LEGAL PROTECTION OF THE COMPANY NAME AND GEOGRAPHICAL INDICATION AS MARKETING DESIGNATIONS

Mazurenko S. V.

INTRODUCTION

Development of market relations, intensification of business activity, expansion of the sphere and volumes of material production, changes in the socio-economic structure of the state led to the introduction of market mechanisms in the economy of Ukraine, the manifestation of which was the intensification of competition between economic entities operating in one or related industries. Under the influence of these factors, the importance and role of the special identifying marks used by manufacturers to distinguish themselves and the results of their activity – means of individualizing the participants of the civil turnover, goods and services, grows. Due to changes in the economic sphere, there is a need to develop and implement adequate legal mechanisms for regulating relationships related to the use and reliable protection of business names, trademarks and geographical indications.

The following intellectual property rights are included in the means of individualization of the participants of the civil turnover, goods and services: commercial (trade name); trademark (trademark, sign for goods and services); geographical indication (indication of origin of goods). Therefore, the trademark, trade name and indication of origin of the goods form a separate group of intellectual property rights, which are traditionally referred to as "means of individualization" or "commercial (marketing) designation". The use of these objects ensures the individualization, identification of the business entity and its products in market relations. These distinctive designations are a manifestation of individualization, which is broadly understood as empowering individuals with distinctive features that distinguish them from other persons with whom they participate in legal relationships.

The value of the means of individualization in the conditions of development of competitive relations, increasing the variety of organizational and legal forms of economic activity, expansion of international economic ties necessitates the proper legal regulation of subjective rights, which mediate the performance of these objects of their functions and ensure the satisfaction of the interests of its subjects.

1. Intellectual property right to the company name

When studying this topic, it should be noted that the term "commercial name" was first introduced into the legislation of Ukraine by the Central Committee of Ukraine. Prior to the adoption of the Central Committee of Ukraine, two terms were used: "corporate name" and "corporate name". The only act that contained rules on the use of company names was the resolution of the Central Executive Committee of the USSR and the Council of People's Commissars of 22.06.1927 "On the enactment of the Regulations on the firm" (as amended), which determined the legal basis of the activities of firms of different organizational – legal forms. According to the letter of the Supreme Economic Court of Ukraine of January 14, 2004 No. 05-3 / 31 in connection with the adoption of the Civil Code of Ukraine and the Civil Code of Ukraine, which regulates the issue of intellectual property right to a commercial name, from January 1, 2004 in Ukraine the stated Company Regulations apply. Despite the adoption of these codes, business names are one of the few entities whose legal regime still requires legislative improvement. Unlike most other intellectual property (trademarks, industrial designs, inventions, utility models, copyright and related rights), the legal regulation of commercial names is not governed by any special laws. Although some references to commercial names are contained in some regulatory acts of Ukraine, in particular in the Criminal Code of Ukraine, the Law of Ukraine "On Protection of Rights to Marks for Goods and Services", the Law of Ukraine "On Protection against Unfair Competition", etc.[1]

Pursuant to the Paris Convention for the Protection of Industrial Property of 20 March 1883, trade names are objects of industrial property. Commercial names, along with trademarks and geographical indications, are means of individualizing participants in civilian traffic, goods and services. In determining the structure of the business name, the following should be noted. There are two parts of the company: the main (corpus of the firm) and the subsidiary (arbitrary)[2].

The corpus of the firm is a mandatory part of the commercial (corporate name), contains an indication of the legal form of the enterprise, its type and subject of activity, and in some cases, other characteristics. For example, the name of the full partnership, in addition to the indication of the legal form –

[1] Коссак В.М., Якубівський І.Є. Право інтелектуальної власності: підручник. К. : Істина, 2007. С. 78.

[2] Козлова О., Ковач Ж. Деякі проблеми правового регулювання комерційних найменувань в Україні у контексті міжнародно-правового досвіду // Промислова власність в Україні: проблеми правової охорони: зб. наук. статей /за ред. Ю.С. Шемшученка, Ю.Л. Бошицького. К.: Ін-т держави і права ім. В.М. Корецького НАН України, 2004. С. 326.

"full partnership", must also include the names (name) of all participants or the name (name) of one or more of them with the addition of the words "and company" (Art. 119 CC Ukraine). And the commercial name of a joint stock company should indicate that the company is a joint stock company (Article 152 of the Civil Code of Ukraine)[3].

The auxiliary part is made up of mandatory and optional elements. A custom business name is a required part of the business name auxiliary. It can be any word, proper name, geographical name, etc. Optional elements are included in the trade name at the request of the owner. These include the abbreviated name of the company, instructions such as "specialized", "central", "universal", including the abbreviated name of the company (KAMAZ, ZIL, etc.). However, these applications should also be untrue and misleading. Exceptions are full and limited partnerships, in the auxiliary part of the name of which must be the names of all full members of the company or the name (name) of at least one full participant with the words "and company", as well as the words "full partnership", or a limited partnership, respectively[4].

Legal protection is subject to both the full and abbreviated commercial name of an entity, if it is actually used by it in business. Article 489 of the Civil Code of Ukraine provides for two conditions for obtaining legal protection. First, the business name must make it possible to distinguish one person from the other. That is, to perform a dystopian function.

Secondly, the commercial name of a person should not mislead consumers as to their true activity. That is, perform a safety function. Individuals may have the same business name if it does not mislead consumers as to the goods they produce and (or) sell and the services they provide.

In addition, some scholars also highlight the condition of novelty and invariance of the commercial name.

Ievina OV, Mironenko VP, Pavlovskaya NV and Pilipenko S.A. also distinguish the principles of commercial name:

– truthfulness – to accurately reflect the legal status and not to mislead other members of the civil turnover;

– exclusivity – a certain originality of the name, the presence of distinguishing features, due to which it is not allowed to mix one firm with another;

[3] Сергеев А.П. Право интеллектуальной собственности. М. : Теис, 1996. С. 524.

[4] Козлова О., Ковач Ж. Деякі проблеми правового регулювання комерційних найменувань в Україні у контексті міжнародно-правового досвіду // Промислова власність в Україні: проблеми правової охорони: зб. наук. статей / за ред. Ю.С. Шемшученка, Ю.Л. Бошицького. К.: Ін-т держави і права ім. В.М. Корецького НАН України, 2004. С. 326.

– Continuity – The name of a particular subject is retained over a long period of time.

Palladiy MV draws attention to the fact that the business name performs mainly two functions: distin- guish, that is, distinguishes one participant of commercial activity from another regardless of what goods or services they sell and market, and preventive, ie does not give mislead consumers about its true activity[5].

In addition, some scientists distinguish between security, advertising, warranty functions. Due to the lack of sufficient legal regulation of business names, there are currently many issues in Ukraine that are the subject of heated debate among Ukrainian intellectual property professionals.

Discussions are underway over the subjects of the trade name rights. The Civil Code of Ukraine uses the term "persons", which, based on the content of Section II of the Book of the First Civil Code of Ukraine, may be used to refer to both legal entities and individuals, including entrepreneurs. Thus in Art. 90 of the Civil Code of Ukraine contains a restriction on the fact that commercial names can only be owned by business companies. Businesses for profit and subsequent distribution between participants (business partnerships) can only be created as business partnerships (full partnerships, limited partnerships, limited or additional partnerships, joint stock companies) or production cooperatives. The current jurisprudence in commercial courts is based on this particular restriction. Thus, item 4 of the Review Letter of the Supreme Economic Court of Ukraine "On the Practice of Application by the Commercial Courts of the Law on Protection of Intellectual Property Rights" dated 14.12.2007 No. 01-8 / 974 refers to the case on the claim of the Bar Association unity on the prohibition of a business entity – an individual to use in his activity in the field of law the sign "Legal consultation", which with reference to the provisions of Articles 16, 23, 50, 51, 90, 431, 432, 489–491 of the Civil Code of Ukraine the need to protect his commercial rights no name. The claim was upheld with reference to the fact that, in accordance with the first paragraph of the second part of Article 90 of the Civil Code of Ukraine, a commercial (company) name may have a legal entity, which is an entrepreneurial company.

According to Article 42 of the Civil Code of Ukraine, entrepreneurship is an independent, initiative, systematic, at-risk economic activity carried out by economic entities (entrepreneurs) in order to achieve economic and social

[5] Паладій М.В. Право інтелектуальної власності на комерційне найменування // Правова охорона комерційних позначень в Україні: проблеми теорії і практики: зб. наук. статей / за заг. ред. Ю. С. Шемшученка, Ю.Л. Бошицького. К. : Ін-т держави і права ім. В.М. Корецького НАН України, 2006. С. 372.

results and profit. At the same time, according to the provisions of Article 1 of the Law of Ukraine "On the Bar", the Bar of Ukraine is a voluntary professional public association, called in accordance with the Constitution of Ukraine to promote the protection of rights, freedoms and represent the legitimate interests of citizens of Ukraine, foreign citizens, stateless persons, legal entities give them other legal assistance. According to clause 2.1 of the statute of the plaintiff, registered with the Ministry of Justice of Ukraine to comply with the provisions of Article 4 of the Law of Ukraine "On the Bar", the purpose of the law association is to create the most favorable conditions for the successful work of the partner lawyers, to promote the development of a democratic rule of law, the protection of internationally recognized human rights and freedoms, the establishment of market relations in Ukraine. That is, the court found that the plaintiff, not being an entrepreneurial company, is not a subject of intellectual property rights to the business name.

The position of the Supreme Economic Court on the resolution of certain issues of protection of intellectual property rights to commercial names is also set out in the Review Letter of 01.04.2006 No. 01-8 / 845 "On the Practice of Application by the Commercial Courts of Law on the Protection of Ownership of Commercial Names (According to Case Files, considered in cassation by the Supreme Economic Court of Ukraine).

Civil Code of Ukraine Art. 159 establishes that the rights to a business name may belong only to economic entities, that is to say, legal entities and entrepreneurs. In doing so, the surname or first name may be claimed as a commercial designation by the citizen.

The issue of including a legal entity's legal form in the commercial name is also undefined. The business name of the business entity may be entered upon its submission to the registers, the procedure of which is prescribed by law. There is no special register of commercial names in Ukraine yet. To date, the use of business names has in fact been reduced to the use of legal entity names entered in the Unified State Register of Legal Entities and Entrepreneurs under the Law of Ukraine "On State Registration of Legal Entities and Entrepreneurs" of May 15, 2003. However as seen from Art. 90 of the Civil Code of Ukraine, the name of the legal entity and the commercial name are different legal categories. Yes, the name of the legal entity is the duty of the legal entity, and the commercial name is the right of the company. An entity with a business name previously entered in the register shall have priority over any other entity with the same business name later included in the register.

Content of intellectual property rights to the business name. Article 8 of the Paris Convention establishes that the trade name is protected in all the countries of the Union without compulsory application or registration and

regardless of whether it is part of the trade mark. This is fully consistent with the provisions of Art. 489 of the Civil Code of Ukraine, according to which the intellectual property right for the commercial name is protected without the obligatory application for it or its registration and regardless of whether or not the commercial name is part of the trademark. If the business name of the entity is an element of its trademark, then the legal protection of both the business name and the trademark is exercised.

Under the proprietary rights of the intellectual property to the commercial name it is accepted to understand the rights of the participants of the civil turnover to own, use and dispose of the rights to the commercial name during the exercise of the person's activity. The essence of these property rights is that a person is guaranteed the opportunity to speak in civil turnover under his own business name and to protect his rights in due course.

According to Art. 490 of the Civil Code of Ukraine the intellectual property rights to the commercial name are:

– the right to use a business name;

– the right to prevent other persons from misusing the business name, including prohibiting such use;

– other intellectual property rights established by law.

These property rights can be exercised in various forms, in particular during the conclusion of civil agreements, the offering of goods (services) for sale, the protection of violated rights, the implementation of other legal actions. Commercial names can be used by placing them in business records, advertising, the Internet, goods, packaging, signboards, labels and more.

Misuse of another's business name is not permitted. Such actions are recognized by the current legislation of Ukraine as unfair competition. According to Art. 20 of the Law of Ukraine "On Protection against Unfair Competition" committing actions defined by this Law as unfair competition entails the imposition of penalties in due course by the Antimonopoly Committee of Ukraine, as well as administrative, civil and criminal liability. The offender may be prosecuted in accordance with Art. 512 of the Code of Ukraine on Administrative Offenses. Article 229 of the Criminal Code of Ukraine provides for the possibility of conviction of a guilty person to criminal liability on condition of causing material damage in large and large amounts. In this case, material damage is considered to be caused to a considerable extent if its size is twenty times more than the taxable minimum of citizens 'incomes, to a large extent – if its size is two hundred or more times the taxable minimum of citizens' incomes, and to a particularly large amount – if its size is a thousand times more than the taxable minimum income of citizens.

A person whose trade name rights have been infringed may also go to court to defend his rights in civil law. A person who uses a different business name, at the request of his right holder, is obliged to discontinue such use and to recover damages. The use in the business name of the natural person's own name is not recognized as improper if any distinctive element is added to the personal name, which excludes confusion with the activity of another business entity (entrepreneur).

The trade name rights are valid from the first use and are valid indefinitely. Termination of intellectual property rights to a business name. Given that the intellectual property rights to the commercial name belong to the inalienable rights, their validity is terminated together with the termination of the activity of the person, in particular in case of liquidation of the legal entity. Although the list of grounds for termination of intellectual property rights to a commercial name is given in Art. 491 of the Civil Code of Ukraine is not exhaustive, so far the legislation of Ukraine contains no other grounds for this.

Intellectual property rights to a trade name may be transferred to another person only together with the whole property complex of the person to whom these rights belong, or a corresponding part thereof. The transfer of the whole property complex is carried out by the person to whom these rights belong on the basis of civil agreements. The transfer of the whole property complex can also be carried out in the order of sale of the debtor's property in the process of rehabilitation. According to Art. 19 of the Law of Ukraine "On restoration of the debtor's solvency or bankruptcy" in order to restore the solvency and satisfy the requirements of the debtor's creditors, the rehabilitation plan may provide for the sale of non-state debtor's property as a complete property complex. When selling a property of a non-state property debtor as a complete property complex, all types of property intended for the debtor's business activities, including premises, structures, equipment, inventory, raw materials, products, claims, rights to signs (designations) are alienated in due course. individuating the debtor, his products (works, services) (company name, marks for goods and services), other rights that belong to the debtor, except for rights and duties that cannot be transferred to other persons.

2. Intellectual property right to the geographical indication of the place of origin of the goods

Geographical indications are a means of individualizing goods. At the international level, a fairly extensive and effective system of legal protection of geographical indications has already been established and is operating. These issues are, in particular, governed by the Agreement on Trade-Related Aspects of Intellectual Property Rights signed by the World Trade Organization, the Paris Convention for the Protection of Industrial Property of

20 March 1883, the Madrid Agreement to Prevent False or False Indications of the Origin of Goods, 18 The Lisbon Treaty for the Protection of Place Names and Their International Registration of 31 October 1958.

The use of origin sources is an important buyer tool for originating products of defined quality. Indications of origin of goods may be used for industrial and agricultural purposes to indicate the origin of goods and services. One use purpose is to facilitate trade through product information and should be accessible for use by all manufacturers in the area[6]. Due to its function of individualization, the geographical indication must distinguish from the mass of homogeneous goods the goods possessing special properties in comparison with those goods[7].

Traditional state support for agricultural producers in many advanced market economies has led to the creation and establishment of a modern system of protection and protection of appellations of origin. On the other hand, in countries with low levels of agricultural production, the protection of the appellation of origin is at least premature. In many countries, it is difficult to install products whose place of origin indicates their particular quality. If these products are intended primarily for domestic consumption and are not competitive in foreign markets in terms of both quality and price, the protection of the names of their places of origin is not relevant, looks far-fetched and unnecessary. Thus, the protection of the name of the place of origin of the goods is mainly in the interest of foreign producers of agricultural and other similar products. This is not surprising, since the entire modern system of intellectual property of transition economies was originally created under the dictation of Western experts to protect the interests of their countries[8].

Indication of origin of goods may be verbal, pictorial, appear as a national symbol, geographical map, etc. At the same time, the indication of the origin of goods should be distinguished from the common designations of goods of a particular type, which are not related to the specific place of their production, even though they contain the names of geographical features (for example, Kiev cake, Crimean wine)[9].

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[6] Солощук М., Капінос М., Лерантович Е. Право інтелектуальної власності на засоби індивідуалізації учасників цивільного обороту, товарів та послуг // Інтелектуальна власність. 2008. № 7. С. 54.

[7] Комментарий к Четвертой части Гражданского кодекса Российской Федерации (постатейный). Правовое регулирование отношений в сфере интеллектуальной собственности. С постатейными материалами и практическими разъяснениями / под ред. И.А. Близнеца, А.Ю. Ларина. М. : Книжный мир, 2008. С. 521.

[8] Судариков С.А. Право интеллектуальной собственности: учебник. М. : Проспект, 2009. С. 257.

[9] Базилевич В.Д. Інтелектуальна власність: підручник. К. : Знання, 2006. С. 174.

In Ukraine, the issues of acquisition, exercise and protection of intellectual property rights to geographical indications are regulated by Chapter 45 of the Civil Code of Ukraine and the Law of Ukraine "On Protection of the Rights to Indicate the Origin of Goods". Rules for drawing up, submission and examination of the application for registration of the qualified indication of origin of goods and / or the right to use the registered qualified indication of origin of goods, approved by the Order of the Ministry of Education and Science of Ukraine No. 598 of August 17, 2001, as amended.

In Ukraine today, dozens of indications of the origin of goods are registered as verbal or combined trademarks. Among them, in particular, the names of mineral waters "Truskavetska", "Naftusya", "Mirgorodskaya", "Morshynska", "Narzan". Some of them are even included in the relevant State Standards of Ukraine. Moreover, the trademarks of "Naftusia" have already been registered several by the name of manufacturers that have nothing to do with Truskavets "Naftusia". The uncontrolled use of these designations results in the erosion, loss of reputation, trust in this unique national heritage. Geographical indications serve to protect intangible values such as market differentiation, reputation and quality standards. They are also carriers of the cultural identity of the nation and the region.

In accordance with the provisions of the current legislation, the procedure for registration of geographical indications is defined[10].

The term "geographical indication" is used in the TRIPS Agreement and EEC Regulation No 2081/92 of 14.07.92 "On the protection of geographical indications and names of places of origin of agricultural products and manufactured goods"; in addition, the term "indication of origin or the name of the place of origin "(Paris Convention for the Protection of Industrial Property)," the name of the place of origin "(Lisbon Agreement on the protection of designations of origin and their international registration)," Al origin "(Madrid Agreement Concerning sanctions for false and incorrect designation of origin products).

Types of geographical indication are the name of the place of origin of goods and indication of origin of goods. The name of the place of origin of the goods is the geographical name of the country, region, district or locality used to designate the originating product, the quality and specific characteristics of which are solely or substantially determined by the geographical environment of the place of origin, which may consist of natural or human factors, or both.

The indication of the place of origin of the goods is as follows:

– is the name of the geographical feature,

[10] Актуальні проблеми правового регулювання розвитку підприємницької діяльності в Україні: монографія / за ред. Н.М. Мироненко. Київ: підручники і посібники, 2008. С. 174.

– the relationship of this name to specific, distinguished goods from the mass of homogeneous goods with special, unique properties;

– the relationship of this name to the specific natural conditions of the geographical feature and / or to any specific human factors that are unique to that geographical feature only;

– the dependence of the specific properties of the product on the specified specific natural conditions and / or human factors.

Indication of the place of origin of the goods is an indication which can take any form and which is used to refer to goods which have only a special reputation, due to their place of origin[11].

The origin of a product is usually represented by the name of a country, geographic region, locality or object (including historical). For example, the designation "Made in the USSR" or "Made in China" indicate the country in which the goods are manufactured.

Names can be used together with the names of relevant geographical features. For example, products made in mountainous areas are often marked not only by names, but also by images of mountains and other objects. The packaging and the goods themselves are often labeled with an indication of their origin.

In current law, the term "indication of origin" covers the terms "simple indication of origin" and "qualified indication of origin", which in turn combines the terms "origin of goods" and "geographical indication of origin".

A simple indication of the origin of a commodity is any verbal or pictorial (graphic) designation that directly or indirectly indicates the geographical origin of the commodity, the legal protection of which is granted on the basis of its use[12].

Qualified indication of origin of goods includes such concepts as "name of place of origin" and "geographical indication of origin". Legal protection of the qualified place of origin of the goods is granted on the basis of registration of intellectual property rights to it, which is valid indefinitely from the date of its registration.

The name of the place of origin of the goods is the name of the geographical place, which is used as a designation in the name of the product, which originates from the specified geographical place and has special properties, exclusively or mainly due to the natural conditions specific to that

[11] Комментарий к Четвертой части Гражданского кодекса Российской Федерации (постатейный). Правовое регулирование отношений в сфере интеллектуальной собственности. С постатейными материалами и практическими разъяснениями / под ред. И.А. Близнеца, А.Ю. Ларина. М. : Книжный мир, 2008. С. 522.

[12] Судариков С.А. Право интеллектуальной собственности: учебник. М. : Проспект, 2009. С. 256.

geographical place (specific climate, soil composition, terrain, altitude, composition, water temperature, etc.), or a combination of these natural conditions with a specific human factor.

Geographical Indication of the Origin of a Product is the name of a geographical place, used as a designation in the name of a product originating from that geographical place and having certain qualities, reputation or other characteristics, predominantly due to the natural conditions or human factor or combination of these natural features that are characteristic of that geographical place. conditions and the human factor.

The distinction between place of origin and geographical indication of origin is made by three criteria. First, the name of the place of origin of the goods will be only if the product has special properties, and the geographical indication – when the product has certain qualities, reputation or other characteristics.

Secondly, the name of the place of origin is a requirement that the properties of the goods are solely or mainly due to nature and the human factor. That is, for the name of the place of origin, the dependence of the special characteristics of the goods on the natural conditions of the place of origin of the goods is obligatory: although the specific properties of the goods designated by this name may depend on the human factor characteristic of the place, but necessarily in combination with natural conditions. (i.e. using local raw materials, climatic conditions, minerals, etc.).

Geographical indication of origin in the same context uses the term "primary", meaning less rigid communication. In this case, the particular characteristics, quality and reputation may depend on both natural and human factors, and may also be conditioned by the combination of natural conditions and professional experience, traditions and ethnographic features characteristic of the locality.

Thirdly, the production and processing of the goods indicated by the place of origin are carried out within the specified and geographical place, and for the geographical indication of origin it is sufficient that at least the main component of the goods designated by that name is produced or processed within the specified geographical place. Therefore, for the geographical indication of origin, raw materials can be imported from other regions and subjected to substantial processing sufficient to give the characteristics of the finished product[13].

Having analyzed the provisions of the current Law of Ukraine "On Protection of the Rights to Indicate the Origin of Goods"[14], we can

[13] Право інтелектуальної власності: акад. курс: підр. для студ. вищих навч. закладів / за ред. О. П. Орлюк, О. Д. Святоцького. К. : Видавничий дім "Ін Юре", 2007. С. 437.

[14] Про охорону прав на зазначення походження товарів: Закон України від 16.06.2009 р. № 752-XIV // Відомості Верховної Ради України. 1999. № 32 від 13.08.99 р. Ст. 267.

conclude that the intellectual property right to a geographical indication is granted provided that:

– it is the name of the geographical place from which the product originates;

– it is used as the name of such a product or as an integral part of that name;

– there are objectively specific natural conditions and / or human factors in the geographical area designated by this name, which give the product special properties or certain qualities;

– the goods marked with this name have the appropriate properties or certain qualities, which are solely or mainly due to the natural conditions specific to a particular geographical location or the combination of these conditions with a human factor characteristic of that geographical place;

– the production (extraction) and processing of a product or its part designated by this name is carried out within the specified geographical place. In order to obtain the intellectual property right for a geographical indication, the person entitled to that right submits an application for registration of this right to the Civil Service, where an examination of the application is carried out, upon which the applicant is issued a certificate of registration of the intellectual property right for the geographical indication. As already mentioned, the intellectual property right to geographical indication arises from the date of its state registration[15].

As a rule, they are determined by the specific natural conditions of the geographical environment (Krasnodar Tea, Nizhyn Cucumbers, etc.) and (or) the professional experience and traditions of production of persons who produce goods and live in the area (for example, Khokhloma or Petryk painting, Tula gingerbread). Finally, the name of the place of origin of the goods becomes an independent object of legal protection only when the intellectual property right to it in the manner prescribed by law is registered with the Civil Service. In this capacity, the name of the place of origin of the goods is no different from other objects of intellectual property rights that are acquired by users only from the moment of their state registration.

The Law of Ukraine "On Protection of the Rights to Indicate the Origin of Goods" does not provide legal protection to a qualified indication of the origin of the goods that:

– does not meet the conditions stipulated in Article 7 of the Law of Ukraine "On Protection of the Rights to Indicate the Origin of Goods";

[15] Право інтелектуальної власності: науково-практичний коментар до Цивільного кодексу України / за заг. ред. М.В. Паладія, Н.М. Мироненко, В.О. Жарова. К. : Парламентське видавництво, 2006. С. 330-331.

– contrary to public order, the principles of humanity and morality;

– is the specific name of the product;

– correctly indicates the geographical place of manufacture of the goods, but creates a consumer misconception that the goods are manufactured in another geographical place;

– is the name of a plant or animal species and is therefore liable to mislead consumers as to the true origin of the product;

– is identical or similar in that it can be confused with a mark for goods and services, the rights of which are recognized in Ukraine, if, given the reputation, reputation and duration of use of such mark, such legal protection may mislead consumers as to the identity of the goods.

The Law of Ukraine "On Protection of Rights to Indicate the Origin of Goods" does not provide legal protection for a qualified indication of the origin of a commodity associated with a geographical place in a foreign country, if the rights to that indication or other designation, which in its content correspond to the notion of qualified indication of origin of goods, are not protected in the appropriate foreign country.

In the legal literature distinguish the following types of cities names of goods.

Depending on the circumstances that caused the specific properties of the product: formed under the influence of natural conditions; formed under the influence of human factors; combined species: formed under the influence of natural and human factors.

Depending on the area of distribution: national; international (international).

Depending on the degree of control by the relevant state bodies for the presence of special properties and production of goods: ordinary, which is characterized by the formation of the natural specific properties of the goods, which are individualized only under the influence of the natural environment or similar factors; regulated, which is characterized by the preliminary regulation of specific properties of the goods, while controlling the final stage of production; controlled (guaranteed), which is inherent in the control at all stages of production of the product, which is individualized by them, which makes such names especially valuable[16].

The main functions of naming the place of origin (geographical indication) are as follows:

– distinctive character, which consists in the isolation of goods among the mass of homogeneous goods as having special quality, specific properties;

[16] Гульбин Ю.Т. Исключительные права на средства индивидуализации товаров – товарные знаки, знаки обслуживания, наименования мест происхождения товаров: гражданско-правовой аспект. М. : Статут 2007. С. 110-111.

– qualitative or guarantee, which is to guarantee the special quality, specific properties of the goods and is a condition for providing geographical indication of legal protection;

– information, which is manifested in the true indication of the place of manufacture of the goods;

– protective, which is to protect against counterfeiting, since no one except the legal user has the right to use the geographical indication.

One of the main differences between these means of individualisation is that, in respect of a trade mark, the right of use and the right of disposal may belong to one person, whereas in respect of geographical indication these rights may never belong to one person.

Geographical indication is often included as a trademark or security element. It may be registered as a trademark or part of it if the future trademark holder has the right to use the geographical indication. Examples are use as a trademark or part of a geographical indication that is perceived as fantastic for a particular product, use as a trademark or part of a little-known geographical area names with the addition or change of suffixes, prefixes and endings, use of the name of a known geographical area in adjective for a particular product, when such use of a geographical indication is a trademark security feature, use of the geographical indication I view as an adjective neohoronyuvalnoho element of the mark[17].

The Law of Ukraine "On Protection of the Rights to Indicate the Origin of Goods" defines a range of intellectual property rights entities for a geographical indication, without specifying an exclusive list of intellectual property rights entities for a geographical indication, but only naming among them producers of goods and consumer associations.

According to Art. 9 of the Law of Ukraine "On Protection of Rights to Indicate the Origin of Goods", the right to register a qualified indication of the origin of the goods are: a person or group of persons who produce the product in the declared geographical location, special features, certain qualities, reputation or other characteristics of which are associated with that geographical location; consumer associations; institutions directly relevant to the production or study of relevant products, products, processes or geographical locations.

The above entities have the right to apply to the State Service for registration of a qualified indication of origin of goods. Qualified designation of origin may also include other persons who wish to use a registered place of origin or a registered geographical indication of origin. The right to use the

[17] Клименко Л. Проблемы использования географических названий в маркировке товара // Право и экономика. 1999. № 9. С. 16.

registered name of the place of origin of the goods or the registered geographical indication of the origin of the goods, provided that this right is registered, is made by manufacturers who, in the geographical place indicated in the Register, produce the goods, special properties, certain qualities or other characteristics of which correspond to those entered. to the Register.

The right to use a geographical indication is not the exclusive right of the holder of the certificate attesting to that right. Indeed, according to Article 17, paragraph 2 of the Law of Ukraine "On Protection of the Right to Indicate the Origin of Goods", according to which the registration of the right to use a qualified indication of the origin of the goods does not restrict the rights of other persons to register their rights to use it[18].

An applicant for the registration of a qualified indication of the origin of a product may be any natural or legal person who intends to produce a product with characteristics specific to a given geographical feature or is already producing the specified product. A person who registers in his own name a qualified indication of the origin of the goods shall be entitled to use them if the goods manufactured by him meet the requirements set out in the application for registration.

Thus, the Law of Ukraine "On Protection of Rights to Indicate the Origin of Goods" defines the subjects of intellectual property rights for a geographical indication by linking the registration of the intellectual property right to the geographical indication and the right to use the geographical indication, the intellectual property right of which is already registered. Persons who are legally entitled to such rights are subject to geographical indication intellectual property rights.

In order to obtain a certificate for the right to use a geographical indication, the manufacturer must submit an application to the State Service, which is executed accordingly[19]. The Civil Service within the specified time limits the examination of the application, which includes the examination of the conformity of the properties of the goods to the features established for goods for which a geographical indication may be used. Based on the results of the examination, the applicant is issued with or is not issued a certificate of the right to use the geographical indication and the data on it enter the names of places of origin and geographical indications of origin of the goods and the rights to use the registered qualified indications of origin of goods in the State Register of Ukraine.

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[18] Глухівський Л. Про стан правової охорони зазначень походження товарів в Україні // Інтелектуальна власність. 2007. № 1. С. 19-20.

[19] Про затвердження Правил складання, подання та проведення експертизи заяви на реєстрацію кваліфікованого зазначення походження товару та/або права на використання зареєстрованого кваліфікованого зазначення походження товару: Наказ МОН від 17.08.2001 р. № 598 // Офіційний Вісник України 2001 № 36 від 21.09.2001 р. Ст. 1682.

The holder of the certificate has the right to affix, along with a qualified indication of the origin of the goods, a warning mark to indicate that this indication is registered in Ukraine. The oval abbreviation (NMP) is used for the warning marking of the name of the place of origin of the goods. Instead, the marking may or may be accompanied by the text: "Name of origin of the goods registered in Ukraine". The oval abbreviation (GZP) is used for the warning marking of the geographical indication of the origin of the goods. Instead, the marking may or may be accompanied by the text: "Geographical indication of origin of goods registered in Ukraine"[20].

Any holder of a right to use a geographical indication is entitled to counteract the illegal use of a geographical indication. Nothing prohibits manufacturers from a particular area from joining together to increase the effectiveness of their rights protection, but any manufacturer who has a certificate of use of a geographical indication has the full right not to participate in such association and use the geographical indication on his discretion (usually in compliance with legal requirements). The features of the right to use geographical indications determine the content of the obligations of the certificate holder to the right to use geographical indications, which are not borne by other subjects of intellectual property rights for this means of individualization of goods[21].

CONCLUSIONS

The obligations of the holder of the certificate to use the geographical indication are laid down in Article 17, paragraph 7, and in Article 18 of the Law of Ukraine "On Protection of the Rights to Indicate the Origin of Goods", according to which the following are included. First, it is the duty to ensure that the quality, specific properties and characteristics of the product being manufactured are consistent with their description in the State Register. Second, there is an obligation not to prevent the specially authorized bodies from controlling the presence in the product of special features and other characteristics on the basis of which the geographical indication of the goods and / or the right to use them is registered. Third, the obligation to refrain from licensing geographical indications.

The validity of the intellectual property right to geographical indication is indefinite in accordance with Article 504 of the Civil Code of Ukraine. First of all, it should be noted that only one intellectual property right on a

[20] Глухівський Л. Про стан правової охорони зазначень походження товарів в Україні // Інтелектуальна власність. 2007. № 1. С. 20-21.

[21] Орлюк О. Зазначення походження товарів як об'єкт правового регулювання // Юридичний радник. 2005. № 5. С. 31.

geographical indication can have a validity period – the right to use a geographical indication; other rights cannot, in fact, be limited in time. Therefore, it can be concluded that the provisions of Article 504 of the Civil Code of Ukraine relate only to the right to use a geographical indication.

Pursuant to Article 15, paragraph 4, of the Law of Ukraine "On Protection of the Right to Indicate the Origin of Goods", the certificate's validity for the right to use a geographical indication is established, not the term of the right to use the geographical indication itself. According to Article 15 of the Law, the term of the certificate may be extended for another 10 years on the basis of the statement of the holder of the certificate. The number of times the certificate was extended. It can be concluded that the right to use the geographical indication is indefinite provided that the certificate for the right to use the geographical indication is re-registered.

SUMMARY

The use of means of individualization is essential for the pursuit of economic activity. In addition to the distinctive function, the means of individualization are intended to inform consumers about the quality and source of origin of goods, services, as well as to promote goods and services. Means of individualization are important components of an entity's business reputation, since the opinion of consumers, competitors and other persons about an entity is associated, first and foremost, with individual designations.

The content of the term "individualization means" is not limited to these three intellectual property objects and covers many other designations used for identification in the field of civil legal relationships (name of individual, nickname, company name, state name, domain name, etc.).

The development of the global information network (Internet) has led to the expansion of the traditional list of individualized means of intellectual property by incorporating a new specific element, the domain name, into it. Vocabularies used to address information resources on the Internet and identify goods and services, their manufacturer or geographical location cause a high likelihood of conflicts between owners of domain names, trademarks, business names, and geographical indications.

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зб. наук. статей / за ред. Ю.С. Шемшученка, Ю.Л. Бошицького. К.: Ін-т держави і права ім. В.М. Корецького НАН України, 2004. С. 326.

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9. Базилевич В.Д. Інтелектуальна власність: підручник. К. : Знання, 2006. С. 174.

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11. Комментарий к Четвертой части Гражданского кодекса Российской Федерации (постатейный). Правовое регулирование отношений в сфере интеллектуальной собственности. С постатейными материалами и практическими разъяснениями / под ред. И.А. Близнеца, А.Ю. Ларина. М. : Книжный мир, 2008. С. 522.

12. Судариков С.А. Право интеллектуальной собственности: учебник. М. : Проспект, 2009. С. 256.

13. Право інтелектуальної власності: акад. курс: підр. для студ. вищих навч. закладів / за ред. О.П. Орлюк, О.Д. Святоцького. К. : Видавничий дім "Ін Юре", 2007. С. 437.

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15. Право інтелектуальної власності: Науково-практичний коментар до Цивільного кодексу України / за заг. ред. М.В. Паладія, Н.М. Мироненко, В.О. Жарова. К. : Парламентське видавництво, 2006. С. 330-331.
16. Гульбин Ю.Т. Исключительные права на средства индивидуализации товаров – товарные знаки, знаки обслуживания, наименования мест происхождения товаров: гражданско-правовой аспект М. : Статут 2007. С. 110-111.
17. Клименко Л. Проблемы использования географических названий в маркировке товара // Право и экономика. 1999. № 9. С. 16.
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19. Про затвердження Правил складання, подання та проведення експертизи заяви на реєстрацію кваліфікованого зазначення походження товару та/або права на використання зареєстрованого кваліфікованого зазначення походження товару: Наказ Міністерства освіти і науки України від 17.08.2001 р. № 598 // Офіційний Вісник України 2001. № 36 від 21.09.2001 р. Ст. 1682.
20. Глухівський Л. Про стан правової охорони зазначень походження товарів в Україні // Інтелектуальна власність. 2007. № 1. С. 20-21.
21. Орлюк О. Зазначення походження товарів як об'єкт правового регулювання // Юридичний радник. 2005. № 5 (7). С. 31.

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DOI https://doi.org/10.36059/978-966-397-168-1/129-145

SCIENTIFIC AND THEORETICAL FOUNDATIONS OF INFORMATION SUPPORT FOR ADMINISTRATIVE LEGAL PROCEEDINGS IN UKRAINE

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INTRODUCTION

The evolution of domestic legislation regulating information relations in the field of legal proceedings takes place in stages and depends on many factors, the main of which are the development of information technology, legal reforms, and the implementation of international law.

The legal basis of information provision in general was considered in the works of such legal scholars as: L.V. Balabanov, Ye.Yu. Barash, Ye.D. Bondarenko, O. Iierusalymov, R.A. Kaliuzhnyi, O.V. Kostenko, V.V. Lusher, P.V. Makushev, S.M. Petrenko, A.V. Chernoivanenko, V.V. Halunko, O.K. Yudin, and others. The issue of information provision of legal proceedings was investigated by O.V. Bryntsev, O.I. Korchynskyi, Ye.I. Ovchynnykov, V.B. Pchelin, I.O. Turkina, and others. A small number of scholars who investigated namely the issue of information provision of legal proceedings testify to the complexity of this problem and the need to intensify scientific research in this area. Significant volumes of relations in the field of information provision of legal proceedings led only to a fragmentary study of their legal regulation. Recent changes in the procedural law have significantly increased the number of legal rules governing the information provision of administrative legal proceedings and introduced new unexplored and completely unformed legal institutions. The abovementioned determines the relevance of the submitted scientific article.

According to O.V. Bryntsev, e-justice is one of the elements of e-democracy, which is being implemented in order to ensure accessibility, accountability, the effectiveness of feedback, inclusiveness, transparency in the activities of state authorities. Judiciary is a key component of democracy, so it is fairly considered that e-justice is the most important front of e-democracy[1]. For the effective functioning of the state and all state mechanisms, information provision of administrative legal proceedings of Ukraine is of key importance. As V.B. Pchelin notes, the proper functioning of administrative legal proceedings of Ukraine, within which the

[1] Бринцев О.В. "Електронний суд" в Україні. Досвід та перспективи: монографія. Х.: Право, 2016. 72 с.

consideration and resolution of public-law disputes related to the protection and restoration of violated, unrecognized, disputed rights, freedoms, and interests of individuals and legal entities take place, may be only in the case of its effective information support[2]. The content and scope of information relations arising in the field of administrative legal proceedings with each stage of development of domestic information and procedural legislation are increasingly specified. At the same time, the growth of the circle of such relations, the increase of the types of information used within the administrative legal proceedings, and the growing importance of information support for administrative legal proceedings are observed. The current legal community of Ukraine is looking for ways to optimize the work of the entire judicial system in general and administrative legal proceedings in particular.

The volume of cases handled by administrative courts remains significant every year. Thus, in 2016, 215 319 administrative cases were received for consideration by local administrative courts, and 76 184 cases – by administrative courts of appeals[3]. In 2017, 121 692 cases were submitted for consideration to the local administrative courts and 73 496 cases – to the administrative courts of appeal[4]. Accordingly, the amount of information used to resolve such a circle of cases invariably grows; the need for optimization of information databases, their integration, and improving the efficiency of the search for the necessary information increases.

1. Information support of administrative proceedings in Ukraine

One of the most important characteristics of the state, which significantly affects all processes of the socio-economic development of society, is the level of information provision of the system of state power, as I.M. Oliichenko emphasizes. Many years of experience in improving public administration confirms that information provision should be considered as one of the strategic directions for improving the efficiency of its activities at all levels: state, branch, regional, international[5]. P.V. Makushev emphasizes that information provision of each civil service is an important element of its

[2] Пчелін В.Б. Перегляд адміністративних актів органів внутрішніх справ: дис. … канд. юрид. наук: 12.00.07 "Адміністративне право і процес; фінансове право; інформаційне право". Х., 2011. с. 121.

[3] Нечитайло О.М. Адмінсуди організовують роботу так, щоб суспільство могло примусити органи державної влади та посадовців поважати права громадян. URL: http://www.vasu.gov.ua/archive/123741/.

[4] Ефективність роботи судів за 2017 рік / Державна судова адміністрація України. URL: https://ln.kr.court.gov.ua/dsa/pokazniki-diyalnosti/efekt_ roboti_sudiv1/efekt_2017.

[5] Олійченко І.М. Інформаційне забезпечення управління обласною державною адміністрацією. URL: http://www.dridu.dp.ua/zbirnik/2011-01(5)/11oimoda.pdf.

functioning[6]. As V.V. Lusher notes, the science of administrative law widely uses this term: "administrative legal support", "the mechanism of administrative legal support", "ensuring rights and freedoms of citizens", "ensuring public safety", etc.[7]

In the dictionaries, the term "provision" is interpreted in similar terms, but they have certain differences. Thus, in the new explanatory dictionary of the Ukrainian language, it is considered in two meanings: 1) the provision or creation of material resources; 2) guaranteeing something[8]. In the great explanatory dictionary, the term "provision" is explained through the verb "to provide", which is used in several meanings: "to create reliable conditions for the implementation of something"; "to guarantee something"; "to defend, to protect someone, anything from danger"[9]. The above interpretation of the concept of "provision" allows considering it as an activity, a system of measures aimed at improving something specific. So, one can agree with the conclusion of V.B. Pchelin that the category of "provision" is denoted by a long process aimed at guaranteeing the functioning of the relevant institution, maintaining it in good condition in order to fulfil its tasks[10].

The term "provision" can be used in various areas of legal regulation and have some peculiarities depending on it. However, for the purpose of studying the issues of information provision of administrative legal proceedings, the results of the search of scientists are important in terms of approaches to the content of the concept of information provision. So, R.A. Kaliuzhnyi, investigating information provision of a management system, proposes to understand it as a combination of all the information used, specific means and methods of its processing, as well as the activities of specialists on the efficient use of data, information, knowledge in the management of a particular system[11]. Studying the information provision of management, S.M. Petrenko believes that it is a set of implemented decisions on the

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[6] Макушев П.В. Система інформаційного забезпечення державної виконавчої служби України та персональні дані як їх складові. Право і суспільство. 2013. № 4. С. 70–77.

[7] Лушер В.В. Поняття інформаційного забезпечення органів прокуратури України. Форум права. 2014. № 1. С. 338–341. URL: http://nbuv.gov.ua/UJRN/ FP_index.htm_2014_1_59

[8] Новий тлумачний словник української мови: в 4 т. / укл.: В.В. Яременко, О.М. Сліпушко. К.: Аконіт, 1999. С. 684.

[9] Словник української мови: в 11 т. / за ред. І.К. Білодіда. К.: Наукова думка, 1972. Т. 3. 630 с.; Словник української мови: в 11 т. / за ред. І.К. Білодіда. К.: Наукова думка, 1977. Т. 8. С. 19.

[10] Пчелін В.Б. Правові засади інформаційного забезпечення адміністра- тивного судочинства України. Підприємництво, господарство і право. 2016. № 8. С. 120.

[11] Калюжний Р.А., Гавловський В.В., Гуцалюк М.А. та ін. Інформаційному суспільству України інформаційне законодавство (щодо питань реформувань у сфері суспільних інформаційних відносин). Правове, нормативне та метрологічне забезпечення системи захисту інформації в Україні. 2001. № 2. С. 11.

volumes of information, its qualitative and quantitative composition, location, and forms of organization, the purpose is timely provision of necessary and sufficient information for the adoption of managerial decisions that ensure the effective operation of both the enterprise as a whole and its structural subdivisions[12].

O.K. Yudin and V.M. Bohush, studying the provision of information security, define it as a set of measures designed to achieve the state of protection of the needs of individuals, society, and the state in information[13].

Directly informational support as an independent concept, L.V. Balabanova proposes to understand as a set of actions to provide the necessary management information in the specified place on the basis of certain procedures with a given periodicity[14]; A.V. Chernoivanenko – as a system for managing the totality of representations, concepts, data, and as activities related to means of collecting, registering, transmitting, storing, processing, and presenting information[15].

A. Tytorenko – as the most important element of information systems and information technology, designed to display information that characterizes the state of the controlled object and which is the basis for the adoption of management decisions, and includes a set of unified system of indicators, flows of information – options for document management; systems of classification and coding of economic information, unified documentation system, and various information arrays (files) stored in a computer and technical carriers and having different degrees of organization[16]; Ye.D. Bondarenko – as a process to meet the needs for information based on the use of special means and methods for its acquisition, processing, accumulation, and output in easy-to-use form, and the structure of this provision includes an information fund and special techniques and methods of information provision, i.e., this phenomenon simultaneously represents, firstly, a certain organizational activity of obtaining, processing, accumulation, and output of information, secondly, methods and techniques of

[12] Петренко С.М. Інформаційне забезпечення внутрішнього контролю господарських систем: монографія. Донецьк: ДонНУЕТ, 2007. С. 20.

[13] Юдін О.К., Богуш В.М. Інформаційна безпека держави: навч. посібник. Х.: Консум, 2005. С. 52.

[14] Балабанова Л.В., Алачева Т.И. Информационное обеспечение обосно- вания управленческих решений в условиях маркетинговой ориентации пред- приятия: монография. Донецк: ДонГУЭТ им. М. Туган-Барановского, 2003. С. 9.

[15] Черноіваненко А.В., Галунько В.В. Інформаційне забезпечення підготовки, прийняття та реалізації управлінських рішень: теоретичний підхід до визначення поняття. URL: http://www.kbuapa.kharkov.ua/e-book/conf/2009-l/doc/35.pdf.

[16] Информационные технологии управления: учеб. пособие для вузов / под ред. Г.А. Титоренко. 2-е изд., доп. М.: ЮНИТИ-ДАНА, 2003. с. 15

its implementation, and thirdly, certain material objects – information fund; I.O. Iierusalymov defines it as an act, as well as storage, performance of something that serves as a guarantee of one or another process[17].

Investigating the information support of the state criminal-executive service, Ye.Yu. Barash defines its main features, namely: in its essence, it acts as a process of processing, obtaining, storing, and using management information about various aspects of the functioning of the service; by a periodicity it represents an uninterrupted process of processing and using information; by the nature of existence it is a part of the management of the service; by the form of implementation, it is carried out using means and methods inherent in this type; by the consequences of the implementation of information provision, it is associated with the formation of certain information funds, documents, regulatory framework; for the purpose of functioning, it is aimed at ensuring the proper functioning of the system, for example, an automated control system; for the main purpose as an instrument of effective management, it finds its implementation in the analysis, planning, and preparation of effective managerial decisions[18]. Studying the information provision of the state executive service, P.V. Makushev defines it as a part of managerial activity in the analysis, planning, and preparation of management decisions, which is an uninterrupted process of processing and using information on the state of the functioning of the state executive service system, which is carried out with the help of information tools and methods, leads to the formation of information funds, and aims to ensure the proper functioning of the system of the state executive service of Ukraine[19]. O.V. Kostenko determined the features inherent in information provision in more detail, taking into account its content, methods of implementation, goal, purpose[20].

Taking into account features of administrative legal proceedings, the most modern definition of its information provision is formulated by V.B. Pchelin. Thus, this scholar proposes to understand the information support of administrative legal proceedings of Ukraine as the set of measures based on

[17] Ієрусалимов І.О. Поняття "забезпечення" у юридичній науці. Науковий вісник Київського національного університету внутрішніх справ. 2007. № 1. С. 12.

[18] Бараш Є.Ю. Інформаційне забезпечення управління Державною кримінально-виконавчою службою. Форум права. 2011. № 3. С. 35. URL: http://www.nbuv.gov.ua/e-journals/FP/2011-3/11beikvc.pdf.

[19] Макушев П.В. Персональні дані як елемент системи інформаційного забезпечення державної виконавчої служби України. Форум права. 2013. № 2. С. 335. URL: http://nbuv.gov.ua/UJRN/FP_index.htm_2013_2_51.

[20] Костенко О.В. Інформаційне забезпечення регіональних прокуратур та інформація з обмеженим доступом. Форум права. 2016. № 1. С. 116. URL: http://nbuv.gov.ua/UJRN/FP_index.htm_2016_1_21.

the requirements of the current national legislation on the operation (collection, fixation, analysis, storage, dissemination, etc.) of information that is implemented in the framework of the performance of its functions by authorized subjects and due to the functioning of automated systems and aimed at ensuring the proper functioning of administrative courts for the consideration and resolution of public-law disputes[21]. In our view, the term of operating information is not traditional in the field of law and its use in this area needs a deeper justification. Therefore, in our opinion, in the proposed by V.B. Pchelin definition, the term "operation" is proposed to be replaced by the term "circulation". In the current legislation of Ukraine, the term "circulation", which can be applied to information, is defined in the Law of Ukraine "On Electronic Document Circulation)). So in Article 9 of this law, electronic document flow is defined as a set of processes for creating, processing, sending, transmitting, receiving, storing, using, and destroying electronic documents that are performed using integrity checking and, if necessary, confirming the fact of receipt of such documents. Thus, in the opinion of the legislator, the information circulation includes its processing. At the same time, an electronic document, under Art. 5 of this law, is a document, the information in which is recorded in the form of electronic data, including the mandatory details of the document[22]. Although the concept of an electronic document is somewhat narrower than the concept of information, in general, we believe that the concept of electronic document circulation characterizes the content of the concept of information circulation.

Information provision of administrative legal proceedings is carried out in the course of activities of authorized entities, as well as through the operation of the relevant automated systems.

V. B. Pchelin stresses that the judges as the main subjects of cognition in the administrative process, the State Judicial Administration of Ukraine, and the courts are the main subjects that carry out the information provision of administrative legal proceedings[23]. At the same time, according to Art. 147 "System of Ensuring the Functioning of the Judiciary" of the Law of Ukraine "On the Judiciary and Status of Judges" in Ukraine there is a unified system of ensuring the functioning of the judiciary – courts, bodies of the judiciary,

[21] Пчелін В.Б. Сутність інформаційного забезпечення адміністративного судочинства в Україні. Науковий вісник Ужгородського національного університету. Серія "Право". 2016. № 39. С. 22–25.

[22] Про електронні документи та електронний документообіг: Закон України від 22 травня 2003 р. № 851-IV / Верховна Рада України. Відомості Верховної Ради України. 2003. № 36. Ст. 275.

[23] Пчелін В.Б. Сутність інформаційного забезпечення адміністративного судочинства в Україні. Науковий вісник Ужгородського національного університету. Серія "Право". 2016. № 39. С. 24.

other state bodies and institutions of the system of justice. This system includes: the Supreme Council of Justice, the High Qualifications Commission of Judges of Ukraine, the State Judicial Administration of Ukraine, and the National School of Judges of Ukraine, other bodies of state authority and local self-government bodies are involved in the organizational support of the activities of courts in the cases and in accordance with the procedure established by this and other laws[24]. According to Articles 152 and 155 of the Law of Ukraine "On the Judiciary and Status of Judges", the State Judicial Administration of Ukraine and the court apparatus have the basic authority regarding the information provision of administrative justice in the system of bodies for ensuring the functioning of the judiciary.

Information support for administrative legal proceedings is provided through the functioning of the relevant information systems. At present, such systems are the Unified State Register of Court Decisions, the Register of Electronic Addresses of State Authorities, their Officials and Officers, the Automated System of Court Documents, the Single Judicial Information and Telecommunication System[25]. According to Article 18 of the CALP, the Single Judicial Information and Telecommunication System operates in courts, which was created for the fulfilment of such tasks as: registration of documents coming to court; determination of a judge for the consideration of a case; exchange of documents electronically between courts, as well as between the court and the participants in the trial; fixing the trial and participation of participants in the trial in a court session in a video conferencing mode. However, the adoption of the provision on this system still requires time and certain measures. Thus, the State Judicial Administration of Ukraine has elaborated a Plan of Measures for the Implementation of the Law of Ukraine on 03.10.2017 N° 2147-VIII "On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts"[26]. Consequently, as V.B. Pchelin emphasizes, the corresponding automated information systems serve as

[24] Про судоустрій та статус суддів: Закон України від 2 червня 2016 р. № 1402-VIII / Верховна Рада України. Відомості Верховної Ради України. 2016. № 31. С. 7. Ст. 545.

[25] Щодо Положення про автоматизовану систему документообігу суду: Рішення Ради суддів України від 26 листопада 2010 р. № 30 / Рада суддів України. Вісник Верховного Суду України. 2010. № 51. С. 5.

[26]. Про затвердження Плану заходів щодо реалізації Державною судовою адміністрацією України Закону України "Про внесення змін до Господарського процесуального кодексу України, Цивільного процесуального кодексу України, Кодексу адміністративного судочинства України та інших законодавчих актів" від 3 жовтня 2017 р. № 2147-VIII: Наказ Державної судової адміністрації України від 22 грудня 2017 р. № 1126 / Державна судова адміністрація України. URL: https://dsa.court.gov.ua/userfiles/file/DSA/DSA_2017_all_docs/17ordersmarch/N_1126.pdf.

important constituent elements of the information provision of administrative legal proceedings, because precisely due to their functioning: the subjective factor is eliminated; tasks on information provision are carried out continuously and promptly; everyone, except for cases provided by law, is provided with the necessary information on administrative legal proceedings and other related data in this area[27]. It is through the information support for administrative legal proceedings that the principles of its publicity, openness, and transparency are implemented.

2. Legal fundamentals of information provision of administrative legal proceedings in Ukraine and the stages of their formation

Under the legal principles of information provision of administrative legal proceedings, V.B. Pchelin proposes to understand the totality of legal acts of various legal force, which, taking into account their hierarchical links, carry out statutory regulation of the activities of authorized entities and the functioning of automated information systems with the operation of information in order to ensure proper activities of administrative courts for the consideration and resolution of public-law disputes.

The current state of legal regulation of information provision of administrative legal proceedings preceded the long period of development of domestic administrative-procedural and information legislation. The general principles of information provision of administrative legal proceedings are determined by the following laws of Ukraine: “On Personal Data Protection” on June 1, 2010; “On Court Fees” on July 8, 2011; “On Appeal of Citizens” on October 2, 1996;

“On State Secrets” on January 21, 1994; “On Electronic Documents and Electronic Document Circulation” as of May 22, 2003; “On Electronic Digital Signature” on May 22, 2003; “On Information “ dated October 2, 1992; “On Access to Public Information” on January 13, 2011; “On Information Protection in Information and Telecommunication Systems” dated July 5, 1994; etc. Special laws and regulations detail the order of information provision of administrative legal proceedings.

The stages of formation of the legal regulation of information provision of administrative legal proceedings, determined by us, are based on large-scale structural changes that have led to global processes in the field of information provision of administrative legal proceedings.

We associate the first stage of the formation of legislation regulating the information provision of administrative legal proceedings with the adoption of

[27] Пчелін В.Б. Правові засади інформаційного забезпечення адміністра- тивного судочинства України. Підприємництво, господарство і право. 2016. № 8. С. 121.

the Code of Administrative Legal Proceedings of Ukraine (hereinafter referred to as CALP) on July 6, 2005. Thus, the first edition of the CALP identified such important components of the information provision of administrative legal proceedings as the principles of transparency and openness of the administrative process (Article 12), the principles of recording the court session by technical means (Article 41), reproduction and printing of the technical record of the court session (Article 44); types of procedural information and its carriers.

The second stage of the formation of legal norms regulating information provision of administrative legal proceedings is connected with the introduction of an automated system of document circulation in administrative courts. The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Introduction of Automated System of Document Circulation in Administrative Courts" on June 5, 2009, No. 1475-VI supplemented the CALP by Art. 15-1 "Automated System of Court Documents". By the Order of the State Judicial Administration of Ukraine as of 03.12.2009 N° 129, the provision "On Automated System of Document Circulation in Administrative Courts"[28] was approved, which expired pursuant to the Decision of the Council of Judges of Ukraine as of 26.11.2010 No. 30, which introduced the Regulation on the Automated System of Document Circulation of the Court[29].

The second stage in the formation of information provision of administrative legal proceedings is also characterized by a fragmentary development of certain rules regulating the information provision of certain categories of administrative cases. One of such legal acts, which caused changes in this area, is the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Elections of the President of Ukraine" as of August 21, 2009, N° 1616-VI, which identified the features of the use of procedural information under the proceedings in cases related to the election of the President of Ukraine[30]. The Law of Ukraine "On Alienation of Land Plots and Other Immovable Property Located Thereon, Which are in Private Property, for Public Needs or Social Necessity" on November 17, 2009,

[28] Про автоматизовану систему документообігу в адміністративних судах: Наказ Державної судової адміністрації України від 3 грудня 2009 р. № 129 / Державна судова адміністрація України. Офіційний вісник України. 2010. № 101. С. 393. Ст. 3566.

[29] Щодо Положення про автоматизовану систему документообігу суду: Рішення Ради суддів України від 26 листопада 2010 р. № 30 / Рада суддів України. Вісник Верховного Суду України. 2010. № 51. С. 5.

[30] Про внесення змін до деяких законодавчих актів України щодо виборів Президента України: Закон України від 21 серпня 2009 р. № 1616-VI / Верховна Рада України. Відомості Верховної Ради України. 2009. № 50. С. 1816. Ст. 754.

N 1559-VI, supplemented the CALP by Article 183-1 "Peculiarities of the Proceedings in Administrative Cases Concerning the Compulsory Alienation of a Land Plot, Other Objects", this article defines a circle of procedural information characteristic for this category[31]. Also, at this stage, there was an extension of the circle of legal norms regulating the information provision of certain stages and types of proceedings in administrative legal proceedings (Article 174, Article 183-2 of the CALP), the circle of information used in administrative legal proceedings was expanded, etc.

At this stage, the formation of the legal regulation of the information provision of administrative legal proceedings also introduces changes to Art. 12 "Publicity and Openness of Administrative Process" regarding the recording of the trial by technical means[32].

The third stage of the formation of the legislation regulating information provision of administrative legal proceedings began on November 22, 2017, with the signing of the Law of Ukraine "On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts". This stage is characterized by the introduction of the electronic justice system at all stages of the process and the transition to the Single Judicial Information and Telecommunication System, the creation of the possibility of remote participation in the trial, the presentation of various documents, familiarization with the case. The specified system provides for the exchange of documents in electronic form between courts, between the court and participants in the trial, as well as recording the trial and participation of participants in the court proceedings in a court session in a video conferencing mode.

In accordance with the said law, the system of organization of legal proceedings in Ukraine undergoes certain changes, namely: obligatory registration of procedural documents in the system on the day they are received; committing any actions in electronic form using an electronic digital signature; automatic determination by the system of a judge or panel of judges for consideration of a particular case in accordance with the procedure established by the Codes; storage of case materials in electronic form; preservation of the right of the parties to the case to apply to the court in paper form and receive the relevant documents after the introduction of the system;

[31] Про відчуження земельних ділянок, інших об'єктів нерухомого майна, що на них розміщені, які перебувають у приватній власності, для суспільних потреб чи з мотивів суспільної необхідності: Закон України від 17 листопада 2009 р. № 1559-VI / Верховна Рада України. Відомості Верховної Ради України. 2010. № 1. С. 3. Ст. 2.

[32] Рішення Конституційного Суду України від 8 грудня 2011 р. № 16-рп/2011 (справа про фіксування судового процесу технічними засобами) / Конституційний Суд України. Вісник Конституційного Суду України. 2012. № 1. С. 31.

obligation to broadcast a court session in a video conferencing mode via the Internet; functioning of the Unified State Register of Executive Documents[33]. The information provided indicates the phased development of the legal norms that are in the CALP and regulate the information relations in the administrative legal proceedings.

CONCLUSIONS

The conditional stages of the formation of the legal regulation of the information provision of administrative legal proceedings determined by us were based on events of key importance for the formation of the information support system of administrative legal proceedings and were accompanied by secondary fragmentary changes that concerned only information provision of certain types of administrative cases.

When investigating the information support of administrative proceedings, it is necessary to distinguish it from the information support of the administrative court. In our view, the information support of the administrative court is a part of the administrative activity for the analysis, planning, and preparation of management decisions, which is an uninterrupted process of processing and using information on the state of functioning of the court apparatus and work of judges, which is carried out with the help of information tools and methods, leads to the formation of information funds, and is aimed at ensuring the proper functioning of the administrative court. At the same time, as information provision of administrative legal proceedings of Ukraine, this is, based on the requirements of the current national legislation, a set of measures related to the circulation of procedural information, which are implemented in the framework of their functions by authorized agents and through the functioning of automated systems and aimed at ensuring the proper functioning of administrative courts on consideration and resolution of public-law disputes.

At the current stage of development of domestic legislation, the legal regulation of information provision of administrative legal proceedings is carried out in accordance with the following laws and regulations: Laws of Ukraine "On the Judiciary and Status of Judges", "On Amendments to Certain Legislative Acts of Ukraine on the Introduction of Automated System of Documentation in Administrative Courts"; "On Access to Court Decisions", "On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Justice of Ukraine, and other legislative acts", the Code of Administrative Legal Proceedings of

[33] Роїк О.В. Електронне судочинство. Чи має Україна шанси? URL: http:// yur-gazeta.com/dumka-eksperta/elektronne-sudochinstvo-chi-mae-ukrayina-shansi.html.

Ukraine, as well as the Regulation “On Automated System of Documentation of the Court”, the Procedure for the Management of the Single State Register of Court Decisions, the Regulation on the Single Database of Electronic Addresses, Fax Numbers (Telefaxes) of the Authorities. Some aspects of the information provision of administrative legal proceedings of Ukraine are regulated at the level of subordinate legislation adopted by the State Judicial Administration of Ukraine, which approve the Typical Job Instructions for Employees of the Administration of the Local General Court; Instruction on the Procedure for Working with Technical Means of Recording Court Proceedings (Court Sessions); Instruction on Case Management in Administrative Courts, etc.

The nearest changes in the system of information provision of the administrative process in accordance with the Action Plan on the implementation of the Law of Ukraine as of 03.10.2017 N° 2147-VIII “On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts” is the introduction of the Unified State Register of Executive Documents and the Single Judicial Information and Telecommunication System.

SUMMARY

The article is devoted to the analysis of scientific concepts and the legal framework of the concept of information support for administrative legal proceedings. Features and peculiarities of information provision for administrative legal proceedings are studied; its differences from information support for the administrative court are stressed. The author’s definitions of the concept of information support for the administrative procedure and information support for the administrative court are proposed. Three stages of formation of national legislation regulating information provision of administrative legal proceedings are singled out. The system of laws and regulations, which provisions consolidate legal fundamentals of information support for administrative legal proceedings, is clarified. Prospective directions for the development of scientific inquiry in the field of information support for administrative legal proceedings and its legal regulation are revealed.

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DOI https://doi.org/10.36059/978-966-397-168-1/146-160

CIVILIZATIONAL CHOICE OF A STATE AND PROBLEMS OF CONSTITUTIONAL REFORM IN UKRAINE

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INTRODUCTION

Statement of the problem. The idea of the distribution of power in the legislative, Executive and judiciary, as one of the modern principles of the legal State, together with the system of checks, balances and limits the authority of the Hetman, to prevent corruption, were quite wisely implemented yet in the Constitution of Pylyp Orlyk 1710 a year. But the problem of harmonization and improvement of the constitutional bases of her organization is not completed and the date.

The urgency of the problem is caused by new turns of the constitutional reform, part of the conceptual provisions of which unveiled in the new bill for amendments to the current Constitution.

Analysis of recent research and publications which discuss this problem shows that the problem of formation and organization of the activities of the legislature and harmonization of legislative process in the spotlight as politicians and scientists[1]. But the existing publication does not exhaust the

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whole complex problem, but rather to form a fundamental basis for subsequent research.

The aim of this work is to identify ways of harmonizing power and the constitutional process.

Our State has made a faithful civilizational choice and today is difficult, but keeps the course on the implementation of the principle of the rule of law. This complex and multi-faceted process must tap as a legal "person-the State and the Organization of the authorities. Many problems of organization of power Ukraine received in succession for another moment of receiving its independence, but through a different. Reboot the individual institutions.

In the structure of the legislature, it is advisable to foresee two chambers: the upper house – the Sejm, the lower House, is the "Vice" (people's Assembly). For constructive updates, the legislature should set the general constitutional rule – a citizen can be a member of the Parliament of not more than two consecutive terms. For selected has who submitted a declaration of their profit and your wealth in General, and confirmed that most of his

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property on the territory of Ukraine. Regulations of the legislature should be simpler and allow promptly take crucial laws.

Explanation of the basic material of the study.

1. Institutional aspects of implementing the ideas of the legal state

Having inherited the legal system built up on the ideology of totalitarianism, the people of Ukraine chose the main path of their development, with the aim of building a democratic, social legal state and consolidating these concepts in the main law of the state.

The fundamental principles of law that need more attention are the principles of separation of powers, rule of law and the responsibility of the state to the individual.

The executive branch of power in Ukraine was a "two-headed", divided into two parallel functioning and often duplicated one another system: the President with the President's Staff and the Prime Minister with the entire apparatus of the Cabinet of Ministers and ministers. The Cabinet of Ministers as a collective body has shown its ineffectiveness when it is necessary to make decisions quickly and bear personal responsibility for them (curtains that contain collective irresponsibility should be sent to the landfill of history). If we turn our attention to the US Constitution, it's easy to see another, simple and effective system of organization of executive power, headed by, of course, the President. It is considered appropriate in the process of constitutional reform in Ukraine to radically simplify the organization of executive power, through the subordination of all ministers directly to the President (by canceling the post of Prime Minister), and the Cabinet of Ministers to unite with the apparatus of the President, significantly reducing the staff of officials.

An important problem of the present constitutional process is the improvement of the activities of local self-government bodies. According to the proposals on changes to the wording of Article 118 of the Constitution of Ukraine, proposed by the draft law "On amendments to the Constitution of Ukraine concerning the decentralization of power", the executive power in the districts and regions is exercised by the prefects appointed by the President of Ukraine. Prefects should be replaced by heads of local state administrations, including so-called governors. The Prefect becomes not so much a "governor" as it will fulfill the functions of prosecutor supervision over observance of laws by local authorities. But will the prefect always be able to achieve legitimacy on the ground, and often to overcome the opposition of local officials, being outside the law enforcement system? Under the requirements of the law prefect can become a kind of "Don Quixote". It will be difficult for

him to put the system in executive power in place for such an “asymmetry” of his competence. This is a problem of power imbalance.

Having inherited the legal system, based on the ideology of totalitarianism and collateral methods of command-administrative jurisdiction, today it is important to this organization, which would become a model of efficient management. Need to solve the problem of the Division of power and business, eliminate corruption schemes of privatization, stopping inflationary processes.

The financial and banking crisis can be largely overcome, if most wealthy people most of their foreign currency savings were placed in banks of Ukraine, rather than export them in the offshore area. The necessary guarantees of such deposits, the new guarantee of investment activity. It could be at the legislative level to consolidate the rule of the inviolability of property on deposits deposited at the National Bank of Ukraine, the prohibition of the imposition on them of arrest and seizure, except charges in crimes against humanity and the financing terrorism. However, should ban be appointed to legislative bodies and bodies of local self-government, or hold positions in the executive authorities individuals who most half his fortune stored in foreign banks. The Executive must be formed not from politicians and leaders from the business, and with professionals and people that meet the requirements of integrity, the society presents to the judges. Business should be deprived of the opportunity to use the power.

The legislative body of Ukraine is the Verkhovna Rada, which should work more qualitatively and not create a situation of permanent reforms. The name of our legislative body should not emphasize its “supremacy”, it would be more appropriate for the Ukrainian parliament to name “Parliament”, in the structure of which there are two chambers: the upper chamber – the “Sejm”, and the lower chamber – “Veche” (people’s assemblies). A constructive update of the legislature should establish a general constitutional rule: a citizen may be a member of the parliament for no more than two consecutive terms. Only those who filed a declaration of their profits and their wealth in general should be allowed to be enlisted, and confirmed that most of his property is in Ukraine, is invested in Ukraine.

Elections to parliament should take place in such a way that the composition of the parliament does not change at once in full, and is renewed every two years by one third (deterrence from radical changes and upheavals), therefore, it is more appropriate to have a bicameral legislative body.

The judiciary should be as independent of the others. The current system of appointment and dismissal of judges does not ensure such an approach. This applies both to courts of general jurisdiction and the Constitutional Court of Ukraine. It would be desirable to return to the election of judges by the people.

The renaissance of the jury should take place in the light of its classical model, which was chosen by England, the United States, Russia and other countries, which showed their merits during the 1864 Statute of Criminal Procedure. In a jury trial, the question of guilty (this issue is decided by the jury in the verdict) should be separated from the issue of punishment (this issue is decided by the judge in the sentence). This judicial power is divided into two mutually controlling parts, which limits the possibilities of abuse, corruption and pressure on the judiciary, strengthens the principle of impartiality and independence of the court and reduces the risk of court errors.

At the same time, the work of peace judges should be restored. Peace judges are a democratically elected judicial body, whose simplicity has provided procedural economy, and its work should deepen the implementation of the idea of humanism in the judiciary.

The state is responsible to the people for their activities, it is so defined in Article 3 of the Constitution of Ukraine. An important form of the implementation of this idea was the Law of Ukraine "On the Procedure for Compensation of Damage Inflicted on the Citizen by Unlawful Acts of Inquiry, Pre-trial Investigation, Prosecutor's Office and Court". Meanwhile, a separate settlement of the procedure for compensation for damage caused to a citizen by unlawful actions of officials of executive authorities and local self-government is needed. Based on the above norms of the Constitution of Ukraine, it is necessary to develop and adopt a systemic legislative act – the Code of Rehabilitation of victims of illegal actions or inaction of the authorities.

At the same time, with the emergence of Ukraine as an independent state, with an increasing separation from the totalitarian past, with the new winds of revolution of dignity, we must take care of the dignity of several lost generations of the past and of the prospect of future generations. Mykola Berdyaev rightly wrote: "The state does not exist to transform the earthly life into paradise, but to prevent it from becoming finally into hell".

One of the important problems is to ensure the inevitability of the responsibility of those who organized and carried out mass political repressions and terror against the Ukrainian population. It would seem appropriate to add section XX of the Criminal Code of Ukraine to article 448 "Political repressions and terror".

To ensure the human rights, it is expedient to introduce in Ukraine a separate National Human Rights Court, whose jurisdiction would include consideration of actions of a person against the organs of state power of Ukraine and their officials. In our opinion, the creation of such a judicial body can improve the implementation of the institution of State responsibility to a person, promote the strengthening of the rule of law in the activities of state authorities.

The National Human Rights Court should be set up in Ukraine based on maximum independence of judges from the authorities. Consequently, the appointment of judges to positions of any branch of government should not be affected. Therefore, most likely, the election of judges will be justifiable by all national elections.

Along with the introduction of amendments and additions to the Constitution of Ukraine, a separate Law of Ukraine "On the National Court of Human Rights" should be adopted. In our opinion, the creation of such a judicial body can improve the implementation of the institution of State responsibility to a person, promote the strengthening of the rule of law in the activities of state authorities.

It is necessary to preserve and multiply the realization of the fundamental principle of a state governed by the rule of law – when adopting new laws, it is not allowed to narrow the existing human rights and freedoms as a guarantee of non-return in a sad past.

The strategic goal of Ukraine is building a social legal State. If the goal is to develop social legal State then the strategy must include the formation of the principles of law, the creation of institutions of checks and balances against the retreat from the goal.

In the current legislation do not quite successfully implemented the principle of legal state-the principle of distribution of power into legislative, Executive and judicial, in order to provide reliable mechanisms of checks and balances against possible abuse, of stagnation, inconsistencies challenges of time.

To ensure human rights, it is advisable to establish in Ukraine, its single National Court of human rights, whose jurisdiction included as time consideration of actions of the person against the bodies of State power of Ukraine and their officials.

To ensure the independence of the Attorney General it is advisable to set the rule that appointment to the post will be appropriate to a constitutional majority, and release only in the application of the Institute of impeachment.

In the legislation of clean power, it is advisable to fix the rule that a government official, who filled out a declaration of their income and wealth that did not match his wages and other legitimate profit, must be released from any position of the ban to run in elective bodies.

Will and the land are the main components of the Ukrainian national idea, integral principles of a legal State, the most fundamental principles of State-building.

In doctrine will highlight the following its structural or purely industry ideas-principles: the freedom to freely and with dignity to live and not be enslaved; personal integrity; freedom to do whatever is not prohibited by law; prohibition of coercion; privacy, right to free thinking; the right to the free creative activity

The land and the will of these people on the basis of natural law. The Earth may not be the commodity because it is not created by the commodity producer and may not have a cost. Its like the freedom you can not to lose or sell. The Earth is a unique treasure of the whole society, which may not be the only means of organization of the land, but also a certain guarantor of sovereignty and the will of the people.

At this stage of nation-building it is advisable to develop a new version of the Constitution of Ukraine, which more clearly realize the principle of a legal State is the principle of the distribution of power, the more clearly legally determine the functions of State bodies, to simplify the Organization of the Executive branch. It is advisable to implement the idea of a bicameral Parliament, Executive authority is fully uploaded to the competence of the President of Ukraine, attach the prosecutors perform oversight functions ensuring the rule of law in the country, to expand the jurisdiction of the Commissioner of the Ukraine on human rights.

In the structure of the legislature, it is advisable to foresee two chambers: the upper house – the Sejm, the lower House, is the "Vice" (people's Assembly). For constructive updates, the legislature should set the general constitutional rule – a citizen can be a member of the Parliament of not more than two consecutive terms. For selected has who submitted a declaration of their profit and your wealth in General, and confirmed that most of his property on the territory of Ukraine. Regulations of the legislature should be simpler and allow promptly take crucial laws.

In the process of constitutional reform in Ukraine radically simplify the Organization of the Executive Branch is to subordinate all Ministers directly to the President (to fill the post of the Prime Minister) and the Cabinet of Ministers, combined with the apparatus of the President, significantly reducing State officials.

An important principle of the legal state is inadmissibility in the adoption of new laws narrowing the existing human rights and freedoms (article 22 of the Constitution of Ukraine). But the legislation does not provided reliable mechanisms of checks and balances against violations of this principle. We propose to establish criminal liability of legislative authorities for voting for laws that narrow the existing rights and freedoms of the person. A similar responsibility should also be established for executive officials and law enforcement agencies for the adoption of regulatory acts and narrowing the human rights and freedoms enshrined in the laws.

2. Doctrinal aspects of ensuring the rule of law in the sphere of justice

European standards of justice system generally accepted European Community reforming definitions, principles, guidelines, instructions, general

regulations, legal positions and precedents set forth in separate conventions, resolutions, recommendations or other international legal acts, as well as in legal positions and precedent the decisions of the European Court of human rights, which are fixed standardized relationship between man and the State and its institutions in the field of Justice.

In providing equitable justice a significant role have the following fundamental principles of criminal proceedings as the rule of law and legal certainty, and formed on this basis of procedural form of criminal proceedings. Procedural form defines in detail the regulated law, mandatory, stable and protected legal regime of the State of proceedings in criminal matters, which aims to create a system of guarantees of truth, freedom and justice, to promote realization of the ideas of legal State in the sphere of Justice.

Procedural form must meet the requirements: feasibility (to provide fast, accurate and effective justice); simplicity (be free from unnecessary bureaucratic formalities); reliability (ensure the achievement of truth and justice); tolerance (to ensure respect for human rights and freedoms); capacity for self-purification, fix committed abuses and errors, clarity, morality and ethics. A simplified procedure of criminal justice, which achieved the necessary savings, is allowed provided the guarantees ensuring the protection of human rights and freedoms and fair justice.

According to paragraph 5 of article 364 of the Criminal Procedure Code of Ukraine "in the court debate the parties of the proceedings can use only evidence which was examined in court session". According to the requirements of part 4 of Art. 95 "the court can justify its findings only on the evidence which were said during the hearing". In part 3 art. 370 of the Criminal Procedure Code of Ukraine it is defined that "the decision, which is made by court on the basis of objectively clarified circumstances which are confirmed by the investigated proofs during trial and estimated by court according to article 94 of this Code. So, paragraph 2 of part 1 of article 468 of the Criminal Procedure Code of Ukraine, article 472 of the Criminal Procedure Code of Ukraine and part 2 of article 473 of the Criminal Procedure Code of Ukraine (regarding the agreement between the prosecutor and the suspect or accused on the recognition of culpability) must not apply and must be canceled as norms which cancel existing substantive guarantee of finding the objective truth and ensure the rights and freedoms of the individual, to narrow existing rights and freedoms of a person and contradict the existing Constitution of Ukraine, international legal acts and the principles and individual provisions of the norms of the Criminal Procedure Code.

We take attention to an interesting decision of the European Court of human rights (ECHR), in the case "Mirovni Inštitut v. Slovenia" from 13.03.2018, in which the ECHR established that the trial must guarantee the

right to a public hearing within the meaning of article 6, paragraph 1, of the Convention, because such principle is a certain means of public control, one of the ways of asserting confidence in the court. Thus, the consideration of cases in simplified proceedings without calling the parties is contrary to the practice of the ECHR. According to the sentences handed down without a comprehensive examination of the evidence in court, it is possible, without a guaranteed right of the defendant to ask questions to witnesses who testify against him and without the participation of the defense in the study of other evidence, to be considered illegal. We can say also that according to article 17 of the Criminal Procedure Code of Ukraine: "Nobody is obliged to prove his innocence of committing a criminal offence and must be acquitted, if the prosecution does not prove the guilt of the person beyond a reasonable doubt".

There are certain objections to limiting the right to appeal a court verdict in the case of a plea agreement. Article 14 of the International Covenant "On civil and political rights" notes that "everyone, who is convicted of any crime has the right to hear his conviction and verdict by a higher court in accordance with the law".

In the case "Rostovtsev against Ukraine" (verdict from 25.07.2017), the court determines that "any restriction of the right of viewing contained in national legislation has to pursue a legitimate aim and not to violate the essence of this right by analogy with the right of access to court, which is enshrined in article 6, paragraph 1 of the Convention".

Wider implementation of the institutions of production on the basis of agreements into the investigative and judicial practice needs strengthening of safeguards to protect the rights and freedoms of the participants of the process; development and implementation better procedure of investigation and court consideration of the relevant cases taking into account the rule of law. The Institute of "effective repentance" and procedural forms of production on the basis of agreements need coordination. The plea agreement cannot be applied in criminal proceedings of Ukraine because of its contradiction to the norms of the Constitution of Ukraine. However, the procedural form of application of the Institute of effective repentance should be required. The agreement about the reconciliation of the suspect with the victim should be more widely applied. Taking into account the formation of the institution of criminal offenses, such agreements should become an unquestionable basis for the closing of the proceedings by the bodies of inquiry at the pre-trial stages of the process and by the court at any stage of the trial. Prospects for further study of the problem mean the development of a conceptual model of the Institute of active repentance and a separate Chapter of the Criminal Procedure Code of Ukraine which will be devoted to special forms of criminal proceedings.

The norm “Exclusively a lawyer shall defend against criminal charges” (article 131-2) is fixed in the Constitution of Ukraine by the newly elected Parliament of Ukraine, under the slogans of abolishing the monopoly of lawyers to perform the functions of protection and legal assistance in 2019. On the one hand, the “advocate’s monopoly” in criminal proceedings leaves unchanged and, on the other hand, the concept of “prosecution” in the law is insufficiently legally certain, because in the pre-trial stages of criminal proceedings against persons who are held to responsible, the act of notification of suspicion is done. So the question about subjects of protection from the ongoing public act of suspicious.

In the modern criminal process, a lawyer, as a representative of a human rights institution, which should do the function of legal assistance, can take part in criminal proceedings in three different statuses: 1) as a defender of a suspect, accused, convicted, acquitted, a person of whom compulsory medical or educational measures are envisaged and person who can be sent in extradition to a foreign state (article 45 Code of the criminal procedure of Ukraine), a person against whom the Institute of rehabilitation is applied in criminal proceedings; 2) as a representative of the victim (article 58 of the Code of criminal procedure of Ukraine) civil plaintiff, civil defendant; a third party (article 63 of the Code of criminal procedure of Ukraine), and as a the representation of persons, property of whom can be arrested (article 64-2 of the Code of criminal procedure of Ukraine); 3) as a legal assistant (consultant) of witness (article 66 of Code of criminal procedure of Ukraine) –legal assistance or in other words legal legal counsel.

None of the outlined competencies in Criminal procedure law has received a proper systemic legal definition yet. The law has not adequately regulated both the legal aid function as a whole and the protection function, which creates many problems in ensuring proper justice.

None of the outlined competencies in Criminal procedure law has received a proper systemic legal definition yet. The law has not adequately regulated both the legal aid function as a whole and the protection function, which creates many problems in ensuring proper justice.

These provisions create a certain competition of legal norms of national legislation and international legal acts, they are internally contradictory and controversial. First, the requirement of Art. 131-2 of the Constitution of Ukraine that “only a lawyer shall defend against criminal charges” does not mean the establishment of a monopoly of lawyers to perform the function of protection in criminal proceeding. So according to part 2 of article 42 of the Code of criminal procedure of Ukraine the guilty person is a person, the indictment about him is carried out to the court, according to the article 291 of Code of criminal procedure of Ukraine. Under the current Code of criminal

procedure of Ukraine, protection from the act of suspicion is carried out at the pre-trial investigation, and protection from prosecution is possible only in the judicial stage of the process. Consequently, the provisions of the constitutional regulations that "exclusively a lawyer shall defend against criminal charges" do not exclude the protection of a suspect (a person, who has not accused yet) by another lawyer who is not an advocate. Secondly, this novella does not meet the requirements of art. 22 of the Constitution of Ukraine, concerning inadmissibility of restriction of the existing rights and freedoms at adoption of new laws, and also it contradicts the decision of the Constitutional Court of Ukraine, the basic international legal acts and case practice of ECHR.

The Constitutional Court of Ukraine in its decision on the 30-th of September, 2009 in the case of the constitutional appeal of the citizen Golovan Igor Vladimirovich concerning the official interpretation of the provisions of article 59 of the Constitution of Ukraine (the case of the right to legal aid), determined: 1. The provision of the first part of article 59 of the Constitution of Ukraine "everyone has the right to legal assistance" should be understood as a state-guaranteed opportunity for any person, regardless of the nature of his legal relations with state bodies, local governments, associations of citizens, legal entities and individuals to freely, without undue restrictions to receive assistance on legal issues in the scope and forms as he requires; 2. A person during interrogation as a witness in the bodies of inquiry, pre-trial investigation or giving explanations in legal relations with these and other state bodies has the right to legal (juridical) assistance from a person elected at his own request in the status of an advocate, this situation does not exclude the possibility of obtaining such assistance from another person, if the laws of Ukraine don't have restrictions.

Legal attorney can act as a lawyer or his assistant and other specialist in the field of law, in respect of which there are no statutory grounds for withdrawal from participation in the case.

Legal attorney has the right to:

1) be notified about the procedural status of the person who needs a legal assistance;

2) to get acquainted with the document about the call or other documents about presence of the person in the law enforcement Agency;

3) to provide to the personб to whom the legal aid is provided, consultation on legal questions in enough volume and forms, including confidentially within time, which does not infringe the rights of other persons;

4) to apply for a change in the procedural status of a person, if it does not comply with the requirements of the law;

5) to declare, in the presence of the bases provided by the law, challenge to the detective, the investigator, the prosecutor, the investigating judge, the judge;

6) to apply for the application of security measures provided for by law to the person to whom legal assistance is provided;

7) to be present at carrying out investigative and other procedural actions which are carried out with participation of the person to whom the legal aid is rendered;

8) to explain to the person who is provided with legal assistance the right to refuse to testify and answer questions about himself, his family members and close relatives;

9) during carrying out procedural actions to put questions, to submit the remarks and objections concerning the order of carrying out actions which are brought in the Protocol;

10) get acquainted with the protocols of investigative (search) and other procedural actions performed with his participation and make written comments, clarifications and additions;

11) to apply technical means for fixing of results of procedural actions in which he is participant;

12) to submit evidence to the investigator, prosecutor, investigating judge, court;

13) to object to illegal actions of the detective, the investigator, the prosecutor, the investigating judge, the judge;

14) to provide legal assistance to a person in the preparation of written applications, complaints, petitions or claims, or with the consent of such person to make on her behalf written documents of a legal nature;

15) to file complaints against decisions, actions, inaction of the detective, the investigator, the prosecutor concerning interests of the person to whom the legal aid is rendered.

Legal attorney is obliged: to respect the rights and freedoms of human and citizen; not to impede establishment of the truth; to observe the principle of fair trial and under no circumstances to inform the court obviously incredible or unreliable information; not to disclose without the permission of the investigator, prosecutor, court, pre-trial investigation data and other information which has become known to him in connection with participation in criminal proceedings and which is the secrets protected by the law; to prevent the disclosure in any way of confidential information which has been entrusted to him or has become known in connection with the performance of his duties; to avoid committing acts which would harm the interests of the person assisted or the rights and freedoms of others."

CONCLUSIONS

In the implementation of constitutional and legislative reform, it is important to strictly adhere to the principles of the rule of law, legal certainty,

and in the legal positions of the European Court of human rights, the principle of proportionality. Requires the development of a conceptual model of the new Constitution of Ukraine and the procedure for its adoption by popular referendum. The implementation of this order the adoption of the Basic Law of the State.

SUMMARY

The adoption of the Constitution of the State through the national referendum is a legitimate and effective way to harmonize the legislative power in General and in particular. While the Basic Law of the State, gets its jurisdiction directly from the people and becomes a higher power, and the authorities are no longer able to change it on your own. The authorities should not be "Supreme", and serve as the law and ensure the rule of law, the person and the citizen.

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DOI https://doi.org/10.36059/978-966-397-168-1/161-177

ADMINISTRATIVE LIABILITY FOR VIOLATION OF LEGISLATION IN THE SPHERE OF INTELLECTUAL PROPERTY

Todoshak O. V.

INTRODUCTION

The objective need to overcome infringements of intellectual property rights is explained, first of all, by the need to ensure the legal rights and interests of the subjects of these rights, as well as by creating conditions for compliance with the law on fair competition in business activity and the promotion of intellectual creative work. After all, in order for intellectual property to really play a significant role in the life of society and to ensure its development, a reliable system of its legal protection, including administrative and legal ones, and effective protection are required. The problem of administrative responsibility for infringement of intellectual property rights in modern conditions requires a deeper, more comprehensive, comprehensive analysis in order to identify its peculiarities. That is why there is an urgent need to apply both legislative and enforcement measures to create a coherent and effective system of protection and protection of intellectual property, an important place for administrative coercion and one of its types – administrative responsibility for infringement of intellectual property legislation.

Administrative responsibility – is a complex and multifaceted phenomenon that covers administrative and legal norms, administrative legal relations, norms containing administrative sanctions, offenses with their statistical elements (object, objective party, subject and subjective) party), the activities of law enforcement agencies and their officials, etc.

The concept of "administrative responsibility" should integrate the following elements: it is a type of public relations, a reaction to the offense, and the application of appropriate sanctions, and an obligation to be constrained by the application of sanctions, and to reveal a compulsory method of government. In one definition, it is impossible to cover all the elements and features that characterize administrative responsibility.

The concept of administrative responsibility should synthesize two main definitions: the first characterizes administrative responsibility as an objective category, which expresses the state's response to an administrative offense, and the second – as a subjective-personal category, which characterizes it as a set of rights of the person being punished.

Administrative responsibility should be understood to mean all measures of administrative and legal influence applicable to a person who has committed an administrative offense. These measures are implemented in legal relations that arise and objectively exist from the moment of committing an administrative offense – administrative-procedural law enforcement relations, which last for a certain period of time and cover all the main stages of proceedings in cases of administrative offenses, and their main subjects are the competent authority, vested with the power of jurisdiction, and the offender[1].

1. General principles of administrative responsibility for infringement of the legislation in the field of intellectual property

The successful solution of the problem of administrative and legal protection of intellectual property rights depends on the preservation and multiplication of the intellectual capital of the state, the growth of its international authority, the degree of development of its civilization, and in the end, the level of democracy of society. That is why the field of intellectual property causes increased interest on the part of consumers of the results of intellectual creative activity, entrepreneurs, businessmen, different levels of executives, etc.

One of the types of legal responsibility is administrative liability, which is why when disclosing the concept and nature of administrative responsibility, it is necessary to take into account the general features and features of legal liability. However, administrative responsibility as a species phenomenon is inherent in certain features related to the basis of its occurrence, the nature of the measures of its impact and the procedure for its application. Administrative responsibility can be considered as the duty of the person who has committed an offense, stipulated by the norm of administrative law, to bear the burdensome consequences of personal, property and other nature[2].

Thus, based on the general definition of legal responsibility, administrative responsibility for infringement of intellectual property law, in general, is the implementation of sanctions provided for by law for the administration of an administrative offense in the field of intellectual property.

The main features of administrative responsibility are that it: is a means of safeguarding the state order; normatively defined and consists in the application (implementation) of sanctions of legal norms; is the result of a

[1] Миколенко О.І., Стукаленко В.А., Стукаленко О.В. Адміністративна відповідальність посадових осіб за порушення виборчого законодавства : навч. посіб. Кіровоград : Полімед-Сервіс, 2014. 170 с.

[2] Олійник В.І. Адміністративна відповідальність за правопорушення в галузі рослинного світу України : монографія. Харків : НікаНова, 2015. 221 с.

guilty anti-social act; is accompanied by state and public condemnation of the offender and his act; is connected with coercion, with negative consequences for the offender (moral or material nature), which he must suffer, and is also implemented in appropriate procedural forms.

Thus, administrative liability for infringement of intellectual property law includes, on the one hand, all the essential features of legal liability, in particular:

– it is a state-legal compulsion (compliance with the general rules of imposition of administrative penalties for administrative offenses during their application are manifested in the strict observance of the principles of the rule of law, legality, individualization of responsibility, etc.);

– the administrative responsibility for violation of the legislation in the field of intellectual property is normatively expressed and manifested in the application and implementation of sanctions of legal norms (the measures of administrative liability contain the final legal assessment of the offense committed by the subject of the offense, which is specified in the decision of the court in the application of the court ;

– this responsibility has a clear basis – an offense;

– it is imposed in a strictly established procedural order (in case of violation of property and non-property rights of the subjects of intellectual property rights to their respective objects of intellectual property, the court applies legal rules that determine the scope, limits, grounds of administrative responsibility, content and procedural forms of implementation of specific administrative penalties);

– it involves the aggravating consequences of property, moral, personal and other nature for the offender (administrative liability causes adverse effects on the offenders of intellectual property rights by imposing a fine and confiscation, deprivation or restriction of his rights).

The characteristic and specific features of administrative responsibility include, first of all, the fact that its basis is a special type of offense – an administrative offense. Administrative responsibility is expressed in the application of certain types of administrative penalties, specific in content and different from the measures of criminal punishment, disciplinary influence and property liability[3].

Administrative liability for infringement of intellectual property law is characterized by a number of specific features (related to the basis of its origin, the nature of its measures of action and the procedure of application), which allow it to be separated from other types of liability. First of all, the

[3] Остапенко Л.О. Адміністративна відповідальність за правопорушення, вчинені в сфері охорони праці : монографія. Львів : Растр-7, 2016. 223 с.

most important feature of administrative responsibility is that in most cases it is used in extrajudicial procedural forms.

Public administration is the responsibility of public authorities. Due to the specificity of the intellectual property objects, the legislator has restricted the range of persons authorized to hear such cases. Those charged with the misuse of intellectual property objects are subject to the administrative penalties provided for in Art. 24 Coupe.

The main source of norms that establish administrative liability for the illegal use of intellectual property is the Code of Administrative Offenses (CUAP), which lists administrative offenses, administrative penalties and authorities that are authorized to apply them. The rules on administrative liability for infringement of intellectual property rights are contained in Chapters 6, 9, 12 of the Code of Administrative Offenses. Such administrative offenses can be attributed to Art. 51-2 (Chapter 6) Art. 107-1 (Chapter 9) and Art. Art. 156-3 (as regards intellectual property), 164-3, 164-6, 164-7, 164-9, 164-13 (Chapter 12). In parallel with the Administrative Code, the Customs Code of Ukraine is in force, which contains rules that establish administrative liability for violation of customs rules. Special legal legislation in the field of intellectual property is also part of the legal acts containing administrative liability issues, but the rules of this legislation do not impose administrative sanctions for the illegal use of intellectual property objects.

Thus, administrative responsibility for infringement of intellectual property law is the responsibility for a particular type of offense, and therefore all the features and principles of a coherent institution of administrative responsibility are inherent in it.

2. Administrative offense in the field of intellectual property as a basis of administrative responsibility

The basis for the application of administrative responsibility for infringement of intellectual property rights is a homogeneous group of administrative offenses – administrative offenses in the field of intellectual property. The quality of interpretation of the concept of an administrative offense depends on the resolution of specific issues of administrative law, such as grounds of administrative responsibility, determination of the range of its subjects, qualification of administrative offenses and the application of administrative penalties for their commission. Each administrative offense is committed by a specific person or group of persons at a specific place and time and is contrary to the applicable legal norm, characterized by clearly defined features.

Article 9 of the Code of Administrative Offenses (CUAPA) defines an administrative offense as unlawful, guilty (intentional or negligent) act or

omission that encroaches on public order, property, rights and freedoms of citizens, the established administrative procedure and for which the law provides for administrative liability[4]. This article defines the general concept of "administrative offense", reveals its material content, legal nature and social nature, analyzing which can formulate the main features of administrative offense, in particular, and offenses in the field of intellectual property. Objective signs of an administrative offense are its social harm, wrongfulness and punishment, and subjective – guilt and subjectivity. Only in the presence of all these signs can one speak of qualifying an individual's act as an administrative offense and resolving the issue of bringing him to administrative responsibility.

The first sign of administrative offenses in the field of intellectual property is their social harmfulness, which is the violation of intellectual property rights and causing harm (material and intangible) or creating a threat to the subjects of those social relations that have arisen from the use of the results of intellectual activity are protected by administrative liability law. Public harmfulness of an administrative offense means that it causes harm to certain social relations, which are protected by legal norms: state and public order, property, rights and freedoms of citizens, established management order[5]. This damage can be both material and other (moral, organizational, etc.). The act or omission of the entity causes or threatens to cause harm (material, moral, organizational or other) to the objects of administrative and legal protection, in this case an encroachment on intellectual property rights, such as copyright or trademark rights. Public harmfulness in these cases is an objective property of such offenses and a real violation of the intellectual property rights relationship, constituting "the destruction of the social wrongdoing in the object – relations of the right to intellectual property objects"[6].

An administrative offense should be considered a socially harmful act with a degree of danger less than that found in the criminal offense. As for the assessment of the public harmfulness of administrative violations of intellectual property rights, it occurs at two levels: legislative (to date, the legislator has already placed most of the composition of these offenses in the Code of Administrative Offenses (Art. 51-2, 107-1, 156-3 (in relation to intellectual property objects), 164-3, 164-6, 164-7, 164-8, 164-9, 164-13) and

[4] Кодекс України про адміністративні правопорушення : Закон України від 7 грудня 1984 р. № 8073-X. URL.: http://www.zakon.rada.gov.ua/go/80731-10.

[5] Олішевський О.В. Соціально шкідливі наслідки сприйняття інформації, що містить пропаганду культу насильства і жорстокості. *Форум права.* 2016. № 2. С. 135–139.

[6] Селіваненко В.В. Форми порушення та захист прав суспільства на об'єкти інтелектуальної власності у сфері охорони здоров'я. *Часопис Київського університету права.* 2013. № 3. С. 223–228.

law enforcement (when the authorities assess its degree in a particular in case of infringement of intellectual property rights).

Social harmfulness belongs to evaluation concepts, and the criterion of its degree is the objective and subjective features of the composition of the administrative offense in the field of intellectual property: a specific object of intellectual property (the result of a person's literary and artistic activity, the result of his scientific and technical activity or the result individualization of goods (services) and their manufacturers), consequences, method of committing an administrative offense, guilt, motive and purpose. The damage caused by the infringement in the field of intellectual property finds its assessment in the sanction of the legal norm.

Administrative offenses in the field of intellectual property that directly cause damage are manifested in the real, material result (they are called offenses with material composition). These include, in particular, the display and distribution of films without a state certificate for the right to distribute and display films (Art. 164-4 of the Code of Administrative Offenses), the illicit distribution of copies of audiovisual works, phonograms, videograms, computer programs and databases (Art. 164-9 KUPAP).

Administrative offenses, which involve only danger or the possibility of causing harm and encroach on the legal form, are formal. Such are, for example, infringement of intellectual property rights (Art. 51-2 of the Code of Administrative Offenses), violation of the legislation governing the production, export, import of wild game for laser reading systems, export, import of equipment or raw materials for their production (Art. 164 -13 CUP).

The nature of the act (repetition or gross misconduct) is also affected by the extent of the public nuisance of the offense, which accordingly leads to increased administrative responsibility. Therefore, the importance of social harmfulness as a material feature of an administrative offense in the field of intellectual property is that it is the main objective criterion for recognition of an act as administratively illegal, allows to classify a specific administrative offense, defines the boundary between it and other offenses (in particular, a crime). one of the general principles of individualization of administrative responsibility and punishment, and also determines the existence of grounds for exemption from administrative responsibility. awareness.

The legal form of expression of social harmfulness of an administrative offense in the field of intellectual property is its illegality, which indicates the illegality of such acts and their prohibition in the legislation on administrative responsibility. Unlawfulness is an intrinsic property of any administrative misconduct, which consolidates both the negative assessment of a certain act by the legislator, as a representative of the state, and the actual fact of leveling the

legal order that determines the relevant attitude to the person-delinquent[7]. The sign of the unlawfulness of an administrative offense stems from the fact that it is prohibited by law as causing damage or threatening to cause such harm.

Unlawfulness, as a sign of an administrative offense in the field of intellectual property, provides for a direct indication of this in the law, that is, it excludes the possibility of administrative liability for actions not provided for by the legislation on administrative offenses. An administrative offense recognizes only such unlawful act for which the law provides for a special type of state coercion – administrative responsibility. Unlawfulness of an administrative offense is a violation of mandatory rules established by the state. An administrative offense can be manifested in both unlawful action and unlawful inaction.

Administrative unlawfulness is closely linked to public harm and is an objective manifestation of the real harmfulness of actions for public relations in the field of intellectual property and its legislative evaluation. In addition, administrative unlawfulness is a legal feature of public harm, and its degree determines the objective limits of unlawfulness, beyond which the question of criminalization of this act already arises[8]. Allocation of administrative unlawfulness as a mandatory sign of an administrative offense is a concrete expression of the principle of legality in administrative law, since administrative liability is subject only to the person who committed a socially harmful act (the subject of misconduct), ie an act of specific, conscious and volitional behavior in the form of inaction, which is contrary to administrative law. Due to the presence of such a feature of administrative offenses in the field of intellectual property as unlawfulness, among all possible human acts in the specified area, those offenses which are recognized administratively punished and which are the subject of legal regulation of administrative law are distinguished. In addition, the function of administrative wrongdoing lies in its importance for distinguishing administrative offenses in the field of intellectual property from related administrative offenses.

Another obligatory feature of administrative offenses in the field of intellectual property, which is detected at the time of the offense and reflects its internal psychological content, is the presence of guilt. Thus, an administrative offense is not only a socially harmful, unlawful, but also a guilty act, that is, a result of the offender's will and mind. Guilt implies the presence of a person's own mental

[7] Калєніченко Л.І. Об'єктивно протиправне діяння як фактична підстава юридичної відповідальності (аналіз галузевого законодавства). *Вісник Харківського національного університету внутрішніх справ.* 2016. Вип. 4. С. 19–28.

[8] Письменський Є.О. Реалізація кримінально-правової політики шляхом криміналізації та декриміналізації: аналіз поточних законодавчих ініціатив. *Часопис Київського університету права.* 2015. № 1. С. 230–234.

attitude to the relevant act and its consequences[9]. Guilt forms are of great legal importance. Acting deliberately, the offender is aware of the unlawful nature of his act, anticipates and desires (direct intent) or knowingly permits (indirect intent) the occurrence of harmful consequences. An administrative offense may also be committed by negligence. Negligence is manifested in the form of overconfidence or negligence.

Administrative offense in the field of intellectual property is the unity of objective and subjective: act and mental (conscious and volitional) attitude to it. As an act cannot be disclosed out of touch with a person's mental attitude to it, so does the meaning of a mental attitude not be determined out of touch with the nature of the act: the result of the intellectual creative activity that the person is afflicting, the way of the assault, the consequences, and others. its objective features. Wine largely determines the nature of the act and the degree of its severity and is an important criterion for recognizing it as an administrative offense. Without fault, there is no wrongdoing, and therefore there can be no administrative influence for one or another act against intellectual property. Thus, the presence of the offender's guilt in one form or another is an important and necessary sign of an administrative offense, which facilitates the qualification and clarification of qualifications, determines the objectivity of the approach in determining the degree and type of aggravation charged to the perpetrator.

An important feature of an administrative offense in the field of intellectual property is its administrative punishment, which is understood to mean the threat of punishment for a given offense contained in administrative sanctions in due cases. A specific act (act or omission) can be recognized as an administrative offense only if its law provides for administrative liability[10].

It is an outward sign of misconduct – punishment. Punishment, by its very nature, stems from public harm and administrative wrongdoing: it therefore becomes administratively punishable, since it is socially harmful and envisaged by administrative law as an offense. This feature allows to distinguish the offense from other unlawful acts, the implementation of which does not entail the use of administrative penalties.

In addition, it should be noted that the character of administrative punishment is closely related to the legal consequences of applying administrative liability measures.

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[9] Венгер Ю.В. Вина як суб'єктивна підстава адміністративної відповідальності юридичної особи за вчинене правопорушення у сфері стандартизації. *Науковий вісник Міжнародного гуманітарного університету. Серія : Юриспруденція.* 2015. Вип. 13 (1). С. 85–87.

[10] Чишко К.О. Адміністративно-правова кваліфікація та кваліфікація адміністративного правопорушення (проступку): поняття, ознаки, передумови. *Вісник Харківського національного університету внутрішніх справ.* 2015. Вип. 3. С. 150–158.

Without any administrative sanction, it is impossible to combat any offense[11]. However, this does not mean that the penalty provided for in the sanction must necessarily be applied to the person who committed the act formulated in the disposition of a particular article. A person recognized as an offender may be released from administrative liability. In some cases, the presence of all signs of an administrative offense in a person's act does not mean that the act automatically entails the administrative liability provided for by the Code of Administrative Offenses. For example, according to Art. 18 of the Code of Administrative Offenses, an act that contains all the features of an administrative offense is not such if it was committed in an emergency. With regard to intellectual property, an urgent need may arise in the following cases: in the case of using the patented claims without the consent of the patentee to create a medicinal product necessary for the preservation of human life and health[12]. However, the urgency does not allow for the use of procedures for obtaining a patent owner's license or a compulsory license.

And the last sign of this type of administrative offense is their subjectivity. Administrative offenses in the field of intellectual property are acts committed by the subject of the offense, since not every person who commits a publicly harmful administrative-unlawful act is subject to administrative responsibility[13]. She should be aware of and manage her own actions, reach a certain age, and so on. The notion of subjectiveness of administrative offenses in the field of intellectual property is important in the context of the development of the theory of administrative misconduct, the improvement of administrative and jurisdictional activities for their prevention, as well as ensuring the coherence of administrative enforcement measures with the nature of the respective offenses.

The peculiarity of the administrative legislation on intellectual property lies in the fact that its rules provide for both administrative responsibility for committing illegal actions on the objects of intellectual property and protection of the property interests of the subjects of intellectual property rights whose rights are violated by such actions. Due to the fact that the legal relations with respect to certain intellectual property objects are regulated by

[11] Колпаков В.К. Фактичні ознаки та юридичний склад адміністративного проступку: поняття та розмежування. *Вісник Запорізького національного університету. Юридичні науки.* 2016. № 3. С. 160–170.

[12] Микитин В.І. Окремі аспекти наслідків порушення прав інтелектуальної власності. *Науковий вісник Херсонського державного університету. Серія : Юридичні науки.* 2016. Вип. 2(1). С. 79–83.

[13] Фролов О. С., Васильєв І. В. Зміст та обсяг концепту "суб'єкт адміністративного правопорушення". *Держава і право. Юридичні і політичні науки.* 2014. Вип. 66. С. 105–117.

special laws, the administrative law should be guided by the provisions of that special law, which provides for the protection of the personal non-property and property rights of authors and their successors (rights related the creation and use of works of science, literature or art), as well as the rights of performers, producers of phonograms and videograms, and of broadcasting organizations and inventors' rights. Thus, for the qualification of an administrative offense in the field of intellectual property, it is necessary to have clearly expressed its features.

Thus, an administrative offense in the field of intellectual property can be defined as envisaged by the legislation on administrative responsibility socially harmful, unlawful, guilty act (act or omission) committed by the subject of such unlawful acts that encroach on the set of property and personal non-property rights to intellectual property results. creative activity of a person (results of literary and artistic activity (objects of copyright (literary and artistic works, computer programs, databases x) and related rights (performance, phonograms, videograms and programs (broadcast))), scientific and technical creativity (invention, utility model, industrial design, scientific discovery, layout of integrated circuits, innovative offer, plant variety, animal breed and commercial secrecy) and the individualisation of goods (services) and their manufacturers (trade name, trademark and geographical indication). Committing a person of an administrative violation in the field of intellectual property containing the composition of an administrative violation is a ground for bringing him to administrative responsibility and applying to it appropriate administrative penalties, depending on the type of offense in relation to specific intellectual property objects, responsibility for violation of rights for which are established by law.

3. Legal structure of administrative offenses in the field of intellectual property

For the proper qualification of administrative offenses in the field of intellectual property, it is essential to characterize the characteristics of their composition. Thus, the composition of an administrative offense is the set of objective and subjective features established by the legislation on administrative liability that determine a specific socially harmful act by an administrative offense.

To all structures of administrative offenses in the field of intellectual property (Art. 51-2, 107-1, 156-3 (as regards the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9, 164-13), as well as other administrative offenses, there are such elements as objective signs (they are the totality of the generic object and the objective side of the compositions of these administrative offenses) and subjective signs (a set of relevant entities

and a subjective side), which in their unity form the administrative offenses of tollgates group.

It is advisable to begin characterizing the objective features of the composition of administrative offenses in the field of intellectual property with the disclosure of their ancestral object – what the offender is afflicted with and why it causes or may cause harm. It is the object that allows to determine the social essence of an administrative offense, to find out its socially harmful consequences and the mechanism of causing harm, promotes the correct qualification of the act, as well as to differentiate it from related socially harmful acts. In our view, warehouses of administrative offenses have their own single generic object – public relations of intellectual property, which are protected by the law on administrative responsibility.

Thus, in our opinion, there are sufficient legal grounds to separate intellectual property relations into a separate independent group of public relations. But the generic object of administrative offenses in the field of intellectual property is not only their entirety, but only part of it, which is protected by the Code of Administrative Offenses, while acquiring the status of intellectual property law enforcement relations.

Thus, the generic object of the group of administrative offenses under investigation is the law enforcement relations of intellectual property, which feature a number of characteristic features. First, they are the subject of intellectual property – the results of intellectual creative activity. Secondly, they are a continuation of the intellectual property regulatory legal relationship and arise as a result of administrative offenses of the relevant Special Part of the Code of Administrative Offenses, exercising the right of an intellectual property subject to an administrative offense, to be compulsorily and indirectly protected. Thirdly, they are aimed at bringing the offender to administrative responsibility for the committed. Thus, the generic object of the composition of administrative offenses defined in the above articles is the public relations of intellectual property, which are protected by the law on administrative responsibility.

The objective side of administrative offenses under Art. Art. 51-2, 107-1, 156-3 (in the part concerning intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the Administrative Code, represents a set of features that characterize IPR infringement as outward conduct. The objective side is understood by scholars as a system of features prescribed by the rule of law, which characterize the outside of an administrative offense. The attributes of its objective side include acts in the form of actions or omissions, its socially harmful effects and the causal link between the act and its consequences.

In the Code of Administrative Offenses unlawful acts in the field of intellectual property are defined as “infringement of rights” (art. 51-2), “violation

of statutory requirements" (art. 156-3), "unfair competition" (art. 164-3), "infringement conditions "(vv. 164-7)," illegal distribution "(vv. 164-9)," violation of the law "(vv. 164-13). An analysis of the dispositions of these articles convinces that administrative offenses can be committed through action, but since the wording "other deliberate violation" (v. 51-2) contains an inexhaustible list of actions, the question arises as to the possibility of committing these offenses by inaction[14]. In the dispositions of the articles under study, the domestic legislator, using the notion of "illegal use" as well as illegal "demonstration", "dissemination", etc., reveals their content without giving a complete or even partial list of illegal acts that should be considered unlawful.

It should also be borne in mind that each type of intellectual property is subject to the law by the legislator. Typical infringements of copyright and related rights are: the commission by any person of actions that violate the personal non-proprietary rights of copyright subjects and (or) related rights; piracy in the field of copyright and (or) related rights; plagiarism; importation into the customs territory of Ukraine without the permission of copyright holders and (or) related rights, copies of works (including computer programs and databases), phonograms, videograms, broadcast programs; committing acts that threaten copyright and / or related rights; any actions deliberately aimed at circumventing the technical means of copyright protection and (or) related rights, including the manufacture, distribution, importation for the purpose of distribution and use of the means for such circumvention; falsifying, altering or deleting information, including in electronic form, about rights management without the permission of the copyright entities and / or related rights or the person exercising such management; distribution, importation into the customs territory of Ukraine for the purpose of distribution, public notification of copyright and (or) related rights, from which, without permission of copyright and (or) related rights, information on management of rights has been removed or altered, in particular in in electronic form[15].

Infringement of intellectual property rights on the results of scientific and technical creativity is considered, for example, disclosure without the consent of the author or the applicant of the essence of the invention, utility model or industrial design before the official publication of information about them[16].

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[14] Самбор М.А., Самбор А.М. Інші та подібні дії як елемент складу адміністративного правопорушення та його вплив на кваліфікацію діяння як адміністративного проступку. *Науковий вісник Дніпропетровського державного університету внутрішніх справ.* 2014. № 3. С. 143–160.

[15] Криволапов Б.М., Тесленко Н.В. Порушення авторського права як актуальна проблема для України. *Актуальні проблеми міжнародних відносин.* 2015. Вип. 124 (1). С. 85–93.

[16] Бондаренко О.О. Основні напрями удосконалення національного законодавства у сфері охорони промислових зразків в Україні. *Науковий вісник Міжнародного гуманітарного університету. Серія : Юриспруденція.* 2015. Вип. 15(2). С. 4–7.

The unauthorized use of a trade mark is recognized as the unauthorized manufacture, use, importation, offering for sale, sale, other introduction into civil circulation or storage for the purpose of the trade mark, or the determination of similar things up to the mixing of homogeneous goods. It shall be considered an offense to use, without the consent of the owner, both the said images themselves and similar images if the latter are used for goods which are homogeneous with those for which the image is intended[17]. According to the construction of the objective side of intellectual property offenses, administrative responsibility for these offenses also arises in the case of any other intentional infringements of intellectual property rights[18].

Subjective features of administrative offenses in the field of intellectual property are the unity of the subject and the subjective side, and their specificity is determined by the peculiarities of the subject of these offenses, elements of which are various objects of intellectual property that are actively used in business activities of enterprises and organizations.

Another subjective feature of the composition of administrative offenses in the field of intellectual property is their subjective side, which is defined as the internal side of administrative offenses, which covers the mental attitude of a person to a socially harmful act, and its consequences[19]. The subjective party, in turn, has mandatory and optional features. A mandatory feature of the subjective side of administrative offenses is wine. Consequently, the perpetrator of the infringement of intellectual property rights was aware that he was illegally using the objects of intellectual property rights, attributing authorship to them or otherwise violating the intellectual property rights, foreseeing the possibility of causing material damage, and wished or tolerated such consequences[20].

Optional features of the subjective side of administrative offenses in the field of intellectual property are the motive and purpose of the perpetrator. That is, the perpetrator, in violation of intellectual property rights, was aware that he was illegally using the objects of intellectual property rights, assigning

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[17] Коваленко Т.В. Торговельна марка та авторське право. *Теорія і практика інтелектуальної власності.* 2016. № 4. С. 51–58.

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authorship to such objects or otherwise intentionally violating the rights to intellectual property objects, provided for the possibility of causing material damage and wanted or wanted allowed for these consequences.

That is, obligatory signs of administrative offenses in the field of intellectual property are their social harmfulness (it is manifested in causing harm to public relations in the sphere of intellectual property or creating a threat of its infliction), administrative illegality (illegality of unlawful acts in the field of intellectual property, liability), punishment (threat of administrative influence, determined by the law on administrative liability for koyennya such administrative offense) and subjectivity (wrongful act committed administrative offense subject to intellectual property).

Thus, the legal structures of intellectual property offenses form a unity of their objective (subject and objective side) and subjective (subject and subjective) features. The only generic object of these administrative offenses is the group of public intellectual property relations, which are protected by the law on administrative liability. The objective side of administrative offenses in the field of intellectual property is the set of ways of infringing intellectual property rights. The subjective signs of the administrative offenses of this group are represented by their subject, and the subjective side is characterized by the fact that they are committed only intentionally.

CONCLUSIONS

The realization of administrative responsibility for infringements in the field of intellectual property is carried out in the form of enforcement, that is, the own activity of authorized subjects, which consists in the application of administrative legal norms to specific facts of committing legally significant actions. In this case, enforcement is the implementation by the authorized state bodies and officials of the actions envisaged by law to bring the perpetrators of the offenses in the field of intellectual property to administrative responsibility. Pursuant to applicable law, administrative liability is the sole prerogative of state bodies and, in some cases, local self-government bodies, which makes it necessary to provide all procedures related to these activities with appropriate procedural form.

Therefore, based on the foregoing features of this proceeding, the following definition of the definition of “intellectual property lawsuits” can be given: intellectual property lawsuits are one type of administrative jurisdictional representation a series of sequential actions of the competent authorities, provided by the current legislation, on the detection of administrative offenses in the field of intellectual property and bringing those responsible to administrative responsibility in the process of administrative investigation, consideration and decision on the case, reconsideration and enforcement of the decision (decision) imposing administrative penalties.

Individuals are brought to administrative responsibility in the form of proceedings in cases of administrative offenses, and legal entities – in the procedural forms established by various regulatory legal acts. Administrative cases in the field of intellectual property infringement should be understood as one of the types of administrative jurisdictional proceedings, which is a series of sequential actions of the competent authorities, provided by the current legislation, to identify administrative offenses in the field of intellectual property and to bring administrative proceedings. investigate, review and decide on the case, review and enforce state (decision) on imposition of administrative penalties.

The following stages of administrative offenses are traditionally distinguished: administrative infringement proceedings (it consists of three stages: official registration by the authorized body (official) of factual data on infringement of intellectual property rights, official activity of the authorized bodies for finding out drafting a protocol); consideration of an administrative offense case and decision-making process (four stages should be distinguished at this stage: preparation for the case; substantive examination; decision-making and execution of the case; announcement of the decision); appeal and appeal against the decision on the administrative offense case; enforcement of the decision, enforcement of administrative penalties.

SUMMARY

The basis for the application of administrative responsibility for infringement of intellectual property rights is a homogeneous group of administrative offenses – administrative offenses in the field of intellectual property. Only in the presence of all signs can one speak of qualifying an individual's act as an administrative offense and resolving the issue of bringing him to administrative responsibility. Based on the above features, an administrative offense in the field of intellectual property can be defined as envisaged by the legislation on administrative liability of socially harmful, unlawful, guilty act (act or omission) committed by the subjects of such unlawful acts that affect the totality of property and personal property. results of conscious intellectual creative activity of a person (results of literary and artistic activity (objects of copyright (literary and artistic works, computer software program databases) and related rights (performance, phonograms, videograms and programs (broadcast))), scientific and technical creativity (invention, utility model, industrial design, scientific discovery, integrated circuit layout, innovative offer, plant variety, breed) animals and trade secrets) and the individualisation of goods (services) and their manufacturers (trade name, trade mark (sign for goods and services) and geographical indication)).

For the proper qualification of administrative offenses in the field of intellectual property, it is essential to characterize the features of their warehouses. Administrative responsibility for offenses in the field of intellectual property is carried out in the form of enforcement, which consists in the implementation by the authorized state bodies and officials of the actions envisaged by law to bring persons who have committed offenses in this area to administrative responsibility.

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DOI https://doi.org/10.36059/978-966-397-168-1/178-192

ENSURING THE FUNCTIONING OF SYSTEM ANALYSIS IN JURISPRUDENCE WHILE INTEGRATING ANALYTICAL METHODS OF PROCESSING LARGE DATA SETS

Zaiets O.M.

INTRODUCTION

Today, Ukraine has not only entered the world information space, but has become an integral part of it. This opened the way to virtually unlimited information resources for government and commercial institutions that conduct information and analytical research, which is a necessary component for the organization of work in this direction. However, apart from undeniable achievements, our country has encountered some trends that pose a real threat to the national interests of the state. That is why building the information field of Ukraine in the world information space is not only a matter of prestige but also of national security.

In the course of large-scale socio-political changes in Ukraine that are reflected in the implementation of legal reforms, the legal system is raised to the level of problems directly related to the solution of urgent problems of legal regulation.

The interest in studying the possibilities of systematic analysis in jurisprudence and the integration of analytical methods of processing large data sets, in particular normative legal acts, is becoming more and more intensive in domestic law. The latest developments, as a rule, concentrate on the analysis and evaluation of the legal technology embedded in the Ukrainian reality. Outside the discussion are the general issues of the essence and functioning of the analytical knowledge of the system of law, in particular the rules and principles of their construction, conditions of effectiveness, principles of co-organization in an effectively operating system, conditions of "transfer" from one legal system (industry) to another, mechanisms of functioning and interaction.

Legal science (jurisprudence, jurisprudence – from the Latin jurisprudential) is one of the oldest social sciences. Even ancient Greek philosophy developed the most important theoretical issues of law. The problems of law play an important role in the modern democratic society and in the formation of the rule of law, which contributes to the fact that legal science occupies one of the leading places among the social sciences[1].

[1] Дубовицкий В.Н. Социология права: предмет, методология и методы. Минск : Право и экономика, 2010. С. 12.

The importance of legal technology for legal science is that, by demonstrating the connection and unity of all elements of a particular phenomenon, it allows you to understand its nature, varieties and, thus, to know the legal reality. Exploring the possibilities of legal technology will help to gain a more generalized and in-depth knowledge of specific legal relationships.

In order to increase the efficiency of the work of state bodies, it is necessary to improve the use of legal techniques and technologies. IT and artificial intelligence is by far the most popular area of research for scientists, the most profitable in the field of business and the area that has the most impact on human life – jurisprudence, because artificial intelligence is now being implemented in all spheres of human life, and, changes it accordingly[2].

The field of law is also linked to all spheres of human life and cannot stand apart from the development of technological progress and artificial intelligence. This area can and should be an assistant to the legal profession.

The information flows include the following main types of information material:

– open periodicals and other scientific and technical, domestic and foreign publications;

– closed publications of public authorities, research institutions and higher education institutions;

– translations of scientific and technical foreign publications;

– manuscript works deposited;

– dissertations, reports on research robots, their registration and registration cards;

– reports on the results of basic and exploratory research;

– Official publications and publications of the State Patent Office concerning domestic and foreign patents and licenses;

– publications with information about inventions and innovative proposals that are distributed for centralized use;

– legal acts, methodological and regulatory documents;

– archival and museum documents and scientific and informational materials.

1. Sources of informational data arrays for analytical processing

The aforementioned information materials on different types of media (paper, magnetic, optical, etc.) in conjunction with the reference and search apparatus form help-information funds, specialized funds of governing bodies,

[2] Сырых В.М. Логические основания общей теории права : В 2 т. Т. 1: Элементный состав. 2-е изд., испр. и доп. М.: Юридический Дом “Юстицинформ”, 2001. С. 133.

research institutions, and higher education institutions and constitute the Unified Distributed Information Fund (hereinafter referred to as ERDIF). ERDIF is completed in accordance with the information needs related to the scientific and technical activities of the research institutions, higher education institutions and scientists. Recording ERDIF should provide for a rational distribution of sources of information, both by topic and by type of document. According to the ERDIF structure, books, brochures, periodicals and other information materials are compiled in different types of media with a total number of more than 3873801 publications (documents). Of these, books account for 84%, brochures – 15%, and periodicals (by number of publications) and other information materials – 1%. By types of publications by purpose, the fund can be divided into official publications (laws, decrees, decrees, orders, directives, military statutes) – 0,5%, scientific publications (reports on research, monographs, theses, dissertations, materials of scientific conferences (seminars), collections of scientific works) – 3,5%, educational publications (textbooks, manuals and tutorials, lectures, advisers, rules, instructions, monuments) – 68%, reference publications – 1,6%, information publications – 26,4%[3].

Nowadays, IT technologies help to free a person from a routine job that does not require a specialist and have specialized knowledge, systematize information, process large amounts of information, work with large databases and more. Also, the latest information technologies are able to process and work with information that requires special knowledge and skills, which is also a significant area of its use.

All this can be used in the work of legal representatives.

For example, law firms, like any other, today cannot exist without IT technology and artificial intelligence to work in the office, but it can be more productive to use, such as creating custom programs for drafting standard forms of contracts, letters, lawsuits and other legal documents. Not all clients of law firms require the preparation of individual documents, for a large number of clients it is sufficient to have a standard document, but given its standard needs and drafted in accordance with the law. All these parameters can be applied in a special program for the preparation of standard documents, which is also the cost of primary legal aid. This will allow the lawyer or lawyer to use their time to work more intelligently, to compose and solve tasks that require high skills and mental ability, to solve non-standard tasks. It will also allow all sections of the population to enjoy legal assistance, which will have a positive impact on society in general and legal relations in society.

[3] Біленчук П.Д., Кофанов А.В., Кобилянський О.Л., Міщенко В.Б. Інформаційна аналітика в юриспруденції: автоматизовані системи і технології. Навчальний посібник. Київ: ННІПСК КНУВС, 2009. С. 11.

Law firms already exist today, for example, to develop programs for predicting the outcome of a court case. This trend is in demand and assists the lawyer in his work, according to the developers themselves. They are now testing and processing this system, its performance and results.

The fact that a lawyer has been engaged in the development of such a program indicates that the work of a lawyer requires modernization and change with time, and it is the representatives of the legal profession who are interested in these changes.

The judicial system of Ukraine is already actively taking advantage of IT technologies and artificial intelligence in its work. We already use a special site to get acquainted with the necessary information, we can make the necessary payment without spending our time to visit the bank, we can submit some documents electronically, we can use an electronic signature to draft and submit some documents, we plan to use typical lawsuits, examples which will be posted on the site and used in simple cases, which also allows a person not to consult a lawyer but to obtain the necessary legal protection. For example, in accordance with the Order of the State Security Administration of Ukraine dated December 22, 2018 No. 628 "On conducting testing of the subsystem "E-court" in local and appellate courts operation of subsystem "E-court" in test mode has started.

In accordance with the requirements of section XI of the Regulation on the automated system of court documents circulation, the acceptance and registration of the procedural documents sent to the court by the participants of the court process should be done from the official electronic addresses (E-cabinets), which they should create in the E-court located at the link: https:// cabinet.court.gov.ua

According to Part 6 of Art. 6 of the Code of Civil Procedure of Ukraine are obligatory in the Unified Court Information and Telecommunication System (ESITS) their official electronic addresses are registered by lawyers, notaries, judicial experts, state bodies, local self-government bodies and economic entities of the state and communal sectors of economy. Other persons register their official e-mail addresses in the Unified Court Information and Telecommunication System on a voluntary basis. However, taking into account the requirements of section XI of the Regulation on the automated system of court documents circulation for the acceptance and registration of procedural documents sent to the participants of the trial, any registration and processing of procedural documents sent by participants of the process to the court without e-mail addresses (Electronic cabinets) created in ESITS will not be tried by a court.

The procedure provides for obtaining their own electronic digital signature, because, according to clause 2 of part 8 of Article 6 of the Civil

Procedure Code of Ukraine, the submission of procedural and other documents, the execution of other procedural actions in electronic form solely with the help of ESITS, is possible only with the use of their own electronic digital signature.

2. Innovative technologies in processing large data arrays

IT technologies and artificial intelligence take away a part of a person's technical work and leave time to perform the intellectual and professional part. For example, when accountants developed special programs to carry out their core business, it was an invaluable contribution to their work. Now no one understands how it was possible to work without these programs. The same contribution can be made to the work of legal professionals, such as, for example, automatic drafting of standard documents, document analysis, forecasting, and the like.

In the near future, according to scientists, artificial intelligence will help the elderly, and all the people who want it, will replace people at airports, hotels and other public places. "Smart homes" will be created to serve all people's needs. Medicine will be more advanced with artificial intelligence, created surgeon robots (Da Vinci Surgical System) is a two-unit unit, the first designed for the surgeon-operator, and the other, a four-handed robot manipulator, is an actuator, one of the hands holding a camcorder that transmits the image of the operated area, the other two in real-time reproduce the movements performed by the surgeon, and the fourth "hand" performs the functions of an assistant surgeon a), for example, will not be tired and make mistakes. This should also change the direction of legal practice. For example, in New York, an artificial intelligence detective uncovered several crimes. The Patternizr algorithm analyzes employee reports to find connections and commonalities between different theft and robbery cases. This helped identify one person who committed these crimes. Patternizr now analyzes 600 violations a week. The algorithm compares new cases with previous cases, revealing similarity in many parameters. The program handles unstructured textual descriptions of events in search of the information it needs. So far, this work has been done by analysts. However, they had neither access to the tens of thousands of reports nor the ability to process them so quickly. Also, artificial intelligence does not tire, it does not need a break for rest and sleep. Artificial intelligence is capable of processing vast amounts of information in a very short time. He can also do important, but not interesting, human work, monotonous, but perform it at a high level.

The ability to find hidden patterns is the strengths of algorithms. It is used not only by police, but also by scientists – from chemists to astronomers.

The unrestrained development of technology is an integral part of people's lives today, it has given development to all spheres of our lives, and the legal profession needs to be "in time" and not keep up with it.

The development of artificial intelligence also influences the development of new areas of law. For example, the European Parliament adopted a resolution on "Civil Law on Robotics". The document deals with various aspects and problems of robotics and artificial intelligence. It proposes to lay down the legal bases for the use of artificial intelligence and the introduction of a Pan-European system for the registration of "smart" machines, to individual categories of robots should be assigned an individual registration number, which will be entered in a special register, where you can find detailed information about the work, including information about the manufacturer, owner conditions for payment of compensation in case of damage. And the support of the artificial intelligence system and its control should be dealt with by a specialized agency for robotics, which could address other aspects of legal regulation in this area.

Since there are many artificial intelligence programs available today, the leading European states are ready to legislate for a computer program and put artificial intelligence on a par with the human. In Japan, in 2016, at a meeting of the State Commission on Intellectual Law, lawmakers made the decision to begin developing regulatory documents on copyright protection for products of creative activity created by artificial intelligence. According to the commission, such a move should be a support for companies working on innovation creation and implementation.

The emergence and development of artificial intelligence has led to the emergence of a new line of law, one of the most common in the future. With the development of these technologies, new objects and subjects of law emerge, new legal relationships, a new scope of law, and, as a result, new specialists in the field of law will be needed.

Technological progress is not a bad situation, but it must be borne in mind that nothing like this has happened before, and all processes existing in society must be changed, including legal relations between man and artificial intelligence.

In the future, artificial intelligence will be required as an "electronic person" as a participant in public relations, and this may be quite natural for the future. It is customary for lawyers and society to recognize a legal entity (which is, in fact, a product of human thought, a virtual entity whose social status is based only on the collective myth prevailing in the legal sphere), a fully-fledged subject of social relations with its own rights and obligations. plump.

In the field of criminal law, the activity of a legal entity was considered only through its representatives – individuals who were supposed to be

criminally responsible for their dangerous acts or omissions and their consequences, now the traditional aspects have been changed and legal measures of a legal nature have been normatively fixed (fine, liquidation, etc.), which have all the features of punishment under the Criminal Code of Ukraine (Section XIV1 Measures of Criminal Law of Legal Entities).

Thus, criminal law, like any other law, is not a dogma, a religion in its frozen sense, and it can be modified in accordance with the times, the development of society and the emergence of new relationships.

The most developed countries of the planet (USA, Norway, Denmark, United Arab Emirates, Federal Republic of Germany, State of Israel, People's Republic of China, Grand Duchy of Luxembourg, French Republic, Swiss Confederation, etc.) are increasingly using different industries. Even today, they are actively introducing these technologies to improve and optimize their analytical work.

In general, analytical work requires first and foremost a continuous systematization of the incoming data. The analyst examines, weighs and evaluates fragmentary information on the basis of which he creates promising, well-founded forecasts. In addition, the responsibilities of the analyst include: analysis of existing thoughts on the problem being studied, verification of previously made assumptions, evaluation of alternative scenarios, ongoing coverage of the data.

No country, if it wants to integrate into the global information space, has to stay away from the global processes of increasing the role of information technology. The practical use of multimedia in the information and analytical work of state institutions is an important means of increasing the quality of public administration and developing a positive image of Ukraine in the global information space. At the same time, it is necessary to realize the purpose with which the technologies of multimedia are used in the information-analytical work, and the advantages of concrete choice.

In general, multimedia has many advantages, including the following: numerous software applications; very economical products; ease of adjustment and maintenance; integrity of materials; forming a positive image of a party using multimedia technologies.

The greatest benefit from the introduction of these technologies is the information and analytical work in the state institutes, which can be in the following areas:

– promotion of the information field of Ukraine in the world information space for organization of information-analytical researches;

– development of an information field and formation of a positive image of Ukraine in the world information space;

– creation of a system of interactive news reporting in information and analytical work;

– low-cost, dynamic, dynamic tools for connecting to think tanks and other sources of information;

– electronic interactive systems of training of analysts[4].

The obvious inability to have all the journals and books in this specialty in the library of every scientific institution requires the wide knowledge of scholars through various bibliographic directories, and subsequently also through electronic catalogs about the location and order of obtaining the publication. In addition, the information scientist must be able to work with literature. It is necessary to increase the qualification of scientists of all specialties in every possible way, to expand their acquaintance with all kinds of bibliographic manuals. And this activity must become one of the essential elements of the work of all scientific and technical libraries and information bodies, be planned and controlled on an equal basis with others. Information support for research works is more effective, the better the scientists have the technique of finding and using secondary information, they know the enormous possibilities of modern bibliographic manuals. Scientific and technological progress also applies to the library. The introduction of technical innovations has changed the process of bringing information to the user, automation allows you to get copies of the required documents in an automated mode. Optical databases are also widely used at this time. Further enhancement of the effectiveness of the use of information for research should be carried out taking into account the results of the analysis.

At present, the leading institution that defines policy in the field of scientific-information and information-analytical activity is: in Ukraine – Ukrainian Institute of Scientific, Technical and Economic Information (Ukrintei).

The leading institution of Ukraine is the Ukrainian Institute of Scientific, Technical and Economic Information (UkrINTEI). The basic direction of scientific activity of UkrINTEI is theoretical and practical bases of creation of system of information-analytical support of scientific-technological and innovative development of Ukraine. Research is conducted in the following sections:

1. Scientific and methodological bases of creation of system of information-analytical support (IAZ) of scientific-technological and innovative development (STI) of Ukraine;

[4] Біленчук П.Д., Кофанов А.В., Кобилянський О.Л., Міщенко В.Б. Інформаційна аналітика в юриспруденції: автоматизовані системи і технології. Навчальний посібник. Київ: ННІПСК КНУВС, 2009. С. 33.

1.1. Scientific and methodological bases of creation of information resource for information-analytical support;

2. Creation of an integrated database system for the functioning of the system of information and analytical support of scientific and technological and innovative development;

3. Development of regulatory and organizational documents for the system of information and analytical support;

4. Organization of interfaces of internal and external access to the resources of the IAZ STIR system;

5. Organization of functioning and use of the information-analytical support system;

6. Integration of the STI system into the world information space[5].

Complex technical systems are material systems that, according to certain algorithms but without human involvement, solve predefined tasks.

They include the following variables in work technology: when and where the task should be performed, how the task should be performed, what is the relationship between the tasks performed. Complex sociotechnical systems are systems whose constituent is a human operator, knowledge, skills, moods, value preferences and relation to the performed duties of which in interaction with a technical device in the process, for example, production of material values, control of certain processes, processing information, etc., help increase the efficiency of solving certain tasks or improve their performance.

3. Systematic approach in the general methodological basis of the creation of complex sociotechnical systems

The concept of socio-technical systems was developed by English scientists E.Trist and K.Bemforth of the Thevistock Institute of Public Relations, who were engaged in the study of the mechanization of coal production in the UK. The results obtained allow us to conclude on the interconnection and interdependence of the two parts of the holistic system – technical, represented by tools and equipment and social, which includes people, relations between them and institutional settings, as well as characteristics of the social engineering system, among which are:

1) organizational philosophy based on employees' understanding of their goals and the purpose of the enterprise, their constant willingness to share with the administration all responsibility for the results of business activities;

[5] Біленчук П.Д., Кофанов А.В., Кобилянський О.Л., Міщенко В.Б. Інформаційна аналітика в юриспруденції: автоматизовані системи і технології. Навчальний посібник. Київ: ННІПСК КНУВС, 2009. С. 25.

2) organizational structure of management that provides ordinary workers and employees with real rights to participate in management;

3) a new approach to job development and the role of the executor in the decision-making process;

4) a new scheme of placement of equipment that would meet the needs of a promising form of work organization and provide for the acceleration of material flows in production;

5) new forms and methods of training and retraining, more flexible personnel policy aimed at guaranteeing employment;

6) new criteria in assessing the economic efficiency of using modern technologies and making investments in production development.

One of the most well-known general methodological principles for creating complex sociotechnical systems is a systematic approach[6] – a direction of methodology of scientific knowledge, based on the consideration of phenomena (processes, objects) as systems, the main stages of which are problem formulation, goal allocation or a set of goals, identification of alternative means by which a goal can be achieved, identification of resources required for the use of each system, construction of a mathematical model, ie a series of dependencies between goals and alternative means to achieve them, the definition of criteria for selecting the best alternative.

The set of specified methodological principles and theoretical provisions of the systematic approach make it possible to view the object of study as a whole system, relatively separated from the external environment and at the same time related to it, ie in close connection and interaction with other objects, to track changes occurring in the system, to study the specific system qualities, to make sound conclusions about the laws of development of the system and to determine the optimal mode of its functioning.

The main tools of a systems approach are system analysis and synthesis. Analysis and synthesis – general scientific methods, without which no act of scientific research can do without, are in the opposite direction (analysis – from whole to part, synthesis – from parts to whole) and at the same time inextricably linked methods of cognition[7].

System analysis is a methodology for the study of such properties and relationships in objects that are difficult to observe and difficult to understand, by presenting these objects in the form of separate components, elements,

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[6] Бойко Г.І. Сутність терміну "юридична техніка*". Правове регулювання суспільних відносин: актуальні проблеми та вимоги сьогодення : Матеріали II Міжнародної науково-практичної конференції у 4-х частинах (31 березня 2011 р., м. Запоріжжя)*. Запоріжжя : Запорізька міська громадська організація "Істина", 2011. Ч. 2. С. 14–16.

[7] Бурячок В.Л., Толюпа С.В., Аносов А.О. та інші. Системний аналіз та прийняття рішень в інформаційній безпеці: підручник. К.:ДУТ, 2015. С. 58.

features and opposites of purposeful systems, studying the properties and mutual relations of these systems as the relationship between the goals and the means of their realization.

It differs from other research methods in that it: takes into account the fundamental complexity of the object being investigated; takes into account the inability to observe a number of object and environmental properties; takes into account its extensive and stable interconnections with its environment; real phenomena, their properties and connections with the environment are further translated into abstract categories of systems theory; Based on the known properties of complex systems, it is possible to discover new specific properties and interconnections of a particular research object; unlike other methods in which objects are well defined, includes one of the important steps in identifying, finding, or constructing an object; focuses not on solving "correctly formulated" tasks, but on creating the right task statement, choosing the right methods for solving it.

The main thing in system analysis is to find a way that can turn a complex problem into a simpler one, not only difficult to solve, but also to understand, to turn the problem into a sequence of tasks for which there are methods of solving them. System analysis is always specific – it always deals with a specific problem, a specific object of study, and is productive when applied to solving tasks of a certain type. It is usually aimed at solving complex, poorly structured problems, dominated by qualitative, little-known and uncertain sides, caused by:

– lack of understanding of the problem;
– complexity of classification of problems;
– distorted assessment of problems;
– incorrect assessment of the significance of the problems;
– the difficulties of posing problems in the long run;
– blending the goals to be achieved with the means to achieve them.

The purpose of applying system analysis to a specific problem is to increase the validity of the decision being made. Its main function is to distinguish such features of an event that could be taken as a basis for unification, systematization of facts, arrangement of them in an appropriate order (chronological, functional, structural, etc.), which in one way or another characterizes a certain side of the development of the event under study. Systematic analysis establishes opposing properties, trends of events that are parties to certain contradictions and allow to reveal the internal source of the event. The need for it arises when: a new problem is formulated (determined) and its solution requires coordination of goals with many means of achieving them; there are some hard-to-compare options for achieving a coherent set of goals; the problem identified has branched links that produce long-lasting

effects in different industries, and taking decisions in such cases requires taking into account the overall efficiency and full cost; new complex systems are being created or existing systems are being upgraded and important decisions must be made at a sufficiently long-term perspective in the presence of uncertainty and risk, etc.

To ensure the success of system analysis, you must: apply it where it is intended; need to carry it out, present the purpose and (or) its purpose; feel responsible to him as analysts and the customer; have sufficient information, experience, ideas and ideas about the subject matter of the study; to reflect in the results of system analysis the real state of affairs and the real ways of solving problems, not the "justification" of subjective decisions; have adequate resources (qualified experts, equipment, money); take into account the possible influence of third-party factors (forecast of scientific discoveries, inventions, political situation).

One of the first methods of systematic analysis to determine the order and stages of working with the structure of goals in the process of forecasting and planning was the PATTERN (Planning Assistance Through Technical Evaluation Relevance Number) method developed by RAND Corporation for military research[8]. The main steps of the method are: developing a scenario that is a forecast of the political picture of the world for the planned period; developing a forecast for the development of science and technology (which may be part of the scenario); development of the goal tree by determining the coefficients of relative importance, the coefficients of the state of development and terms, the coefficients of mutual utility; working out the results of the evaluation (calculation of the total coefficients) and providing the results to the decision makers.

CONCLUSIONS

Thus, the proposed methodology involves the use of law as the main tool for solving social problems. The starting points for its use are, in particular, the understanding that the problems of development of a country are generated by established behaviors, that is, institutions; to change behavior, and therefore to transform institutions, the best and most effective tools are the laws that can and should be used to stimulate a large-scale transformation of society.

So, unlike a number of other concepts, such as: "legislative technique", which is defined as "a system of linguistic and logical receptions, methods, legal procedures and special legal means of legislative activity

[8] Бурячок В.Л., Толюпа С.В., Аносов А.О. та інші. Системний аналіз та прийняття рішень в інформаційній безпеці: підручник. К.: ДУТ, 2015. С. 60.

of the state apparatus for drafting legal rules in the form of provisions of legislative acts on for the purpose of establishing proper law and order in society “or” the system of legal and linguistic and legal-logical methods, methods and legal-technical procedures of drafting legislative acts by the state apparatus “or more broadly as” the system of legal there, organizational and other procedures of drafting, entering into the legislative body, consideration, examination and adoption of bills, as well as consideration and editing of laws and their entry into force, “law-making technique” as a technique of writing texts of drafts of all regulatory acts and editing of texts of all adopted regulatory acts, including bills and laws, “standard design technique”, etc. Therefore, all of the definitions listed higher confirm the complexity of the problem of formulating, adopting, and complying with regulatory requirements, which confirms the need to use systematic analysis techniques in jurisprudence and its archival role in the processing of such information.

This technique is applied in many countries of the world. It is developed and taught by experts at the International Consortium for Law and Development (ICLAD), located in Boston, Massachusetts, USA.

SUMMARY

In the course of large-scale socio-political changes in Ukraine that are reflected in the implementation of legal reforms, the legal system is raised to the level of problems directly related to the solution of urgent problems of legal regulation. System analysis is a complex, multifactorial approach to considering objects of analysis, presenting them in the form of a system that has its elements, connections, structure, functions. The proposed method involves the use of law as the main tool for solving social problems. The starting points for its use are, in particular, the understanding that the problems of development of a country are generated by established behaviors, that is, institutions; to change behavior, and therefore to transform institutions, the best and most effective tools are the laws that can and should be used to stimulate a large-scale transformation of society. Therefore, all of the above arguments demonstrate the complexity of the problem of formulating, adopting and fulfilling the requirements of regulatory acts, which confirms the need to use systematic analysis techniques in jurisprudence and its archival role in the processing of such information. Therefore, all of the definitions listed higher confirm the complexity of the problem of formulating, adopting, and complying with regulatory requirements, which confirms the need to use systematic analysis techniques in jurisprudence and its archival role in the processing of such information.

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DOI https://doi.org/10.36059/978-966-397-168-1/193-204

STATE-LEGAL REGULATION OF SOCIO-ECONOMIC PROCESSES: FOREIGN EXPERIENCE AND UKRAINE

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INTRODUCTION

Social policy is a mechanism for implementing a social function. In political science, the functions of the state are defined as the main directions of its activity, determined by the main social goals and objectives at the concrete historical stage of its development. Thus, the functions of the state are formed in the process of its formation, strengthening and development.

The consolidation of the social principle of the state system in the legislation of many countries means that the state is called upon to serve society, and not vice versa. For example, in the Italian Constitution of 1947 enshrined: "The task of the Republic is to remove obstacles of an economic and social order that, limiting freedom and equality of citizens, impede the full development of the human personality and the real effective participation of all workers in the political, economic and social organization of the country".

The constitutional consolidation of the social principle of the state structure of Ukraine is confirmed by the fact that the social function belongs to priority functions. It should be noted that the content of the social function does not remain unchanged at all stages of the development of society and the state. It depends on many factors, primarily on the type of political regime, political ideology. In principle, the content of the social function indicates what and how the state does in the social sphere. So, for example, if the social policy of a modern democratic state with a high economic level of development is aimed at supporting public welfare, creating conditions for its achievement, then for a state experiencing a transition from one social system to another, another goal is relevant, namely, elimination or mitigation of negative social consequences caused by the sharp contradiction between the need for a tough economic policy and the social vulnerability of the population. Despite this, social policy is of particular importance, one of the tasks of which is the redistribution of income, reduce social tension. Thus, the priorities of social development in transition should be determined.

Activities to study social policy as a specific function of the state and society began during the laying of the foundations of the social state. At the end of the nineteenth century. a group of German scientists founded the

"Circle of Social Policy", the aim of which was to study the development of politics and economics in the context of sociology. It is natural that this happened in Germany, where a conscious and focused policy was aimed at building such a state.

However, the concept of "social policy" was introduced into scientific circulation not in Germany, but in France – a vivid representative of utopian socialism, Charles Fourier. It is to him that we owe the fact that the question of the obligation of the state to provide its citizens with some social guarantees was raised on the agenda. And to make this possible, the state must monopolize trade, issue money and collect taxes. For S. Fourier, state monopoly was a social policy. We owe the Germans the fact that their state was the first to become interested in the social sphere of society, to take care of the German workers and their families. So for the first time a social security system was introduced, not only controlled by the state, but also managed by it.

1. Representations of the social state in domestic and foreign science

Since the end of the nineteenth century (1883), and with the decrees of O. Bismarck on state assistance to the families of German workers, specific state activity began on the social protection of wage workers.

In the future, the concept of social policy was considered in the context of ideas about the social state. Given the fact that the social state has several types, it is clear that social policy was interpreted differently by representatives of various areas of social thought. Shared by the authors is the claim that the modern State necessarily has to carry out social policies. And although the term "social state", as a rule, is applied to such European countries as Sweden, Germany, Denmark, etc., at the same time, it can be stated that any modern (modernized) state has certain signs of social state. Even in countries where strong traditions have socio-economic liberalism, for example in the United States, a targeted state policy is also being pursued.

Even thinkers of the past (Aristotle, T. Hobbes, Kant, G.V.F. Hegel and others) considered the question of the obligations of the state to its citizens, considering justice an undeniable social and moral value. So, V. von Humboldt in his work "Ideas for the experience that defines the boundaries of the state's activity" analyzes both the legal functions of the state (peace and security in society, protection of the rights and freedoms of the individual) and social (caring for the welfare and happiness of everyone). The concept of the maximum participation of the state in ensuring the social conditions of life of citizens is described in the work of I. Fichte, "Closed Trade Power".

State and legal regulation of socio-economic processes has become a characteristic feature of the development of most Western countries in the

second half of the twentieth century, in which power acquired socio-economic legitimacy.

This experience is especially valuable for Ukraine, where society and the economy are in a very deep crisis, where there is a high degree of social inequality and at the same time there is no agreement between political forces on issues regarding the strategy of social development. To eliminate the causes of social injustice, as historical experience confirms, it is possible only through active state regulation, is a characteristic feature of the activity of a social, legal state.

The model of the social state during its existence was subjected to serious tests associated with the periodic deterioration of the economic situation. The concept of a social state has been criticized too sharply, and not without reason, for raising the priority of rights over duties, equalizing people's assessments of efforts, reducing incentives to achieve success, not understanding the role of private business in solving social problems – reducing unemployment, creating additional jobs, improving quality social services and the like.

In foreign and domestic political science, the following main theoretical and methodological approaches to the problem of welfare states are described. Thus, liberal welfare states (USA) are distinguished, in which the provision of need is carried out on the basis of the residual principle; conservative corporatist welfare states (Germany), based on social insurance, and social democratic welfare states (Sweden), where income is redistributed due to the high level of taxation. Sweden has become a world leader in optimally meeting social needs. The Swedish welfare state was able to ensure full employment, significantly reduce class divisions, and achieve public agreement on the existence of a welfare state.

The feminist approach proposes to consider indicators of women's needs satisfaction as a criterion for assessing welfare states. In particular, the level of orientation of the policy on family welfare, the appropriateness of female labor (the ability of women to work on equal terms with men) and which of the parents receives help for children are highlighted.

According to another approach, an indicator such as the share of social security expenditures in the gross national product is used to analyze welfare states.

States are classified according to: the degree of intensity of political mobilization of the working class (that is, the degree of unification of the working class in trade unions and the average percentage of votes cast for social-democratic or other "left" parties); the frequency with which working-class parties exercise control over the government (the degree and duration of

participation in the government and the number of seats in parliament) the level of support for "right" parties.

This approach revealed countries in which the level of mobilization of the working class was higher and control by the "left" parties is quite stable (Sweden, Norway), and countries that were characterized by a high level of mobilization of the working class, but low (Australia) or irregular (UK) level of control.

The available data indicate that there is a relationship between the political orientation of the government and the level of expenditures for social purposes. At the same time, countries such as the Netherlands, West Germany and France had high rates of social spending in the early 1990s, but there was no high level of mobilization of the working class and the government was not controlled by the "left". Some researchers explain this phenomenon by the fact that in the political system of countries such as the Netherlands, Belgium, West Germany, Austria, Christian parties played the same role as the Social Democratic parties in the Scandinavian countries. So, if the "left" orientation of the government is not a prerequisite for a high level of social spending, then their low level is still due to the dominance of the "right" political forces.

Based on a different approach proposed in comparative political science by the Katwright-Wilensky school, the main reason for the development of the welfare state is the economic level, not ideology. Political factors also, according to these researchers, the impact likely to choose social programs implementation time, rather than on their content[1].

I. Doyal and T. Thomas argued that economic development then better contributes to welfare when it is governed by effective authorities that guarantee civil, political and social rights for all[2].

A comparative analysis of these models of developed welfare states allows us to conclude that they differ in the degree of influence of various political factors, sources of financing and means of organization, the impact on the benefits provided to citizens regarding women and ethnic minorities.

The classification of existing types of welfare states is not limited to the foregoing. For example, S. Jones proposed the concept of a Confucian model of a welfare state. In addition, the features of some countries do not yet make it possible to classify them. This applies to the countries of Southeast Asia, in which, on the one hand, active investment is made in social infrastructure, and on the other, welfare is seen as a burden and is associated with liberalism. As the main features of these states, the following can be distinguished:

[1] Wilensky H. (1975), Welfare State and Equality: Structural and Ideological Roots of Public Expenditures. Berkeley, p. 45, 47.

[2] Политическая Наука*:* новые направления. (1999). М.: Вече, 815 с.

a significant role of states in the centralized management of capital investments and their regulation; the willingness of the state to invest in social infrastructure related to job creation; high level of private savings; If there is a family that can provide support, social assistance is not provided.

Foreign scientists R. Darendorf, J. Rawls, E. Harms, F. Neumann, G. von Haferkamp, G.-G. made a great contribution to the development of the problems of the social state and the welfare state, as well as their institutions. Hartwig, V. Abendrot, K. Lenk, G. Brown, M. Niehaus, G. Ehrenberg, A. Fuchs, M. Speaker, G. Vilensky, C. Lebo, R. Titmus, A. Evers, I. Svetlik, P. Baldwin, J. Barnes, B. Wattenberg, C. Espin-Andersen, etc.

A. Hicks, J. Misra, Tang Nah Ng devoted their research to the political factors of the formation of the welfare state. The influence of socio-economic development on the political system has been the subject of research by such well-known scientists as D. Easton, H. Linz, M. Dogan, S. Lipset and others.

Among domestic researchers, the scientific works of V. Babkin, G. Shchedrova, A. Skripnyuk, V. Selivanov, N. Khoma and others should be highlighted.

Starting in the 90s of the last century, the countries of Central and Eastern Europe tried to make a sharp leap into unregulated pluralistic democratically liberal capitalism. However, none of these countries escaped the economic downturn and negatively affected subsequent development. Liberal policies have led to a drop in production levels, an increase in income inequality, high unemployment, a drop in living standards, and a significant increase in mortality in most of these countries.

2. The social state in Ukraine

After the collapse of the Soviet Union and the creation of independent states on its territory, Ukraine faced the problem of determining the path for further political and social development. In the field of social policy, the question of which social security system will replace the collectivist state-bureaucratic system has become particularly relevant.

It was assumed that market mechanisms and institutions, which in the Western countries have passed the centuries-old development path, can be created in post-communist states in a very short time. At the same time, the focus of the governments of countries with economies in transition was turned to legal and political institutional reforms, and social policy issues, as expected, would be resolved by themselves. As a result of this approach, the old social security system collapsed, but the new one was not created.

Millions of people were left alone with the market element. Most countries with significant external debt were forced to accept the liberal version of the development of the socioeconomic sphere, which was facilitated by

international organizations such as the International Monetary Fund, the World Bank, etc. The liberal reforms in Ukraine led to serious social consequences. The number of suicides, murders, and other manifestations of deviant behavior has sharply increased, and indicators of the state of health of the population have worsened.

And if at the very beginning of transformations liberal politics in society was received favorably and with hope, then, experiencing discomfort in the conditions of "wild" capitalism, the population of Ukraine again demanded the stability of social security, justice, and equality.

The existing today in Ukraine, the socio-political situation proves that the consolidation of the society and its withdrawal from the deep crisis is possible only on the basis of policy, aimed at building a democratic and social state of law. As world experience confirms, the transition from one socio-political system to another is always accompanied by a decline in the standard of living of the population, which can lead to increased instability. Therefore, such issues as assessing the role of the state, its participation in the socio-economic sphere, forms and methods of state regulation of the way of forming the foundations of sustainable development of the state and society are of particular importance.

These are problems in the solution of which are interested both new social groups that have arisen as a result of the introduction of market relations, and those that need state support.

It is possible to solve these problems only on the basis of a new social reform strategy; it is reflected in the concept of a social, legal state. It provides all citizens with guarantees of the rights to self-realization, social protection, and the strengthening of social partnership between the state, employers and trade unions.

A reduction in the number of poor, a narrowing of the gap between wealth and poverty through flexible state regulation, redistribution of resources through progressive taxation, and a solid social security system contribute to increased stability and reduce the possibility of social and political disasters.

Unfortunately, the functions of the social state in Ukraine are declining. This is indicated by a number of facts. For several years, Ukrainians have been paying housing and communal services at European prices, while the salaries of Ukrainians are significantly behind European. Subsidies to compensate for utility bills can be called very effective as an effective means of helping the population. Firstly, a part of those working in the private sector and receiving salaries in envelopes, without actually needing such assistance, are legally subsidies.

Secondly, as you know, only people working for the state, the so-called state employees, honestly pay taxes. However, with a small salary, they do not

meet the criteria for subsidies. Thus, on the one hand, they pay utility bills at full cost, on the other hand, through their taxes they pay subsidies to others, including those who do not really need them.

Ukraine has become a country with labor poverty when working people are not able to pay for utilities and other vital services and goods. The average salary in Ukraine in November 2019 was 10679 UAH[3]. 70% of Ukrainians are poor people who receive subsidies, because they are not able to pay for utilities, which, according to the National Academy of Sciences of Ukraine, 30% of the required rate are malnourished, 38% milk products, 22% eggs[4].

Of particular note is the draft new labor code, which is planned to replace the Labor Code. Bill on Labor (No. 278). Thanks to the new law, the employer will have the opportunity to dismiss employees during vacation or sick leave. Pregnant women, women on maternity leave, invalids and ATO veterans are deprived of protection from the employer. The new labor code introduces ambiguity in the issue of sick leave payment in case of employee incapacity for work. Currently, the sick-list is provided by the social protection system, thanks to which the employee receives a fixed percentage of income. As political political expert Mikhail Chaplyga rightly believes, "When the role of the state is removed from labor relations, the worker becomes a slave and the employer becomes a slave owner. For this reason, the employer and the employee will never be able to negotiate on equal terms"[5].

The rejection of paper work books is a lot of questions. As is known, with 2000 g of. in Ukraine, information on seniority is recorded in electronic registers. However, no one explains how the experience earned before 2000 will be taken into account.

When it comes to salaries, pensions and other social benefits for the population, the Ukrainian government, regardless of its ideological orientation, is extremely stingy with measures that improve the life of the population. We have to admit that all the economic reforms that the authorities carried out for 29 years in Ukraine have failed. And, today, without material support from international financial organizations, Ukraine cannot exist. The stratification by income level between rich and poor is growing, as evidenced by the dynamics of changes in the structure of expenditures. "95% is spent on current expenses, and it was 83%. And part of the expenses is financed from previous accumulations.

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[3] Средняя зарплата в Украине URL: https://index.minfin.com.ua/labour/salary/average/

[4] Бортник: Украина уже не является социальным государством URL: https://uiamp.org.ua/bortnik-ukraina-uzhe-ne-yavlyaetsya-socialnym-gosudarstvom-0

[5] Что изменят в новом трудовом кодексе: забастовки, выплаты, наказание за буллинг. URL: https://24tv.ua/ru/trudovoj_kodeks_ukrainy_2020_izmenenija_novyj_trudovoj_kodeks_n1218242

That is, income from assets will decrease in the future – the population takes this money and spends on consumption. Each of the income gap between rich and poor Ukrainians becomes a year wider[6].

As noted by Ruslan Bortnik, "70% (according to other estimates – 60%) of Ukrainians – the poor, and, say, the top 10 of the Forbes list increased their bogats va on. 40% of social stratification in our gains is absolutely inadequate and cynical forms and it will continue, because in. Tools initiation increase the value of housing services and in other ways the richest continue to get richer and the poor will grow poor"[7].

At the same time, the political and state elite continues to grow rich not thanks to innovative projects, but to proximity to the state budget, which they use for their own commercial purposes. With business capacity- with the state manifested by the fact that the owners are trying, often very successfully, click on the process of public decision-making.

At the same time, it is known that many officials of the state apparatus are actively involved in entrepreneurial activity. The merging of business with the state is the reason for the emergence of unequal sectors of the economy – privileged and unprivileged. The first, receiving various benefits from the state, operates in "greenhouse" conditions that have nothing to do with the conditions of a market economy, and thereby put pressure on the unprivileged sector of the economy. The result of this economic policy of the state can be considered the absence of conditions for foreign capital, accustomed to work in other conditions where all participants in market competition are equal. The presence of a two-sector economy is the cause of the polarization of the business elite.

It should be noted that a market economy is social in its principles. It subordinates its development to the interests and needs of the individual, creates the conditions for the realization of his abilities, encourages industriousness, initiative, drives incentives for highly productive and efficient work. However, at the previous stage of development of the Ukrainian economy, the implementation of this principle was practically impossible. The lack of appropriate state mechanisms, corruption at different levels of government led to excessive property stratification of the population. Such stratification, which undermines social and political stability, occurs spontaneously, mainly on a shadow basis.

C otsialnaya policy is a factor of political stability, one of the main prerequisites for a sustainable society state that can effectively work under

[6] В Украине растет пропасть между богатыми и бедными – эксперты URL: https://www.segodnya.ua/economics/enews/v-ukraine-rastet-propast-mezhdu-bogatymi-i-bednymi-eksperty-1300010.html

[7] Бортник: Украина уже не является социальным государством. URL: https://uiamp.org.ua/bortnik-ukraina-uzhe-ne-yavlyaetsya-socialnym-gosudarstvom-0

various influences, while maintaining their structure and ability kontrolirova be a process of social change. At the same time, it is known that economic crises, a decline in production, a deterioration in the standard of living of the population, pronounced imbalances in the distribution of incomes often led to the destruction of the political system. Thus, the task of social policy is to create conditions for improving the standard of living of the population, which should feel its personal interest in the peaceful and conflict-free development of society. Citizens should know that the most important institutions of the state and society are able to adequately and timely respond to their needs.

Ideally, social democracy, which relies on solidarity and joint action, could become the vehicle for such a policy. As one of the leaders of the SPD, O. Lafontaine, noted, the Social Democrats "realized that humanity will survive only if it finds a path to joint action... Any concept that aims at a free society of the future must be accepted by the universal principle of solidarity". It was the Social Democrats in the post-war decades that carried out successful socio-economic reforms and became the basis for the next rapid economic development of industrial countries.

Today's Social Democrats are significantly different from the Social Democrats of the 70s. In particular, they revised their positions on individual freedom, private property, market relations and related values and attitudes. The programs of modern social democratic parties mark the tandem of private capitalist market principles of economics and regulation of the economy (Keynesian approach), and assistance to the needy sectors of society, a high level of employment.

According to modern approaches, the essence of the transformation of a social state lies in its new, more active role in the process of adaptation of an individual to the conditions of his life; they have changed, which will allow him to successfully "get involved" in society. The main goal of a changing social state – to achieve a high degree of social inclusion – opens up wide opportunities for social development and helps to transform the social state into a "state of social investment". This means the emergence of a new function of the social state – the promotion of initiative, creativity and readiness for "new challenges". Thanks to this, according to the current Social Democrats, society can enter a "new era of manageability" and contribute to the creation of an "information society" or a knowledge-based society.

For the implementation of the social democratic model in Ukraine, certain prerequisites are necessary: economic growth; harmony and consolidation of society around fundamental values; strengthening social partnership between the state, trade unions, employers and other public groups; strengthening the social orientation of reforms; determination of the real parameters of social policy, especially in the areas of income, employment and social security.

They need to be created if our country chooses a policy aimed at building a democratic, socially just society.

The thesis that a legal state of a liberal type as a form of organization and activity of state power has exhausted itself is also confirmed by the experience of Western countries. Undoubtedly, negative rights need to be supplemented by positive rights, which provide for the organizing and regulatory function of the state. Thus, the question on the transformation of the legal state of the liberal type into a legal social state was raised on the agenda. As the well-known Ukrainian scientists V. Babkin and V. Selivanov rightly note, the social state "is based on the principle of maintaining a certain balance between democratic institutions and strong state power, planning and the market, private and state property, economic efficiency and social justice"[8].

Social changes are an inevitable attribute of the development of societies and the progress of civilization. Another question: what are their messages to people? Consideration of the principles of the activity of the social state allows us to conclude that the evolution of the social state is positive, which has passed from the statist type to a mixed public-private form, which has significantly increased the effectiveness of the modern social state. This led to changes in its structure, elements of which, along with the state itself, are private business and non-profit public organizations, which are otherwise called the "third sector". The "third sector" was in the center of public and political attention due to the fact that the state and the market in the social sphere are limited. According to Ukrainian researcher H. Homa, "national model of social th sudarstva should be based on the console datsiyu efforts of the three components of society – government, business and the public: for the mouth ment of partnerships between government and business, intensification of the dialogue between the state and society. Effectiveness tive interaction Social Party ers, to achieve an optimal balance and the distribution of responsibilities between the state, business and general stvom should accelerate the development"[9].

An objective analysis shows that the establishment of a social state in our country is still a matter of the future.

The path to a social state is complicated by the fact that we have to simultaneously create a reliable foundation for a future social state and at the same time solve urgent current problems of the transition period, associated, for example, with the search for new models of social protection for a significant part of the Ukrainian population. The existing system of social

[8] Бабкін В.Д. (2001) Від правової до соціально-правової держави. Правова держава: Щорічник наук. пр., вип. 12, с. 276.

[9] Хома, Н.М. (2013). Особенности модели социального государства в Украине. Среднерусский вестник общественных наук, № 1, с. 155.

protection needs to be reviewed, because its mechanisms are not able to solve the problems of material support for those who need help. Therefore, the main characteristics of the new models of social protection should be both social efficiency and economic.

CONCLUSIONS

Based on the foregoing, we formulate the main functions of the modern social state: state and legal regulation of the economy; redistribution of income; protective function: in its broadest sense – protecting society from schism and upheaval, supporting the social world; in the narrow, protection of the population in a market economy; combating poverty, reducing social inequality; fight against crime; security and regulatory, providing for the responsibility of business to the state and third parties.

It is clear that a market economy better than any other system satisfies people's needs. At the same time, as world practice shows, market relations are primarily focused on the laws of profit and cost accounting. And this means that decisions in the economic sphere are made taking into account narrow commercial interests, and not from the standpoint of social responsibility. Therefore, in order to protect itself, society needs the regulatory function of the state, the legal social state.

The success of social development is possible only if a reasonable definition of its real goals. While in our country there is no clear idea of the society we are striving for. The state has not decided on a citizen in the conditions of transition to market relations. Thus, the most important problem associated with determining the nature of the relationship in the system of "state – man" has been solved.

It should be noted that the scientific study of the essence, functions, and the formation of the social state in Ukraine has been going on for a long time. However, researchers still face many challenges that require new approaches. Among them – the definition of the boundaries of state intervention in the socio-economic sphere; elimination of sharp disagreements of the material statuses of individuals; consequences of managerial decisions in the field of social policy for the population; the dependence of the degree of increase in social expenditures on the level of professionalism in the legislative and executive authorities and many other problems, the development of which will create a theoretical basis for the practical implementation of the principles of the social state in Ukraine.

SUMMARY

The article considers the issue of state legal regulation of socio-economic processes. The main theoretical and methodological approaches to the study of the problems of the social state are analyzed. It is argued that the functions

of the social state in Ukraine are declining. It is shown that the consolidation of Ukrainian society and its withdrawal from a deep crisis is possible only on the basis of policies aimed at building a democratic, social, legal state.

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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 4, 2019.
A run of 150 copies.