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(1)

OBJECT AND SUBJECT OF INFORMATION LAW

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ABSTRACT

The urgency of the issue is due to the need to develop and improve the conceptual framework of information law, in particular to determine the essence and content of basic informational and legal concepts that would contribute to the further theoretical research and practical development of the legal and regulatory frameworks of activities of public authorities of Ukraine. The purpose of the research is to determine the object and subject of information law and related informational and legal concepts.

The results of the research were the author's definitions of the concept of the object of study of information law (information activity related to law, or, in other words, the theory and practice of legal organization of information activity), the subject of information law (in general sense it is a legal organization of information activity). The systematic approach allowed to form a certain system of concepts concerning the information and legal sphere, the most obvious of which are: information policy, information legislation, information and legal activity, state information and legal activity. The concepts developed in the research are aimed at constructing an unquestionable (for related branches of law, science and practice) "trees" of basic and derivative terms on informational subject-matter and further detailing informational and legal activities as subjects of information law.

Keywords: information law, information policy, information legislation, state information and legal activity, object and subject of law.

INTRODUCTION

Scientific, practical problems.

The issue concerning of the object of information law is outgoing and is of great theoretical and methodological importance for information and legal science. The accuracy of definition of the issue of a science object depends on its effectiveness, theoretical and practical importance.

The study of the object of information and legal science is of fundamental importance, because this category defines the circle of phenomena and processes of surrounding reality, which are familiar with

the legal sciences in the information sphere, and the deficiencies in its definition entail mistakes in the formation process of science subjects.

The urgency of the issue is also connected with the need for development of the conceptual apparatus of information law, in particular the definition of the essence and content of basic informational and legal concepts that would contribute to further theoretical research and practical development of legal and regulatory frameworks of activities of public authorities of Ukraine. The systematic approach to information activities involves consideration of the main categories and concepts that determine its essence and content. The study of such concepts is important for determining the connection, logic and legal structure of information activity and information law in the state.

In our opinion, the basic informational and legal concepts can be attributed to the following ones: "information activities", "information policy", "information legislation", "informational and legal activities", which determine logical and semantic interrelation and logic of formation and changes of others related concepts.

Analysis of recent researches and publications.

A lot of scholars, mainly from post-Soviet countries, have devoted their papers to the disclosure of the essence and content of the above-mentioned concepts.

Most of the scholars agree that the object of information law is "social relations" in information sphere. The following scholars share the same views: I.V. Aristova, K.I. Bieliakov, V.M. Bryzhko, R.A. Kaliuzhnyi, L.P.

Kovalenko, B.A. Kormych, H.M. Krasnostup, A.I. Marushchak, O.G. Martseniuk, O.M. Seleznova, I.M. Sopilko, V.S. Tsymbaliuk.

According to the object, virtually all of the above-mentioned scholars adhere to the general approach to the definition and object of information law: "psocial relations" by specific information spheres, however, the spheres depend on the authorial point of view: "relations in the sphere ..."; "Social relations ...", in particular, "which arise concerning", "which arise in the field of information activities", etc.

We will give further details of the scientists' views on the object and the subject, but the general approach of these authors is unchanged.

However, existing views and models of organizational and legal norms of information law have a system of contradictions on various interdependent aspects: social, legal, organizational, etc. The main reason for the problems of the practical plan is the undeveloped system of views on the object and subject of information law.

The need for systematic elimination of a complex of causes and problems of the practical plan goes into the plan of solving problems of a theoretical nature, that is why they require further research and development of the integrity of perception and organization of basic informational and legal concepts.

Purpose of the study.

The purpose of the research is to define object and subject of information law and related informational and legal concepts, such as information and legal activities and information legislation. The results

of the research can become an important component in the development of information and legal science.

Research Methods.

To build a multifaceted idea of a social object, one needs to take a comprehensive approach to creating a theoretical picture of the object under study. This position provides for application of the basic methodological scheme "dual knowledge" concerning the object proper and concerning the knowledge that describes and depicts it. On the basis of the already existing knowledge, it is necessary to create an image of the object that is a model for its further analysis and determination of the subjects of research, this will allow to define the system characteristics of the object, which is conventionally called "information law".

Much attention is paid to the problem of defining the object, on which depends the further application of methodological approaches to the formation of the theoretical foundations of information law.

In our opinion, the most successful base point for delineating the object of the research is the separate provisions of papers by Yu.D. Kunev concerning the general issues of defining the object of jurisprudence and the methodology of studying state and legal phenomena, which outlines approaches to the studying jurisprudence, as common ones to information law.

Using the methods of dialectical and formal logic allowed us to formulate and specify the basic concepts and categories that make up a

scientific novelty of the concepts: "information activities", "information and legal activities", "information policy" and "information legislation".

From a theoretical point of view, we outlined the general scope of information law with the help of the object and subjects, which will allow to build reliable models of social phenomena during scientific researches.

RESULTS AND DISCUSSION

THE FIRST TOPIC

THE OBJECT OF INFORMATION LAW

Each science has its object and subject of research. The object of a research is the object, which, after all, holds all the characteristics obtained at different levels of the creature of complex knowledge, in which they all seem to be combined and projected.[1]

"The study of the object of legal science, or jurisprudence, is fundamentally important, because with the help of this category phenomena and processes of reality, which are familiar with the legal sciences, are outlined, and drawbacks in its definition entail mistakes in the process of formation of scientific objects".[2]

"Summarizing the views of different authors on the object of cognition of jurisprudence, one can say that each of them is correct, but

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[1] **Shchedrovytskyi, G.P. (1969). Object problems in system design. Humanitarian portal. Available from: https://gtmarket.ru/laboratory/basis/3961/3983**

[2] **Kunev, Yu. D. (2008). Object of jurisprudence: a systematic approach. *Law of Ukraine, 3*: 35–38.**

they do not explain the systematic connection of categories of such complex social phenomenon as law, mechanisms of research and improvement of the practice or dynamics of law, prospects of knowledge of law.

Concerning the legal sciences, it is advisable to include them in the sciences, which are related to activities for several reasons: 1) the modern theory of law mainly creates models of relations, which then are needed to be implemented in the activities, hereat certain contradictions are traced, to solve which one should normalize not relationship models, but models of activities; 2) human activities as a social category has a systemic character, and it can be considered, first of all, as a system, especially since the foundations of methodology have already been laid by the development of humanity and cognition (systematic approach according to G. P. Shchedrovytskyi, etc.)".[3]

In the scientific journal "Law of Ukraine" №3, 2008, the article was published, in which it was suggested to concider that "the object of the study of law should be public activity of people associated with law, or, in other words, the theory and practice of the legal organization of social activity.

Legal organization means acquiring a certain quality within the scope of law. Organization as a universal feature of activity has a procedural and structural component".[4]

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[3] ***Ibid.***

[4] ***Ibid.***

Thereafter it was determined that "the object of study, projection, operation or real object of law is public activities (practice); the ideal object is a model or theoretical model of a real object, knowledge of law-related activity (theory)".[5]

The main categories of activity theory are described in the works of G. P. Shchedrovytskyi.[6]

"Due to the complexity of state-legal systems and phenomena, the levels of abstraction in the construction of their models should be quite high (although they are chosen by the researcher himself, depending on the purpose and criteria for the evaluation of results) and the methodology should correspond to the latest scientific achievements. Accordingly, the choice of methodology is a fundamental question for the adequate and complete definition of the object of jurisprudence".[7]

One of the fundamental points of system-based methodology (SB-methodology) is the conception of activity as a system.

Elements of the scheme of legal activity acts serve as constructive "molecules", from which branched systems of cooperative activity are formed, while the list of elements can be expanded (principles,

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[5] ***Ibid.***

[6] **Shchedrovytsky, G. P. (1975). Initial representations and categorical means of activity theory. Development and implementation of automated systems in design (theory and methodology). Humanitarian portal. Available from: https://gtmarket.ru/laboratory/basis/3961/3973**

[7] **Kunev, Yu. D. (2008). Object of jurisprudence: a systematic approach. *Law of Ukraine, 3*: 35–38.**

methods), different specification is given to different elements of the scheme, thereby images of acts of activities of different mode and type can be formed. The system of human social activity is polystructural, that is, it consists of many, as if layered, structures, and each of them, in turn, consists of many separate structures that are in hierarchical relations with each other.

In the system of activities, law can simultaneously be represented as a material, means, a norm, a product of activities, and these combinations in cooperation of different acts of activity, where an element is law, will form different types of legal activities: law-making, law enforcement and their varieties.[8]

Any activity also has a process component, where the main categories are the process of change (development or disorganization), the mechanism of activity, represented by the following basic elements: goals, principles, methods, functions in the form of a set of acts of activities. The dynamics of activities is formed by the imposition of a structural presenting the acts of activities to the process. The approach to development of activity models in terms of the development category forces us to contrast systems that describe changes of selected object to systems that describe the mechanism of these changes, to expand the original concept of the object, changing its boundaries, structure and ontological status.

"The definition of the object of jurisprudence does not contradict the normativist approach to legal consciousness, but deepens it by making

[8] ***Ibid.***

certain changes to the object of " normalization of activities (as a system) by means of legal acts", allows more systematically approach to stydying state-legal phenomena and processes, to reach new horizons concerning the organization of legal activity, using the forms of organization of activity and thinking, outlined in the SMD-methodology through the opportunity: to formalize the basic models of legal practice; to explore the main links between other types of activities that are crucial for legal one; to create cooperative systems of law-related activities, to break new ground in studying legal theory and practice, in particular, using the advances of praxeology, synergetics, systemology, etc.".[9]

Turning to the published scientific works related to the object of information law, one can distinguish several different positions concerning the specific composition of phenomena and processes.

As to the definition of the object of information law, most scholars agree that the object of information law is "public relations": "several complexes of public relations"[10]; "social information relations"[11]; "a certain type of social relations"[12].

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[9] ***Ibid.***

[10] **Kalyuzhnyi, R. A., Martseniuk, O. G. (2008). Subject and methods of information law. *Legal informatics, 3*: 5–9.**

[11] **Krasnostup, G. M. (2014). The problem of determining the object and the subject of the information law. Available from: https://minjust.gov.ua/m/str_7949**

[12] **Seleznyova, O. M. (2014). Specifics of the nature of information law in the context of sectoral affiliation. *Scientific Bulletin of Uzhhorod National University, 26*: 178–180.**

Interesting is the opinion of Seleznova O.M. that the "branch of legislation" is characterized by a set of normative and legal acts that regulate the relevant sphere of life[13] in its works, along with "information relations" appears as an object of "information activities"[14].

The main form of social activities in the information sphere is information activities, which needs legal regulation and is in fact is an object of legal regulation.

Most scholars agree that: "Information activities are a set of actions using appropriate ways and methods related to creation, receipt, collection, storage, use and dissemination, as well as security and protection of information".

According to Article 9 of the Law of Ukraine "On Information" the main types of information activity are creation, collection, receipt, storage, use, dissemination, protection and security and protection of information.[15]

The following elements of information activities can be determined (take legal form) by means of law:

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[13] ***Ibid.***

[14] **Seleznyova, O. M. (2016). Theoretical and methodological interpretation of certain basic categories of information law. Paper presented at the scientific and practical conference "IT law: problems and prospects for the development in Ukraine". Lviv: Lviv Polytechnic National University, 136–142.**

[15] **VRU (Verkhovna Rada of Ukraine). (1992). On information. Law of Ukraine, No. 2657-XII. Available from: https://zakon.rada.gov.ua/laws/show/2657-12**

- the rights and legal status of the entities;

- the actions of the entities concerning information transforming;

- information transforming technology;

- the means by which the material of information activities is directly influenced;

- product of information activities.

In the system of information activities, the law can simultaneously regulate the material, means, norm, technology, product of activities, and these combinations in cooperation of various acts of activities, where the element is right, will form different types of information activities that are relevant to the sphere of information law.

It is appropriate to consider information activities related to law, or, in other words, theory and practice of the legal organization of information activities as the object of studying information law.

THE SECOND TOPIC
THE SUBJECT OF INFORMATION LAW

Before proceeding with the subject of information law, it is very important to find out the general approaches to distinguishing the subject of law, since it is advisable to make detailization of the subject of the branch based on the approaches formed for the law as a whole.

Most modern law theorists define the object of law as "social relations", and accordingly, subjects are the legal regulation of varieties of social relations.

According to the authors of the textbook "Theory of State and Law" the history of legal life of society has shown that the sphere of legal regulation includes three groups of social relations that correspond to these characteristics.[16]

But while careful examination of views on formulations of groups of law and a critical analysis of the content of the formulations, we made sure once more, that the object of legal regulation is not only social relations but also other elements of activities, one of which elements is social relations, since the activities point to other elements that need legal regulation and also answer the question "what?" is regulated.

O. F. Skakun states: "The distinction of the subject of legal regulation of one branch from another is made on the basis of revealing the qualitative homogeneity of its constituent elements: subjects; objects; content; dynamic factors.

For example, in labor social relations, subjects are workers and employees, objects are objects of labor, content is labor activities, dynamic factors are changing employment requirements. Other structure of elements has of property relations, management ones, etc.".[17]

Actually O. F. Skakun confirms the dynamic component of the subjects of the branches of law, – behavior of subjects with certain

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[16] Alekseev S. S. et al. (1998). The theory of state and law. Moscow: Statut, 221–222.

[17] Skakun, O. F. (2001). The theory of state and law. Kharkiv: Consum, 240–241.

objects and interaction of subjects. Such behavior and interaction are specific only to activities.

Let us try to define the subjects of law on the basis of existing views of theorists of law on subjects of branches of law, based on the active representation of their nature and without changing the general approach to the division of the law into private and public one in this way.

"The first group is people's relations for exchanging values (both material and non-material). Herein the opportunity and necessity of legal regulation of property relations are the most clearly demonstrated, because the whole society and each person separately are interested in the mutually acceptable exchange of property. These relationships are based on generally accepted rules (for example, the recognition of property value in monetary terms); the obligation to recognize the rules is ensured by the effective force of the special apparatus of legal coercion".[18]

This is a description of the branch of law – private law, which regulates the activities of flow of values (both material and non-material).

Further, we will cite descriptions of public law, where the law regulates the implementation of state functions.

"The second group is formed by relations with the authority-compliance management of society. Man and society are interested in

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[18] Alekseev S. S. et al. (1998). The theory of state and law. Moscow: Statut, 221–222.

managing social processes. Management is carried out to satisfy both individual and common social interests and mshall be implemented according to strict rules, provided by the force of coercion. Naturally, the sphere of legal regulation includes the state management of social processes".[19]

The second branch of law regulates the activities of public administrations, which is carried out to satisfy both individual and general social interests. Such activities have a significant difference, because the object is activities in content: management, the implementation of the regulatory function of the state.

"The third group includes law enforcement relations, which are designed to ensure the normal flow of value exchange and governance processes in society. These are the relations arising from the violation of the rules governing the behavior of people in two specified spheres".[20]

The third branch of law regulates law enforcement activities to implement the security function of the state.

"Social relations within these groups will be subject to legal regulation. These are social relations, which by their nature may be subjected to regulatory and organizational influence and, under specific historical circumstances, require legal regulation. The features, nature,

[19] ***Ibid.***

[20] ***Ibid.***

methods and means of legal regulation depend on nature and content of social relations, which are the subject of legal regulation".[21]

The further division according to branches and subjects within the branches should characterize the branch with the help of objects by volume and proceed from the separation of homogeneous activities and the normalization of its components as a whole according to the chosen model of activities and model of its standardization in the rules of law.

There are such static elements of activities to determine the homogeneity of activities as subjects of braches of law: purpose; subjects; material; way; means; methods; principles; product and dynamic components as a process of change in space and time.

Traditionally, the subjects of legal regulation are:

- the main components of law are private and public;

- profile branches of law: constitutional, administrative, civil, criminal (in this context, it is not superfluous to note the point of view concerning distinguishing as profile the following ones: administrative, civil, security law. A division into profile branches of law is confirmed in encyclopedia "Encyclopedia of Soviet Law"[22] in the late 1980s. R. Beermann described the meaning and content of administrative procedure as follows: "Administrative procedure is a rather new term for the Soviet legal system. It is more widely used in Western Europe,

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[21] ***Ibid.***

[22] **Feldbrugge, F. J. Ferdinand Joseph Maria, Van den Berg, Gerard Pieter & Simons, William Bradford. (1985). Encyclopedia of Soviet Law. Leiden: BRILL.**

where it has evolved into a third branch of formal law along with civil and criminal proceedings");

- special branches of law: by special spheres of activities and homogeneous methods of legal regulation: labor, land and financial;

- complex branches of law – by special spheres of activities and consisting of norms that are included in various profile branches of law: information, trade, maritime, environmental, etc.

After considering the issues of the general subject of law, it is expedient to study the issue of theoretical and practical significance of the defining subjects of branches of law.

There are a number of views on information law.

Krasnostup H. M. notes that "the main subject of social relations is information (information, data, knowledge, secrecy, etc.)".[23]

Seleznova O. M., noting that "information space is a part of the information sphere, limited by the material and non-material territory of extension, the center of which is the combination of subjects, which carry out information activities, and its components – information and information relations, information science and information culture, information activities and information infrastructure, information law and information legislation"[24] points, in fact, to subjects of information

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[23] Krasnostup, G. M. (2014). The problem of determining the object and the subject of the information law. Available from: https://minjust.gov.ua/m/str_7949

[24] Seleznyova, O. M. (2016). Theoretical and methodological interpretation of certain basic categories of information law. Paper presented at the scientific and practical

law: information and information relations, information culture, information activities and information infrastructure, information legislation.

B. A. Kormych defines the subject of information law as follows: "social relations arising concerning establishment of regimes and forms of information flow, the exercise of information rights and the legal status of the subjects of information processes and formation of their legitimate behavior and relations".[25]

It is appropriate to apply this approach to define of the tasks of activities that needs legal regulation in the information sphere (flow of information) or information activities.

A more successful definition of the subject of information law is: "The subject of information law is the social relations that determine the legal regulation of the creation, storage, possession, utilization, use, dissemination of information, the formation and use of information resources, the establishment of modes of access to information, the creation and use of information systems, the use of information product, ensuring the rights of entities when receiving complete and objective information, ensuring information security of the objects of information relations and the conduct of the information policy of the state", as it defines activities undertaken in the information environment.

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conference "IT law: problems and prospects for the development in Ukraine". Lviv: Lviv Polytechnic National University, 136–142.

[25] Kormych, B. A. (2011). Information law. Kharkiv: BURUN and K.

The authors of the textbook "Information Law" also identify the types of activities that need legal regulation in the information field as follows: "a) all activities related to the information resource as an object of activities (the product of intellectual, industrial, any other social activities); b) management in the field of relations related to a specific information resource and certain types of information processing; c) use of new technologies of work with information – formation and ensuring compatibility of information systems and communication systems in information systems and networks; d) ensuring security in the field of information and informatization; e) realization of legal responsibility in the field of information, informatization, telecommunications".[26]

The vast majority of scholars recognize the activities in the information field as the subject of information law.

"The subject of state legal research is a landmark of a piece of knowledge about an object that forms an ideal object, which replaces a real object, that is, the legal organization of social system activities, its mechanism, organizational and legal foundations of its functioning and development".

It was determined that the category "legal organization of activities" means ordering, harmonization of interconnected systems of norms of activities and legal norms necessary for the acquisition of qualities and consolidation of regularities that will ensure the effectiveness and

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[26] Bachilo, I. L., Lopatin, V. N. & Fedotov, M. A. (2001). Information law, edit by B. N. Topornina. SPb: Law Center Press, p. 97.

development of certain activities and the relevant social system and consists in the organization of systems of activities on the implementation of the legal rules and the organization of the system of norms that determine the activities.

Legal organization of activities is the basis that allows us to take a new approach to the processes of modernization of social processes and systems, which combines the basic approaches to "activity universe", "development management" and normalization of activities of various kinds in the rules of administrative law".[27]

Thus*, we consider legal organization of information activities as the subject of information law*.

THE THIRD TOPIC

INFORMATION ACTIVITIES, INFORMATION LEGISLATION

In our opinion, the issue of scientific definition of information activities is equally important.

The essence of information activities is not adequately defined in the scientific literature. When considering the concept of information activities defined by the legislation, attention is paid only to certain groups of features of information activities, in addition, no attention is paid to the activities of other entities that interact at certain stages of the implementation of information legislation. This approach to

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[27] Kunev, Yu. D. (2009). Methodology of the study of state and legal phenomena as a topical issue. *Law of Ukraine, 12*: 118–123.

defining information activities does not meet the requirements of complex and systematic research and needs further development.

"Information" (informational) is a word involved in the formation of a large number of terms that, on the one hand, form entire sectors in science, legislation, daily activities, on the other – derived from terms that originated in other branches and have acquired a systematic role for these industries.

Obviously, the adjective "information" is a generic trait that defines the exact place for a derivative term in an imaginary "tree", the top of which is a certain basic term (e.g., "system", "politics", etc.).

In terms of interpreting the term "information activities", two options for its further association should be considered:

– *with the "flow of information"* ("when analyzing information as an object of legal relations, it is impossible to talk about it at all, not specifically. Information in flow should be primarily the object of consideration".[28] L. P. Kovalenko proposes information to be divided into three groups, depending on the flow in which it is located: civil, administrative, social (public).[29]

– *with the "creation, operation and disposal of certain information objects"* ("objects in connection with which entities enter into information legal relations (objects of legal relations). Objects of

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[28] **Kovalenko, L. P. (2012). Object of information legal relations. *Law and Security, 5*(47): 78–83.**

[29] ***Ibid.*, p. 82.**

information legal relations (information objects) – are the documented information, information products and services; exclusive rights; elements of information security (information rights and freedoms, state of personal security, security of information, information resources, information products, etc.); information technologies and their software (including programs for computers), other objects in the information sphere".[30]

With these basic variants of the association of the adjective "information", the following concepts and connections of concepts are formed: "information activities", "state information activities", "information legislation".

Thus, state information activities are the activities of the state to apply, enforce and observe information legislation and prevent its violation.

Information legislation is a set of laws and other legal acts of the state related to the flow of information, creation, operation and disposal of certain information objects.

The definition of "information policy" is important in this context.

Based on the material mentioned above, which analyzes the structural components, it is possible to identify the main process components of the overall activities involved in the formation and implementation of information policy, which will allow to build a complex, multidimensional model of information policy.

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[30] ***Ibid.*, p. 81.**

On the basis of analogy of the definition of Yu.D. Kunev and L.R Bayazitov, the concept of "customs policy"[31] it is possible to define the concept and content of the concept "information policy".

Considering the information policy of Ukraine as a social activity system, the system provides for the consideration of subsystems by the levels (stages) of its formation and implementation, which collectively make a closed cycle of information policy:

1) activities for forming the model of future changes in information relations, in particular with regard to the physical flow of information;

2) activities of international institutions in forming the model of future changes in international information relations and international information legislation;

3) lawmaking activities on the implementation by the state institutions of the model of future changes in information relations, related to the physical flow of information in the legal acts of information legislation;

4) public activities of state institutions related to the implementation of information legislation (state information activities);

5) private activities directly related to compliance with the legal rules of information legislation;

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[31] **Kunev, Yu. D. & Bayazitov, L R. (2013). Determination of the essence and content of the basic customs and legal concept: customs policy. *Bulletin of the Academy of Customs Service of Ukraine. Series "Law", 2*: 7–18.**

6) information flow and internal production of information resources in parts that are not directly related to compliance with the legal rules of information legislation, but depend on the model of relations regarding information flow and the existence of information objects.

From the above activities, the first three are distinguished as activities that can be directly attributed to the components of *information* policy forming – they actually form the basis of political activities related to the legal regulation of the *information* sphere. Three others can be considered as components of information policy implementation activities".[32]

What kind of state we are building depends on whether we include the implementation of information legislation in the content of the concept "information policy". Information policy is formalized in the rules of information legislation and is *implemented* in the enforcement activities of public authorities and other entities in the field related to the physical flow of information. Therefore, it is important to think that in a democratic, law-governed state, information legislation should be the only product of information policy.

Having synthesized the properties of the activities that form the information policy, we can formulate the following: *information policy can be understood as the activities of the state to transform the authority and certain interests of society (citizens), the state, trade, industry into legal rules and norms related to the flow of information, creation, operation and disposal of certain information objects.*

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[32] ***Ibid.***

The task of information policy is to form a statutory system of obstacles (barriers) to the free flow of information or the legal disposal of certain information objects (programs, resources or systems).

The systematic approach involves the formation of concepts related to varieties of information activities, the obvious ones of which are:

– information policy – the activities of the state in forming the properties of information legislation of Ukraine;

– information legislation – a set of laws and other legal acts of the state, related to the flow of information, creation, operation and disposal of certain information objects;

– state information and legal activities, referring to the system of legal norms of information legislation, which determine the practice and directions of development of activities of the body of executive power with a special status in the information sphere;

– state information and legal activities – the activities of the state to apply, enforce and observe information legislation and prevent its violation.

The varieties of activities for the formation of information legislation and the implementation of information legislation are system-creating. The second one can be considered information and legal activities, that is, information and legal activities are the activities of implementation of information legislation.

To determine the information and legal activities, it is necessary to outline the objects and subjects of the activities. From the above activities, we can distinguish the last three as the components of

information and legal activities, and their subjects, which directly interact during the flow of information, creation, operation and disposal of certain information objects.

Information **legislation enforcement activities (information and legal activities) consist of the above activities defined in paragraphs 4, 5, 6.**

First, let us define that information and legal activities are kinds of activities organized by the standards of information legislation related to the flow of information and the existence of information objects.

The types of information and legal activities that are actually the subjects of information legislation are defined:

1. Public activities of state institutions related to the implementation of information legislation:

a) the activities of public authorities in the enforcement of the positive rights and obligations of private law entities, which consist in *applying the rules of information legislation* – consist mainly of procedural rules and procedures;

b) the activities of public authorities that are aimed at ensuring organizational and legal *compliance with* the rules of information legislation and related to the prevention of its violation;

c) the activities of public authorities on the organizational and legal support of previous activities are realized during the performance of administrative and operational functions by the state.

2. Private activities for the realization of positive rights and obligations, which are directly related to the *observance and compliance* with the legal rules of information legislation.

Thus, the main varieties of information and legal activities that are subject to analysis and development are distinguished.

Based on the polystructural nature of the activities that make up the information and legal activities, it can be interpreted as cooperative activities that consist in the interaction of public and private entities. Such interaction will be considered as a type of activities related to the flow of information and the existence of information objects.

Information and legal activities are cooperative activities of the subjects of legal interaction of state bodies and persons concerned, fulfilling their obligations aimed at considering and realizing state and private interests related to the flow of information and the existence of information objects, organized by the standards of information legislation.

It is possible to specify the part of the definition "information flow and existence of information objects" as follows: "creation, storage, possession, utilization, use, dissemination of information, formation and use of information resources, setting modes of access to information, creation and use of information systems, use of information product, ensuring the rights of entities upon receipt of complete and objective information, ensuring information security."

While modeling the representation of information and legal activities, a sufficiently complex, multilayered structure has emerged that needs to be considered by layers or certain sections: a factual

component, as a set of means of a statutory concept; a procedural component as a set of operations and stages of interaction of subjects; materialization of a statutory concept in the legal procedure.

"The double meaning of information activities was manifested in the so-called concept of public and private dualism, which was initially applied to the media sphere, but it can also broadly characterize the key principles of regulation of basic information activities in general".[33]

According to the subjects of regulation Information law can be divided into activities in the field of private law and public law.

The specificity of the sphere of public and legal regulation identified the need of Schmidt-Assmann to distinguish information and administrative law from information law, as a branch of administrative law.[34] By analogy, the areas of information and public and information and private law can be distinguished, this again confirms that the information law in one of the complex branches of law.

[33] Schmidt-Assmann, E. (2009). General administrative law as the idea of settlement: basic principles and objectives of the systematics of administrative law, edit by O. Syroid. Kyiv: K.I.C., p. 238.

[34] Seleznyova, O. M. (2016). Theoretical and methodological interpretation of certain basic categories of information law. Paper presented at the scientific and practical conference "IT law: problems and prospects for the development in Ukraine". Lviv: Lviv Polytechnic National University, 136–142.

CONCLUSIONS

Information activities related to law should be considered as the object of information law, in other words, it is the theory and practice of legal organization of information activities.

Then legal organization of information activities will be considered as the subject of information law.

The systematic approach involves the formation of a certain system of concepts in the information and legal sphere, the obvious ones of which are the following:

– information policy can be understood as the activities of the state to transform the power and certain interests of society (citizens), the state, commerce, industry into norms of laws and rules concerning the flow of information, creation, operation and disposal of certain information objects.

– information policy is the activities of the state in forming the properties of information legislation of Ukraine;

– information legislation is a set of laws and other legal acts of the state, related to the flow of information, creation, operation and disposal of certain information objects;

– information and legal activities are a kind of activities organized by the standards of information legislation related to the flow of information and the existence of information objects;

– information and legal activities are cooperative activities of the subjects of legal interaction of state bodies and persons concerned,

fulfilling their obligations aimed at considering and realizing state and private interests related to flow of information and the existence of information objects, organized by the standards of information legislation.

– state information and legal activities are the activities of the state to apply, enforce and observe information legislation and prevent its violation;

The types of information and legal activities that are actually the subject of information law are defined:

1. Public activities of state institutions related to the implementation of information legislation:

a) activities of public authorities in the exercise of the positive rights and obligations of private law entities, which consist in applying the rules of information legislation, consist mainly of procedural rules and procedures;

b) activities of public authorities that are aimed at ensuring the organizational and legal compliance with the rules of information legislation and related to the prevention of its violation;

c) activities of public authorities on the organizational and legal support of previous activities are realized during the performance of administrative and operational functions by the state.

2. Private activities for the realization of positive rights and obligations, which are directly related to the observance and compliance with the legal rules of information legislation.

Defined concepts will facilitate the construction of a non-contradictory area of law, science and practice of the "tree" of basic and derivative terms on information topics and further detalization of the areas of information and legal activities as subjects of information law.

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IMPLEMENTATION OF INTERNATIONAL RULES AND STANDARDS IN NATIONAL CUSTOMS LEGISLATION ON THE APPLICATION OF ADVANCE RULINGS IN CUSTOMS

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Abstract

The use of advance rulings in customs is recognized as one of the most important tools for facilitating international trade procedures. The customs legislation of Ukraine sets certain restrictions on their application.

The aim: to identify the range of issues from which advance rulings are made regarding the application of customs legislation and to formulate proposals to amend it.

The methodological basis of the study is a set of general scientific methods of cognition.

It has been established that national customs legislation contains a comprehensive list of issues from which advance rulings can be made that meet the minimum standards of the Trade Facilitation Agreement. It is proposed to implement the norms of international instruments by amending the Customs Code of Ukraine to expand the range of issues on which advance rulings can be made.

Keywords: advance rulings, customs, customs procedures, implementation of international standards, national customs legislation.

INTRODUCTION

Scientific, practical problems.

The modern development of customs in Ukraine is characterized by active search and introduction of innovative tools and methods aimed at improving and enhancing the level and quality of its implementation, including to ensure harmonization and simplification of customs procedures. Attempts to streamline these processes and to set the appropriate direction for them go along with an objective requirement to introduce effective, proven customs instruments and methods only. Of particular importance to the above are the European integration aspirations of Ukraine, which cannot be fulfilled without the adaptation of national legislation in accordance with international rules and standards.

Active foreign economic activity (FEA) of Ukraine, rampant development of trade relations prompt a timely response to new conditions and challenges, which is primarily related to the acceleration of customs procedures, the removal of barriers, the facilitation of trade and further implementation of recognized standards.

Advance rulings on the application of individual provisions of the Ukrainian customs laws are one of the internationally recognized tools for the customs procedures simplification, the effective application of which is related to the regularization of customs relations, the enhancement of legal certainty and predictability, as well as effectiveness of customs procedures.

An important component of the legal significance of advance rulings

is the guarantee of their application by any customs authority throughout the period of their duration, without reviewing and re-evaluating the factual circumstances and legal bases on which they have been adopted. In addition, the implementation and application of advance rulings means optimization of the time of customs procedures carrying out, elimination of contradictions between customs authorities and international business entities, in particular regarding the goods code identification according to the Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA), countries of origin, etc.

The application of advance rulings in customs and legal regulation is recognized as one of the most effective tools for simplifying and speeding up international trade procedures by such international organizations as the World Trade Organization, the World Customs Organization, the Organization for Economic Cooperation and Development, the UN European Economic Commission etc.

At the same time, national customs legislation sets certain restrictions to advance rulings, their adoption, application, for example, in respect of a range of issues regarding which they can be adopted, the time of their adoption (before the transfer of goods across the customs border), the time limits for adoption, and their period of validity. It should be noted that the most restrictive factor for the advance rulings is the range of issues on which advance rulings can be adopted. In this regard, we consider it necessary to study the issues on which advance rulings may be adopted, their legal significance, the viability of adopting advance rulings regarding them, and also establishing their compliance with international and European standards.

Literature review.

The issues of simplification and harmonization of customs procedures, adaptation of national customs legislation to international regulations and standards have already been the subject of analysis by the Ukrainian scientists. Thus, Y. Dodin argued the need on implementation of norms for SAFE Framework of Standards to Secure and Facilitate Global Trade into the National Customs Legislation.[35] V. Prokopenko in his monography justified the need on implementation of norms and standard sin to the procedure of customs formalities use in the process of transferring goods across the customs border of Ukraine.[36] Also the specific aspects of advance rulings were researched. In particular, S. Voitov analyzed advance rulings, adopted in the process of goods classification according to UCGFEA,[37] and R. Nehara – rulings, that used in peculiar customs regimes.[38] While researching the mechanism for determine of goods origin country, P. Shevchenko

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[35] **Dodin, Y. (2005). SAFE Framework of Standards to Secure and Facilitate Global Trade.** ***Mytna sprava, 4*****: 9-12.**

[36] **Prokopenko, V. (2018). Implementation of customs formalities in the process of goods transferring a cross customs border of Ukraine with the different kinds of transport. Dnipro: UMSF.**

[37] **Voitov, S.H. (2013). Scientific and applied aspects of determining of goods' origin country.** ***Visnyk Akademii mytnoi sluzhby Ukrainy. Ser.: Ekonomika, 1*****: 53-58.**

[38] **Nehara, R.V. (2016). Advanced rulings as for permission on keeping the goods in separate customs regime. Paper presented at the scientific and practical conference "*****Suchasni pohliady na aktualni pytannia pravovykh nauk"*****, Zaporizhzhia, 78-81.**

analyzed advance rulings.[39] However, the issues regarding which advance rulings can be adopted remain poorly investigated.

Purpose of the study.

The purpose of the study is to determine the range of issues regarding which preliminary decisions are made and to draft the proposals for amendments to the national legislation, based on a comprehensive analysis of theoretical developments, international regulations and standards, prescriptions of national customs legislation, and their practical implementation.

The *object of the study* is the public relations that arise in regards to the application of advance rulings in customs, and the *subject of the study* is the advance rulings in customs.

The contents and conclusions of the study are based on the rules of the national and international law regulating the procedure of advance rulings. The empirical and information background is made up of the aggregated law enforcement activities of customs authorities, customs statistics data, political and legal journalism.

Research Methods.

The methodological basis of the study is a set of general scientific methods of cognition, in particular the system method - to characterize the advance rulings institute; formal and legal basis - to analyse and

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[39] **Shevchenko, P.Iu. (2016). The meaning of goods' origin for implementation of preferential duty rates. *Visnyk Chernivetskoho fakultetu Natsionalnoho universytetu «Odeskay urydychna akademiia», 3:* 130-143.**

clarify the problematic issues of law enforcement; comparative legal and benchmarking methods - to compare the procedure and conditions of advance rulings adoption in Ukraine and other countries; modelling, analysis and synthesis - to determine the current actual status of the procedure of adopting advance rulings and its compliance with the requirements of national and international customs laws, as well as to formulate proposals for its improvement.

RESULTS AND DISCUSSION

THE FIRST TOPIC
STATE OF LEGAL REGULATION OF ADVANCE RULINGS IN NATIONAL CUSTOMS LEGISLATION

The introduction of the advance rulings institution into national customs legislation has become an important and necessary step towards simplifying and harmonizing the customs procedures, adapting them to the international regulations and standards. In addition, the implementation of international practices ensures guaranteed and positive consequences for both FEA and customs authorities, since it allows to optimize the time of customs formalities, reduces the disputed decisions during the transfer of goods across the customs border, without compromising quality and efficiency of the customs procedures.

In accordance with part 4 of art. 23 of the Customs Code of Ukraine (CC of Ukraine), advance rulings may be adopted on the following issues:

classification of goods (including the complete items being shipped non-assembled in several batches over a long period) according to the UCGFEA;

determining the country of origin of the goods;

granting permits for placing the goods under certain customs regimes in the cases stipulated by the CC of Ukraine.[40]

Analysis of the nature of the regulation in art. 23 of the CC of Ukraine suggests the completeness of the list of issues and prevents its broad interpretation. The exception is the clause 3 of part 4 of this article concerning granting the permission for placing of goods under certain customs regimes in the cases provided by MK of Ukraine. At the same time, the provisions of the effective industry-specific codifying statute demonstrates that the advance rulings regarding the permission to place goods under particular customs regimes can be adopted only in two cases: in terms of the possibility of placing goods under the customs regime of goods processing in the customs territory (part 10 of art. 149) and the possibility of placing goods under the customs regime of goods processing outside the customs territory (part 10 of art. 165).

We fully agree with the position of individual researchers, who believe that the existence of such reference structures can cause an extension of the list of issues regarding which advance rulings can be adopted, without amending the list specified by art. 23 of the CC of

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[40] Customs Code of Ukraine, No. 4495-VI. (2012). *Vidomosti Verkhovnoi Rady Ukrainy*, 44-45, 46-47, 48: 552.

Ukraine.[41] However, we believe that expanding this list of issues can only be done by directly amending art. 23 of the CC of Ukraine. Moreover, granting the customs authorities the power to adopt advance rulings regarding the placement of goods under other customs regimes or regarding other issues about the application of the provisions of the customs legislation of Ukraine will inevitably result in further expansion of the scope of their practical application.

Even the full exact name of the advance rulings, as specified in part 1 of art. 23 of the CC of Ukraine («advance rulings on the practical application of certain provisions of the customs legislation of Ukraine»), indicates the potential likelihood of an inexhaustible list of issues in terms of which such decisions can be made. This must be compulsorily provided for in the CC of Ukraine.

The possibility of expanding the list of issues in terms of which advance rulings are made are also supported by the respective provisions of the CC of Ukraine. For example, according to part 6 of art. 51 of the CC of Ukraine, in cases specified by the CC of Ukraine, the customs value of goods may be determined before the goods cross the customs border of Ukraine. The current version of the industry code does not provide, firstly, for such cases, and secondly, for such a procedure for determining the customs value. We assume that this provision of the CC of Ukraine should be considered as a prerequisite for the further introduction of the practice of determining the customs

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[41] Nehara, R. V. (2016). Advanced rulings in the legislation of Ukraine. *Visnyk Chernivetskoho fakultetu Natsionalnoho universytetu «Odeskay urydychna akademiia», 3*, p. 99.

value of goods before it crosses the customs border of Ukraine.

We believe that the only possibility to implement this prescription is to clearly identify the cases where the customs authorities shall adopt an advance ruling regarding the possibility of determining the customs value before the goods cross the customs border of Ukraine. Therefore, although art. 23 of the CC of Ukraine does not include the issue of determining the customs value of goods in the list of issues regarding which such rulings can be adopted, it is obvious that a relevant clause may be added to this article in the near future.

The next thing to pay attention to is the analysis of the content and significance of the issues in terms of which advance rulings can be adopted (cl. 1, 2, part 4 of art. 23 of the CC of Ukraine), as well as to the determination of the expediency of expanding advance rulings regarding the issues specified by the CC of Ukraine.

According to the theory of customs law, the classification of goods under UCGFEA and the country of origin of the goods are the elements of customs tariff regulation. According to part 1 of art. 69 of the CC of Ukraine, the goods declared are subject to classification. That is, for each goods crossing the customs border the code shall be determined in accordance with the classification groups specified in UCGFEA, and the customs tariff of Ukraine contains a list of national tax rates - the import duty rates.[42] Obviously, on the basis of the foregoing the scientific literature emphasizes that the classification of goods has a

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[42] On Customs tariff of Ukraine, No. 584-VII (2013). *Vidomosti Verkhovnoi Rady Ukrainy, 20-21*: 740.

direct impact on the determination of a specific rate of duty in the course of customs tariff regulation.[43]

According to part 1 of art. 36 of the CC of Ukraine, the country of origin of the goods is determined for the purpose of taxation of goods transferred across the customs border of Ukraine, the application of non-tariff regulation of foreign trade, prohibitions and/or restrictions on crossing the customs border of Ukraine, as well as ensuring the accounting of these goods in foreign trade statistics. Some authors argue that the country of origin of the goods has a decisive influence on the choice of import duty rate when importing the goods into the customs territory of the state. The country of origin of the goods conditions the application of full, reduced or preferential rates of import duties, and hence the respective filling of the state budget of the country.[44] The authors emphasize that within the framework of customs tariff regulation and other public policy measures the correct determination of the country of origin is necessary, in particular, for: granting benefits and preferences in the application of import or export duties; the application of anti-dumping or countervailing duties, duties in response to hostile actions by trading partners; the application of quantitative restrictions or prohibitions; setting quotas and embargoes

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[43] Voitov, S. H. (2013). Goods Classification as tool of customs and tariff adjustment: determining and controlling aspect. *Aktualni problemy ekonomiky*, *9*, p. 43.

[44] Shevchenko, P.Iu. (2016). The meaning of goods' origin for implementation of preferential duty rates. *Visnyk Chernivetskoho fakultetu Natsionalnoho universytetu «Odeskay urydychna akademiia»*, *3*, p. 132.

on foreign trade with individual countries, etc.[45]

The analysis of the provisions of the Customs Code of Ukraine in relation to the customs clearance shows that the classification of goods under the UCGFEA and the determination of the country of origin are mandatory. Moreover, it is established that irrespective of the customs regimes and the stated purpose of transfer, the customs declaration shall include the goods code according to the UCGFEA; name of the country of origin of the goods (part 8 of art. 257 CC of Ukraine).

The importance of classification of goods and determination of the country of origin of the goods is evidenced in the practical plane by a significant amount of contradictions and public law disputes arising between the declarants and the customs authorities, as well as of the cases and results of control carried out by the customs authorities in terms of the correct classification of goods as per the UCGFEA submitted for customs processing (part 2 of art. 69 of the CC of Ukraine) and verification of documents confirming the country of origin of the goods (art. 45 of the CC of Ukraine).

Therefore, the extension of the advance ruling adoption practice for the classification of goods under the UCGFEA and determining the country of origin of the goods remains quite relevant and necessary. This will have a positive effect on the resolution of these issues when transferring the goods across the customs border and will speed up the time of customs control and customs clearance.

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[45] **Voitov, S.H. (2013). Scientific and applied aspects of determining of goods' origin country.** ***Visnyk Akademii mytnoi sluzhby Ukrainy. Ser.: Ekonomika, 1,*** **p. 54.**

In our view, the inclusion of permits for placing goods under certain customs regimes to the list is therefore justified.

According to part 1 of art. 149 and part 1 of art. 165 of the CC of Ukraine, placing the goods under the customs regimes of processing in the customs territory and processing outside the customs territory is allowed with the written permission of the customs authority at the request of the goods owner or the owner's authorized person. Obtaining such written permission is a prerequisite for placing goods under such customs regimes.

Moreover, the analysis of other provisions of the CC of Ukraine on the legal regulation of these customs regimes (in particular, the documents on the basis of which such permission is granted) and the conditions and principles for the goods processing shows that this activity is planned, requiring organization and training, including the provision of requirements and conditions stipulated by the CC of Ukraine regarding these customs regimes. We assume that adoption of advance rulings on granting permission for the placement of goods under customs regimes of processing within the customs territory and outside the customs territory is focused on the provision of legal certainty and obtaining a permit for placing goods under such customs regimes.

The authors stated that the need to obtain a permit is also specified for other customs regimes: destruction or dismantlement (part 1 of art. 176 of the CC of Ukraine), abandonment to the State (part 2 of art. 184 of the CC of Ukraine). The lack of a legally prescribed possibility of adoption of advance rulings in terms of the specified

customs regimes is a logical step and is due to the fact that such regimes are chosen by the declarant in the event of force majeure, at the direct transfer of goods, customs clearance, when the goods owner is not interested in transferring the goods across the customs border according to the original purpose, as it is not profitable to export these goods back. Such circumstances cannot be foreseen in advance, so the very possibility of adopting an advance ruling regarding granting a permission for placing the goods under these customs regimes is at least irrational.[46]

THE SECOND TOPIC

LEGAL REGULATION OF ADVANCE RULINGS WITH INTERNATIONAL ACTS

Thus, the list of issues regarding which advance rulings have already been adopted is justified. In turn, securing the identification of the commodity code, country of origin, obtaining permission for placing the goods under certain regimes prior to the goods transfer across the customs border by adopting advance rulings is a challenge of the present, the immediate implementation of which is required by the national customs.

In order to ensure the national customs legislation compliance with the international and European regulations and standards in terms of

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[46] Nehara, R. V. (2016). Advanced rulings as for permission on keeping the goods in separate customs regime. Paper presented at the scientific and practical conference "*Suchasni pohliady na aktualni pytannia pravovykh nauk",* Zaporizhzhia, p. 80.

the application of advance rulings, we analyse the international and European laws, as well as the customs legislation of particular foreign countries.

Internationally, the subject matter of the article is regulated by the provisions of the Trade Facilitation Agreement.[47] In part 9 of art. 3 of this Agreement, the issues on which advance rulings are adopted are divided into compulsory and recommended ones.

The compulsory advance rulings are provided in terms of:

(i) the tariff classification of the goods;

(ii) the origin of the goods.

The recommended advance rulings are provided in terms of:

(i) the appropriate method or criteria and their application, used to determine the customs value in the particular circumstances;

(ii) the possibility of implementation of the Member's requirements for the reduction of or exemption from customs duties;

(iii) the application of the Member's quota requirements, including tariff quotas;

(iv) any additional issues regarding which a Member deems

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[47] Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization: Decision General Council, dated November 27, 2014. (2014). Retrieved from: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=@Symbol=%20(wt/l/940*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#

necessary to provide an advance ruling.

The list of issues on which «compulsory» advance rulings are provided in accordance with the provisions of the Agreement is exhaustive. In part 3 of art. 23 of the CC of Ukraine the adoption of advance rulings on these issues is also provided for.

The list of issues regarding which it is «recommended» to provide advance rulings under the provisions of the Agreement is inexhaustible. At the same time, none of these recommended issues is envisaged in part 3 of art. 23 of the CC of Ukraine.

Thus, the provisions of the CC of Ukraine in this case are in compliance with the minimum standards of the Agreement on Trade Facilitation, however, there must be a prospective aspiration to ensure adoption of advance rulings on other issues as well, such as those recommended in the Trade Facilitation Agreement.

The Association Agreement between Ukraine, of the one part, and the EU, the European Atomic Energy Community and their member states, of the other part[48] also contains rules on the issues regarding which advance rulings can be adopted. Thus, according to cl. «j» of part 1 of art. 76 of the Agreement, the Parties shall ensure a preliminary implementation of compulsory rulings (advance rulings) regarding tariff classification and rules of origin. The CC of Ukraine provides for

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[48] Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part, on June 27, 2014. (2014). Retrieved from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

advance rulings on these issues, so in this regard the requirements of this Agreement are met.

In the territory of the post-Soviet countries being the members of the Commonwealth of Independent States (CIS), these issues are regulated in the Basics of Customs Legislation of the CIS Member States.[49] According to part 1 of art. 213 of the Basics, the customs authorities may adopt an advance ruling on the issues as follows: the classification of goods; the customs value of the goods; countries of origin; the amount of customs payments; on other issues of the customs legislation application in terms of a specific product or a particular business transaction. By establishing a non-exhaustive list of issues regarding which the advance rulings may be adopted, this regional international act does not oblige the Member States to adopt advance rulings on the relevant issues, since «according to the national law, customs authorities may adopt advance rulings...» (part 1 art. 213). The Basics is only an act adopted to harmonize the customs legislation of the Member States and to be used for the preparation or clarification of the national customs legislation (cl. 2 of the resolution on the Basics of Customs Legislation of the CIS Member States).

Thus, of the list of issues represented in the Basics, p. 3 of art. 23 of the CC of Ukraine contains two - the classification of goods and the

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[49] Framework for customs legislation of States - members of the Commonwealth of Independent States: Approved by decision of the Council of Heads of State of the Commonwealth of Independent States on Framework for customs legislation of States - members of the Commonwealth of Independent States, dated February 10, 1995 (1995). Retrieved from: https://zakon.rada.gov.ua/laws/show/997_509

country of origin, but there are also prerequisites for advance rulings adoption regarding the customs value of goods.

Thus, regarding the regulation of issues on which advance rulings may be adopted, the international acts have specified broad and open (inexhaustible) lists, enabling states to determine independently the limits and conditions of adopting the advance rulings.

The possibility of applying the advance rulings has also been envisaged in the North American Free Trade Agreement between the USA, Canada and Mexico (NAFTA).[50] According to part 1 of art. 509 of the NAFTA, each party shall through its customs administrations provide written advance rulings before the goods are imported into its territory.

Advance rulings shall be adopted regarding the nine issues, however, in accordance with cl. (j) of part 1 of art. 509 of the NAFTA, it is allowed to adopt advance rulings on other issues as agreed by the parties. Generally the issues in terms of which the advance rulings are adopted, focusing on the application of the NAFTA provisions and determination whether it is possible to transfer goods in accordance with the NAFTA provisions or on extending its provisions, in particular regarding preferential tariff regulation for certain goods, entities and the like. These are, for example, the issues as follows: whether the materials imported from a non-party country are used for the

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[50] North American Free Trade Agreement (NAFTA), dated January 1, 1994. (1994). Retrieved from: https://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/NorthAmericanFreeTA.asp

production of goods and if there is a need to change the tariff classification set out in Annex 401 as a result of production within the territory of one or multiple parties; b) whether the product meets the regional transaction value requirements or cost of production methods set out in Chapter Four; e) whether the goods correspond to the goods to be produced in accordance with Chapter Four (Auth. - this Chapter regulates public procurement); g) whether the proposed or actual marking of the goods complies with the country of origin marking requirements in accordance with article 311 (Marking of the country of origin); (i) whether the product is a qualified product in accordance with Section Seven (Auth. - this Section regulates agricultural issues and sanitary and phytosanitary measures).

In accordance with these NAFTA regulations, the US and Canadian national law also provides for the terms and procedure for advance rulings. Thus, the Electronic Code of the Federal Regulations of the USA[51] includes § 181.91-181.116 of section 19 dedicated to this aspect. The subject matter (the issues) of the advance rulings, in accordance with cl. 6 of § 181.92 of section 19 e-CFR, coincides with the issues provided for in part 1 of art. 509 of the NAFTA.

Section 43.1 (1) of the Customs Law of Canada[52] establishes that prior to import, at the request of any person, within the prescribed time

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[51] Electronic Code of Federal Regulations (e-CFR) – Title 19: Customs Duties. (2020). Retrieved from: https://www.ecfr.gov/cgi-bin/text-idx?SID=78e98ccb76cfed37a3f79e280534d8be&node=19:2.0.1.1.25&rgn=div5

[52] Customs Act (R.S.C., 1985, (2nd Supp.) assented to 13-th February, 1986. (1985). Retrieved from: http://laws-lois.justice.gc.ca/eng/acts/C-52.6/

in the prescribed manner and in the form containing the relevant information, an advance ruling shall be adopted in terms of the issues as follows: (a) whether the goods are eligible for preferential tariff treatment in accordance with the free trade agreements; (b) confirmation of goods origin from the country or territory; (c) tariff classification of goods.

The EU Regulation laying down the European Union Customs Code[53] also specifies the terms and procedure for adopting advance rulings. According to part 1 of art. 33 of the EU Regulation, upon application, the customs authorities shall make rulings related to the compulsory tariff information or rulings concerning compulsory information on the origin. That is, this decree defines a range of issues on which advance rulings are adopted, namely: on the classification of goods and determining the country of origin of the goods.

[53] **Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. (2013). Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1568024779830&uri=CELEX:32013R0952**

THE THIRD TOPIC

ADVANCE RULINGS IN THE LEGISLATION OF THE COUNTRY OF THE EURASIAN ECONOMIC UNION

For the countries that have ratified the Customs Code of the Eurasian Economic Union, the revision of April 11, 2017 (EEU CC)[54] contains amendments to the scope of application of advance rulings as compared with the regulations of the Customs Code of the Customs Union of November 27, 2009 (CU CC),[55] which provided for the adoption of advance rulings in terms of classification of goods according to the FEA nomenclature (part 5 of art. 52, art. 53-57 of CU CC) and the country of origin of the goods (part 4 of art. 58 of CU CC).

The effective EEU CC allows for advance rulings on the classification of goods in accordance with the FEA Commodity Nomenclature (art. 21, 23-27) on the origin of goods imported into the customs territory of the Union (art. 32-36). Restrictions on the advance rulings regarding the origin of the goods have been made: currently, the advance rulings in terms of the imported goods only can be made. It is also envisaged that advance rulings are adopted on the application of

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[54] **Treaty on the Customs Code of the Eurasian Economic Union (Appendix to the Treaty on the Customs Code of the Eurasian Economic Union, dated April 11, 2017, No. 1). (2017). Retrieved from: https://wipolex.wipo.int/en/treaties/textdetails/17694**

[55] **Customs Code of Customs Union (Appendix to the Treaty on the Customs Code of Customs Union adopted by Resolution of the Interstate Council of the Eurasia Economic Community, dated November 27, 2009, No. 17). (2009). (expired). Retrieved from: http://pravo.eaeunion.org/SESSION/PILOT/main.htm**

methods for determining the customs value of goods imported (part 19 of art. 38 of EEU CC), if provided for by the legislation of the Member States on customs regulation.

Part 5 of art. 359 of the EEU CC, as a generalization, sets the authority of the customs bodies to adopt advance rulings on the classification of goods, the origin of goods, on the application of methods of determining the customs value of goods imported into the customs territory, as well as on other issues specified by the Commission, in the manner established in accordance with the laws of the Member States, unless such procedure is stipulated by the Commission. Thus, the effective EEU CC sets out a non-exhaustive list of issues on which advance rulings can be adopted, with the possibility of extension, which is conferred by empowerment of the Eurasian Economic Commission to identify such issues and the right of Member States to independently identify additional issues in their own laws on customs regulation.

The national customs legislation of the countries being the members of the Eurasian Economic Union has fully implemented rules of the EEU CC as revised in 2017 on advance rulings, including the issues regarding which they can be made.

Thus, in accordance with part 6 of art. 22 of the Code of the Republic of Kazakhstan «On Customs Regulation in the Republic of Kazakhstan»,[56] advance rulings are adopted in terms of the

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[56] On Customs Regulation in the Republic of Kazakhstan: Code of the Republic of Kazakhstan, dated December 26, 2017, No. 123-VI. (2017). Retrieved from:

classification of goods, the origin of goods, on the application of methods of determining the customs value of goods imported under this Code, as well as on other issues stipulated by the Commission in the manner determined by a competent authority, unless otherwise specified by the Commission. The Code defines the procedure for making advance rulings regarding the classification of goods (art. 44-48) and the origin of goods only (art. 59-63).

According to the Federal Law of the Russian Federation «On Customs Regulation in the Russian Federation»,[57] the customs authorities may make advance rulings in terms of the classification of goods (art. 18), regarding the origin of the goods (art. 22), as well as regarding the application of methods of determining the customs value of goods imported into the Russian Federation (art. 25).

The Law of the Republic of Belarus «On Customs Regulation in the Republic of Belarus»[58] specifies that the customs authorities, at the request of the person concerned, shall adopt advance rulings on the classification of goods according to the FEA Commodity Nomenclature (part 1 of art. 83) and on the country of origin of the goods (art. 91).

According to cl. 50.1 of art. 50 of the Customs Code of the Republic

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http://online.zakon.kz/Document/?doc_id=39082703#pos=5;-160

[57] On customs regulation in the Russian Federation. Federal Law of the Russian Federationon, dated August 3, 2018, No. 289-FZ. (2018). Retrieved from: http://pravo.gov.ru/proxy/ips/?docbody=&firstDoc=1&lastDoc=1&nd=102479197

[58] On Customs Regulation in the Republic of Belarus. Law of the Republic of Belarus, dated January 10, 2014, No. 129-Z. (2014). Retrieved from: http://pravo.by/document/?guid=3961&p0=H11400129

of Azerbaijan,[59] a person has the right to apply in writing to the customs authority for the preliminary determination of the classification, customs value, country of origin of goods and the amount of customs duties in connection with specific goods and transactions. To import or export goods by power transmission lines it is necessary to obtain a preliminary permit (cl. 295.1 of art. 295).

The Customs Code of the Republic of Tajikistan[60] provides for the adoption of advance rulings regarding the classification of goods according to the FEA Commodity Nomenclature and on the origin of goods from a specific country (art. 41-44). A similar provision is stated in Chapter 6 (art. 23-26) of the Customs Code of Turkmenistan.[61]

According to the provisions of the CC of the Republic of Moldova dated July 20, 2000 No. 1149[62] tariff advance rulings on the classification of goods (art. 141^3-141^4) and the origin of goods are made (art. 215^1-215^2), which are the advance rulings under the national law.

Advance rulings have been used extensively in Asian countries as a tool for international trade facilitation. Thus, in Japan, advance rulings

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[59] The Customs Code of Republic of Azerbaijan, dated June 24, 2011, No. 234. (2011). Retrieved from: http://base.spinform.ru/show_doc.fwx?rgn=48844

[60] Customs Code of Republic of Tajikistan, dated December 3, 2004, No. 62. (2004). Retrieved from: http://base.spinform.ru/show_doc.fwx?rgn=7870

[61] Customs Code of Turkmenistan, dated September 25, 2010, No. 3. (2010). Retrieved from: http://base.spinform.ru/show_doc.fwx?rgn=32438

[62] Customs Code of Republic of Moldova, dated July 20, 2000, No. 1149-XIV. (2000). Retrieved from: https://online.zakon.kz/Document/?doc_id=30398272

are adopted regarding the classification of goods, the origin of goods, and the customs value.[63] In the People's Republic of China and Taiwan, the practice of making advance rulings regarding the classification of goods is effective.[64]

CONCLUSIONS AND SUGGESTIONS

The study found that the adoption of advance rulings in the world practice of customs regulation covers a wide range of issues. This is due to the need to accelerate and simplify the procedures of international trade, as well as the non-exhaustive character of the list of such issues in international acts and the specifics of customs relations in certain countries.

Comparison of the lists of issues regarding which advance rulings can be adopted reveals that among the countries where the application of advance rulings is envisaged, they are always adopted regarding the goods classification and definition of origin of goods, and concerning all other issues - the experience of adopting advance rulings is individual.

An exhaustive list of issues regarding which advance rulings may be adopted, set in the CC of Ukraine (p. 3 of art. 23), complies with the minimum standards of the Trade Facilitation Agreement and has

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[63] Japan Customs. (2020). *Advance Ruling System.* Retrieved from: http://www.customs.go.jp/english/advance/index.htm

[64] Shu-Chien, Chen. (2016). In the name of legal certainty? Comparison of advance ruling systems for tariff classification in the European Union, China and Taiwan. *World Customs Journal, 10*(2): 46-64. Retrieved from: http://worldcustomsjournal.org/archive/volume-10-number-2-september-2016/

significant prospects of expansion, in particular with respect to the customs value of goods, the possibility of applying customs privileges and preferences in terms of goods. It is argued that expanding the list of issues regarding which advance rulings can be adopted is a prerequisite for effective application and action, speeding up and simplifying trade procedures, as well as achieving legal certainty in customs control and clearance.

It is suggested that p. 4 of art. 23 of the CC of Ukraine should be amended to read as follows:

«Advance rulings may be adopted on the following issues:

1) classification of goods (including the complete items being shipped non-assembled in several batches over a long period) according to the UCGFEA;

2) determination of the country of origin of the goods;

3) selection of the appropriate method or criteria and their application, used to determine the customs value under particular circumstances;

4) granting, in the cases provided for in this Code, a permission to place goods under certain customs regimes.

5) application of customs privileges and preferences in terms of goods imported into the customs territory of Ukraine or exported abroad;

6) on other issues of application of the provisions of the customs legislation of Ukraine regarding the specific goods or specific business

transactions».

It is suggested that cl. 4 of the Regulation on the State Customs Service of Ukraine[65] should be amended by adding the powers to: generalize the practice of making and applying advance rulings; control the adoption and application of advance rulings; ensure that prior decisions are made public, except for confidential information.

The following actions are suggested to the Ministry of Finance of Ukraine:

a) to determine the form and procedure for adopting an advance ruling regarding the placement of goods under separate customs regimes;

b) to designate customs as the authorities empowered to make advance rulings;

d) in cooperation with the State Customs Service of Ukraine, to ensure filing of appeals on advance rulings and relevant documents in electronic form.

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[65] Regulations on State Customs Service of Ukraine: Resolution by the Cabinet of Ministers of Ukraine, dated March 6, 2019, No. 227. (2019). *Ofitsiinyi visnyk Ukrainy, 26*: 900.

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%20(wt/l/940*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#

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CONSTITUTIONAL RIGHT OF OWNERSHIP ON LAND: SOME ASPECTS OF IMPROVING OF THE PUBLIC-LEGAL MECHANISM FOR IMPLEMENTATION THIS RIGHT IN UKRAINE

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Abstract

The purpose of this article is to improve the public-legal mechanism of ensuring the right of citizens to obtain permission for the development of a land management plan for a land plot allocation into ownership at the stage of appeal to public authorities. A key methodological instrumentarium of the research became the systematic approach as well as the sociological approach of the "three laws of critique" in combination with the critical and legal method. The results of the research made it possible to systematize and make known to the public the factors that adversely affect the effectiveness of the mechanism for exercising the mentioned "land" right of citizens. Ways to counteract the identified negative factors are substantiated. In order to prevent conflicts in these relations, legal positions and recommendations, which can be tactically used in law enforcement, including while the resolution of public land disputes, and strategically in the process of improving the current land legislation are offered.

Keywords: constitutional rights, public-law disputes, public-legal mechanism, right of citizens to land ownership, right of citizens to request, permission request.

INTRODUCTION

Scientific, practical problems.

Under the modern conditions in Ukraine, the development of land relations is becoming more and more frequent, especially in the last five years, accompanied by an imbalance of interests of the state and territorial communities on the one hand, and citizens on the other, regarding the exercise of the citizens' constitutional right to obtain a permit for free land plots allocation. Despite the constant reformation of Ukrainian legislation, it seems that the lawmaker intentionally leaves and even creates new gaps and collisions in the norms of legislative acts, especially in the most important areas for the population. Land use sphere still remains filled with risks and abuses. Under these conditions, the authorities, having the advantage over the citizens, not only use such regulatory problems, imposing subjective ambiguous interpretation of laws, but also create "small-town" conditions and land use procedures. Obviously, citizens in such discussions are either forced to agree with the existing conditions and to refuse to exercise their legal right, or to enter into long-term disputes, including taking a case to court.

Although these problems are not a product of today and had a lot of attempts to solve them, but the dynamics of land relations now remains relevant to the study of ensuring the constitutional right of citizens to obtain permission for the development of a land management plan in general. However, the range of these problems within the limits of the research requires narrowing the subject of the research.

Purpose of the study.

The purpose of the article is an improving the public-legal mechanism of ensuring the right of citizens to obtain permission for the development of a land management plan for a land plot allocation into ownership at the stage of submission of documents by citizens to public authorities.

To achieve this goal, situations identified in practice that have conflicting nature and contribute to the emergence of public-law disputes in the field of land relations at the stage of submission of documents by citizens to public authorities are systematized in the paper; the reasons, which cause such situations, are determined.

The *research object* is a sphere of land relations in Ukraine that arises in connection with exercising the right to obtain the permission for land plots allocation into ownership by citizens.

The *subject of the study* is the public-legal mechanism (in particular, legal norms, administrative legal relations, activity of power entities, law enforcement acts and individual acts) ensuring the constitutional right of citizens to obtain permission for the development of a land management plan for a land plot allocation into ownership at the stage of appeal to public authorities.

Research methods.

The methodological basis of the study made two basic approaches that complement each other: firstly, it is a systematic approach by which the procedure of submission of documents and the documents that are required to obtain permission for the development of land

management project for a land plot allocation into ownership are considered as a complete complex of interrelated elements that interact on the principles of integrity, hierarchy, structuring, multiplicity and systematicity in order to achieve a common goal (to exercise the constitutional right to a land plot) in interaction with the external power environment with the expected feedback (the response of the authorized power entity at the request of a citizen); secondly, a sociological approach of "three laws of critique", combined with the critical and legal method, which contributed to the study of social phenomena and processes in their statics (the normative basis of the procedure for exercising citizens' right) and dynamics (interaction in the process of exercising rights and responsibilities) through the prism of laws "dislike-criticize" (the first law of criticism), "criticize – justify" (second law of criticism), "if you know – offer" (third law of criticism).

RESULTS AND DISCUSSION

According to the general rules, every citizen who manifests a desire to free acquire a land plot into ownership from the state or territorial community should apply to the appropriate authorities. For this purpose, the norms of the Land Code of Ukraine (LCU), which should be followed by all subjects of this procedure, are useful. Thus, in particular, the decisive is part 6 of Article 118 of the Land Code of Ukraine, which regulates the appropriate list of documents, which should be submitted to the appropriate executive authority or local self-government body, namely: request; graphic materials; approval of a land user (in case of withdrawal of land, which is used by other persons) and documents confirming the work experience in agriculture

or the presence of education obtained in an agricultural educational institution (in the case of allocation of a land plot for farming).[66] Herewith the law also establishes a clear prohibition on requiring additional materials and documents not provided by the mentioned article.

Moreover, considering the whole procedure for granting (obtaining) an appropriate permission as an administrative service[67], we note that the above mentioned provisions are correlated with the appropriate norms of the Law of Ukraine "On Administrative Services". This act clearly stipulates, firstly, that the list and documentation requirements necessary for obtaining administrative services should be determined only by law (part 5 of Article 9); secondly, it is forbidden to require documents or information for the provision of administrative services not provided by law from a subject of application (part 6 of Article 9); an entity providing administrative services cannot require from a subject of application documents or information, which are in possession of the entity providing administrative services or in possession of state bodies, authorities of the Autonomous Republic of

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[66] Land Code of Ukraine. Law of Ukraine No 2768-III. *Information from the Verkhovna Rada of Ukraine*. 2002, 3-4: 27.

[67] Pyvovar, Y., Pyvovar, I., Babyak, A., Nazar, Yu., Ostrovskiy, S. (2019). Permission for the Development of a Land Management Plan for a Land Plot Allocation as an Administrative Service: a Theoretical Approach for Legal Practice. *Amazonia Investiga, 8*(22): 370-380.

Crimea, local authorities, enterprises, institutions or organizations, belonging to the sphere of their management (part 7 of Article 9).[68]

Despite such legal certainty, in practice, citizens unfortunately face conflicting situations. Thus, we should examine the existing problems.

THE FIRST TOPIC

REQUEST FOR OBTAINING PERMISSION FOR THE DEVELOPMENT OF A LAND MANAGEMENT PLAN FOR A LAND PLOT ALLOCATION AS A PRETEXT FOR CONFLICT AND SUBJECT OF PUBLIC LAND DISPUTE

The first aspect in situations, where the authorities refuse citizens to exercise their right to obtain permission for the development of a land management plan for a land plot allocation, and which should draw researchers' attention, is the procedure and form of application of an appropriate request by citizens. This is the initial procedure in relations of citizens and public authorities concerning the administrative services in the field of land use, and the most often it ends with the refusal to satisfy citizens' requests.

Provision of administrative services was performed by the executive authorities and local self-government bodies, also before the adoption of the relevant Law of Ukraine "On Administrative Services". The Government regulated the procedure for providing such services using

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[68] On Administrative Services. Law of Ukraine No. 5203-VI. *Information from the Verkhovna Rada of Ukraine*. 2013, 32: 409.

the Framework Law of Ukraine "On Citizens' Appeal" of October 02, 1996, No 393/96-VR.[69]

However, under the current conditions, this law cannot sufficiently provide the administrative regulation of the process of adopting, application examining and taking decisions according to them. Surely, this law not only superficially regulates procedural relations, but also has a completely different purpose – it "regulates the issue of practical exercising by citizens of Ukraine of the granted right by the Constitution of Ukraine to contribute suggestions to statute of public authorities, associations of citizens concerning an improvement of their activities, expose deficiencies in their work, challenge actions of officials, state and public bodies". [70]

Therefore, in part 6 of Article 118 of the LCU, the form of citizens' appeal ("request")[71] to the respective executive or local self-government body is provided, although it can be identified as a form of application (namely "request"), defined by the Law of Ukraine "On Citizens' Appeal", but the provisions of this law (393/96-VR)[72] no longer extend

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[69] **On Citizens' Appeal. Law of Ukraine No 393/96-VR.** ***Information from the Verkhovna Rada of Ukraine*****. 1996, 47: 256.**

[70] ***ibid.***

[71] **Land Code of Ukraine. Law of Ukraine No 2768-III.** ***Information from the Verkhovna Rada of Ukraine*****. 2002, 3-4: 27.**

[72] **On Citizens' Appeal. Law of Ukraine No 393/96-VR.** ***Information from the Verkhovna Rada of Ukraine*****. 1996, 47: 256.**

to administrative relations (since, as noted above, there is another specific legislative act for such relations).

At the same time, comparing the norms of the land legislation with the provisions of the Law No. 5203-VI (in particular, part 4 of Article 9)[73] gives grounds to refer the citizens' appeal to the executive or local self-government body concerning an obtaining permission for the development of a land management plan for a land plot allocation to such type of appeal for receiving the appropriate administrative service, namely to the applications. An additional argument for this is part 3 of Article 50 of the Law of Ukraine "On Land Management", which states that a land management plan for a land plot allocation contains a copy of the requests (applications) for granting permission for the development of a land management plan for a land plot allocation (in case of formation and/or change of the purpose of the land plot at the expense of land of the state or communal ownership).[74]

Another procedural problem, which citizens face at the stage of filing a request with, is *legal uncertainty of the form of this request.* It should be noted that dishonest officials very often abuse their power in part 6 of Article 118 of the LCU.[75] In this legal norm law does not provide a

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[73] On Administrative Services. Law of Ukraine No. 5203-VI. *Information from the Verkhovna Rada of Ukraine*. 2013, 32: 409.

[74] On Land Management. Law of Ukraine No 858-IV. *Information from the Verkhovna Rada of Ukraine*. 2003, 36: 282.

[75] Land Code of Ukraine. Law of Ukraine No 2768-III. *Information from the Verkhovna Rada of Ukraine*. 2002, 3-4: 27.

specific procedural form of filing a request. At the same time, part 4 of Article 9 of the Law No. 5203-VI provides that appeal for receiving the appropriate administrative service is submitted in written or verbal form.[76] However, based on the legal construction of part 4 of Article 118 of the LCU (namely: "the request is supplemented with ..." [77]) it can be clearly stated that the application concerning the permission for the development of a land management plan can be submitted only in written form.

Thus, you can draw the first intermediate conclusion. The interested person submits an "appeal" to the relevant executive body or local self-government body for permission for the development of a land management plan for a land plot allocation into ownership in the form of an application/request and only in written form.

As to the demands that the legislator "puts forward" to a request – it is only stating by the person a designated purpose of a land plot and its approximate size. This information is submitted by the applicant for the purpose of verification by an administrative entity (an entity of administrative service provision) the statutory amounts of free transfer of land plots in accordance with the norm stipulated by Article 121 of the LCU.[78]

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[76] **On Administrative Services. Law of Ukraine No. 5203-VI.** ***Information from the Verkhovna Rada of Ukraine*****. 2013, 32: 409.**

[77] **Land Code of Ukraine. Law of Ukraine No 2768-III.** ***Information from the Verkhovna Rada of Ukraine*****. 2002, 3-4: 27.**

[78] ***ibid.***

There is no other exigencies for the information to be provided in a request, although it should necessarily be specified in a special (thematic) legislative act – the LCU (in particular, these are: identification data on the surname, first name and patronymic, place residence, date of application and signature of the person). However, this data are considered to be generally recognized on the basis of a general legislative act (the Law No 393/96-VR).

Based on the above mentioned, we can conclude that part 6 of Article 118 of the Land Code of Ukraine regarding the information, which should be provided by the applicant, requires regulatory correction (making appropriate changes).

SECTION (1.1)

GRAPHIC MATERIALS (SUPPLEMENT TO THE REQUEST) AS A SUBJECT OF DISPUTE

Another factor that causes refusal to satisfy a request for permission is a legal uncertainty of the requirements for drawing up information about graphic materials, which indicate the desired location of a land plot.

According to the analysis of the legal acts in force, the legislator does not set any requirements concerning the form (type, size, scale) of graphic materials, which should be provided by a person "interested" in the land plot. There is also no legislative definition of the term "graphic materials".

At the same time, from the analysis of the norms of the current legislation, it can be hypothesized that the graphic materials that are attached to the request (application) should be such, the amount of which data will allow to identify the desired location of the land plot relatively to other landowners and land users, and the desired land plot should be as concretized as possible, which would allow the authorized authority to establish the place of its location, to check the suitability of the location of the land plot to the requirements of the laws and in provided by the land legislation cases give permission for the preparation for the development of a land management plan for the defined land plot.

However, the analysis of case-law of courts makes it possible to constate that applicants use both official and non-official sources while preparing graphic materials for such applications.

Instead, as it follows from the provisions of Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Provision of the State Service of Ukraine for Geodesy, Cartography and Cadastre and its Territorial Authorities of Administrative Services" of August 1, 2011, No 835, one of the official sources for receiving the appropriate graphic materials is t State Service of Ukraine for Geodesy, Cartography and Cadastre, the territorial bodies of which carry out the necessary copying from the cadastral map or plan. This service is administrative and is provided on

a separate application by the interested person within 30 days, on a paying basis (0.03 minimum wage).[79]

Among the most common unofficial sources of receiving information for the preparation of graphic materials is independent copying using Google Map, Yandex maps, Public cadastral map of Ukraine[80]. However, it should be noted that from the experience of the competent authorities it follows that the use of informal sources by the applicants while the formation of graphic materials is often the reason for refusal to grant permission for the development of a land management documentation. Competent authorities mainly refer to the fact that graphic materials do not meet the requirements of laws and adopted in accordance with them regulatory acts, Master plans of settlements and other urban planning documents, land management schemes and technical and economic feasibility for use and protection of land of administrative and territorial units, land management plans for the improvement of territories of settlements approved in accordance with the procedure established by law.

In this context, the only reason for denying such permission can be only: the discrepancy of the location of the object with the requirements of laws, adopted in accordance with them regulatory acts, master plans

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[79] Some Issues of Provision of the State Service of Ukraine for Geodesy, Cartography and Cadastre and its Territorial Authorities of Administrative Services. Resolution No 835. *Official Bulletin of Ukraine*. 2011, 59: 184.

[80] Public cadastral map of Ukraine. Updated: daily. Retrieved from: https://map.land.gov.ua/kadastrova-karta

of settlements and other urban planning documents, land management schemes and technical and economic feasibility for use and protection of land of administrative and territorial units, land management plans for the improvement of territories of settlements approved in accordance with the procedure established by law.

However, in practice, sometimes citizens face situations, in which due to the unwillingness of officials for any reason to provide official sources, they are forced to submit information, including graphic materials, without specifying source data, which are from unofficial sources. In such situations, as the experience of case-law of the Supreme Court shows, cases of claims by citizens to a local government or local government authorities, when such authorities refused to grant permission for the development of a land management plan or documentation of land management, motivating, for example, that there are no source data, a general plan or a plan of detailed territories, absence of real estate unit on the land plot, are decided mainly for the benefit of citizens.

Moreover, while there is a part 7 of Article 118 of the LCU, which defines an exhaustive list of grounds for refusing in granting permission for the development of a land management plan for a land plot allocation,[81] but there is no unity in the case-law of the Supreme Court. On the one hand, the Court is guided by this legislative position in its legal position while passing a resolution of February 27, 2018 in the

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[81] **Land Code of Ukraine. Law of Ukraine No 2768-III.** ***Information from the Verkhovna Rada of Ukraine*****. 2002, 3-4: 27.**

Case No 545/808/17,[82] of March 27, 2018 in the Case No 463/3375/15-a,[83] of May 22, 2018 in the Case No 468/1263/17-a,[84] of August 10, 2018 in the Case No 806/3095/17.[85] On the other hand, there is an opposite practice of the Supreme Court, in which the Court, regardless of the grounds of refusing in granting permission for the development of a land management plan, made the following legal decision: "refusal to grant permission for the development of a land management plan for a land plot allocation by the relevant executive authority or local self-government body or a motivated refusal to grant it within a fixed period does not prevent the development of a land management plan for a land plot allocation, since a person has the right to order the development of such plan independently. Thus, permission for the development of a land management plan for a land plot allocation is not a decision, without which the right to receive land into ownership cannot be implemented. Therefore, the refusal of the relevant authority to grant permission for the development of a land management plan for a land plot allocation, even if, in person's opinion, is unlawful, does not have the consequence of violating the rights and interests of the person

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[82] SC (Supreme Court). (2018). Resolution in the Case No 545/808/17. Retrieved from: http://reyestr.court.gov.ua/Review/72532460

[83] SC (Supreme Court). (2018). Resolution in the Case No 463/3375/15-a. Retrieved from: http://reyestr.court.gov.ua/Review/73042181

[84] SC (Supreme Court). (2018). Resolution in the Case No 468/1263/17-a. Retrieved from: http://reyestr.court.gov.ua/Review/74203957

[85] SC (Supreme Court). (2018). Resolution in the Case No 806/3095/17. Retrieved from: http://reyestr.court.gov.ua/Review/75253679

intending to obtain the land plot. By appealing to the court with a claim to oblige the Head Office of State Service of Ukraine for Geodesy, Cartography and Cadastre to grant permission to make documentation on land management, the plaintiff was trying to remove the obstacle to exercising his rights, which in reality does not exist (Supreme Court Decision of March 14, 2018 in the Case No 804/3703/16,[86] dated of January 31, 2018 in the Case No 814/741/16[87]).

Therefore, in order to find the truth, as a result of the analysis of the current legislation, which regulates the procedure for granting permission/refusal for the development of a land management plan for a land plot allocation into ownership, as well as taking into account the case-law of the Supreme Court, we propose the following legal position: in case, when a relevant public administration body will not be able to execute such a decision within the limits of its powers on the ground that the documents are not fully submitted or because the documents submitted by the applicant contain inaccurate information, etc. (i.e., those not provided by Article 118 of the LCU) – in other words, in case, in which the implementation of the administrative procedure is impossible due to incompleteness or inconsistency of the information provided by the applicant, it should be recognized that the authority is deprived of an opportunity to make an appropriate legal decision (as a refusal is given under Article 118 of the LCU will be accomplished on

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[86] **SC (Supreme Court). (2018). Resolution in the Case No 804/3703/16. Retrieved from: http://reyestr.court.gov.ua/Review/72790743**

[87] **SC (Supreme Court). (2018). Resolution in the Case No 814/741/16. Retrieved from: http://reyestr.court.gov.ua/Review/71938609**

the grounds of non-conformity) and indeed is forced to fail to act under the conditions of violation of the order of filing a request.

Therefore, to solve this problem, the strategic task should be an implementation of the following rulemaking measures:

1) suggestion of amendments to Article 6 of the Land Code of Ukraine by extension of the grounds of refusal in obtaining permission, in particular, in case, when the applicant submit not all necessary documents for obtaining administrative service, or revealing inaccurate information in documents submitted by the applicant, etc.; or

2) extension of the administrative procedure by supplementing a new optional stage – suspension of the administrative procedure until the full and accurate information will be given, specifying a certain term. In such a case, an administrative authority should prepare written refusal to the applicant, concerning removal of the identified deficiencies within the time limits provided by applicable law. In case of removal of causes, which led to the refusal to provide administrative service, an applicant should again submit the initial package of documents.

THE SECOND TOPIC

DISCREPANCY OF THE LOCATION OF THE LAND PLOT AS A MATTER OF PUBLIC DISPUTE

A separate group of debating issues that are a prerequisite of conflicts and a subject of public disputes in the field of granting/refusal of permissions for the development of a land management plan is

recognition of the discrepancies of location of the land plot indicated by the applicant in the request.

The current legislation specifies that the grounds for refusal to grant permission for the development of a land management plan can be determined only by the current Land Code of Ukraine, namely, the discrepancy between the location of a land plot and, firstly, the requirements of the laws and passed in accordance with them normative legal acts; secondly, the requirements of the master plan of settlements and other town planning documentation; thirdly, land management schemes and technical and economic feasibility for use and protection of land of administrative and territorial units; fourthly, the requirements of land management plans for the improvement of territories of settlements approved in accordance with the procedure established by law.

We should emphasize that in cases of making a decision to refuse such permission, the law obliges the state or local self-government body to explain the reasons for such refusal properly.

SECTION (2.1)

CHECKING THE FACT OF THE DISCREPANCY OF LAND PLOTS FOR THE DESIGNATED PURPOSE

First of all, it should be noted that the discrepancy between the location of the object and the requirements of laws and passed in accordance with them normative legal acts is determined by the certain articles. For example, according to Article 19 of the LCU, the lands of Ukraine by primary purpose are divided into the following categories:

a) agricultural lands; b) lands for residential and public buildings; c) lands for natural-reserved and other nature-oriented purposes; d) lands for health-improvement purposes; (e) recreational lands; e) land for historical and cultural purpose; e) forest lands; g) water fund lands; g) lands for industrial, transport, communication, energy, defence purpose, etc. Land plots of all these categories that are not transferred into ownership or use to citizens or legal entities may be transferred to the reserve.[88]

The division of lands into categories "by primary purpose" is a tool for regulating their use, since according to the land legislation of Ukraine land can (and even should) be used by owners and users for the designated purpose (in particular, according to clause "a", part 1, Article 91, clause "a", part 1, Article 96 of the LCU,[89] as well as the regulations of the LCU and other acts of legislation concerning the legal regime of certain categories of lands).

Speaking about the concept of "main designated purpose", "designated purpose" it is necessary to use the Order of the State Committee of Ukraine on Land Resources of July 23, 2010 No 548, which approved the Classification of types of designated purpose of land. The purpose of this classification is to ensure land plots inventory by types of designated purpose in the state land cadastre; formation of

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[88] **Land Code of Ukraine. Law of Ukraine No 2768-III.** ***Information from the Verkhovna Rada of Ukraine*****. 2002, 3-4: 27.**

[89] ***ibid.***

reporting on land resources (clause 1.2, 1.3. of the Classifications).[90] It should be emphasized that the Classifier cannot be used to assess whether or not a particular land plot is used as designated one. For this purpose it is necessary to be guided exclusively by the regulations of the Land Code of Ukraine, first of all, part 5 of Article 20 and the regulation on the legal regime of the certain category of land.[91] The peculiarities of the legal regime of different categories of land are disclosed in Ch. 5-12 section 11 "Lands of Ukraine" of the LCU.[92]

Therefore, when verifying the fact of not meeting the requirements of the location of the object and laws and passed in accordance with them normative legal acts, first of all, it is necessary to find out the correlation of the designated purpose of the use of the land plot, which the person would like to receive into ownership, and the rules establishing the legal regime of the certain category of land.

At the same time, considering that the land is referred to one or another category on the basis of decisions of state authorities, the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea and local self-government bodies (the appropriate powers are determined by Article

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[90] On Classification of types of designated purpose of land. Order of the State Committee of Ukraine on Land Resources, dated 23 July, 2010, No 548. *Official Bulletin of Ukraine*. 2010, 85: 110.

[91] Land Code of Ukraine. Law of Ukraine No 2768-III. *Information from the Verkhovna Rada of Ukraine*. 2002, 3-4: 27.

[92] *ibid*.

122 of the LCU[93]), it is considered to be reasonable for the courts in the process of resolving public disputes to carry out a legal assessment of the appealed decisions and to examine lawfulness of the actions of the public authority in making this decision in accordance with the requirements of the current legislation. In particular, it is necessary to find out whether has been legal nature of the title documents, purchase and sale agreement of land (shares) and their compliance with the land legislation. Taking into account the requirements of part 1 of Article 138 of the CAJ[94] for establishing the circumstances that substantiate the claim, the courts should also find out to which category of land for the designated purpose belongs the disputed land, as well as the issue of the referring disputed land plots to agricultural lands.

Uncertainty of the above-mentioned circumstances leads to misapplication of norms of substantive law and rescission of judgements of the courts of the previous instances by the Supreme Court of Ukraine.

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[93] ***ibid.***

[94] **Code of Administrative Justice of Ukraine, No 2747-IV. *Information from the Verkhovna Rada of Ukraine*. 2005, 35-37: 446.**

SECTION (2.2)

ESTABLISHING THE FACT OF THE DISCREPANCY BETWEEN LAND PLOTS LOCATION AND THE MASTER PLANS OF SETTLEMENTS AND OTHER TOWN-PLANNING DOCUMENTATION

Equally difficult, especially for citizens, is to determine whether an object corresponds to the master plans of settlements and other town planning documentation.

According to clause 7 of part 1 of Article 1 of the Law of Ukraine "On Regulation of Urban Planning Activity" of February 17, 2011, No 3038-VI town planning documentation is approved text and graphic materials on regulation of planning, construction and other use of territories.[95]

At the sub-legal level, determining the mechanism for developing or amending city planning documentation at the state level in the part of planning schemes for particular parts of the territory of Ukraine and urban planning documentation at the regional and local levels, provided in the Procedure for the development of urban planning documentation, approved by the Ministry of Regional Development,

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[95] On Regulation of Urban Planning Activity. Law of Ukraine No 3038-VI. ***News from the Verkhovna Rada of Ukraine.*** **2011, 34: 343.**

Construction, Housing and Communal Services of Ukraine of November 16, 2011, No 290.[96]

According to Article 1 of the Law No 3038-VI, the master plan of a settlement is a town planning documentation that defines the principal decisions of development, planning, construction and other use of territory of a settlement. Detailed requirements for the content of the master plan, as well as the authorities for its implementation are determined by Article 17 of the Law No 3038-VI. In particular, this article clearly states that the decision according the development of the master plan is made by the respective village, settlement or city council, and the validity of the master plan of the settlement is not limited.[97]

In addition, the requirements for the structure, content, procedure for development, approval of town-planning documentation for the planning of territory of cities and towns: master plans, development concepts, plans for placement of the first stage of construction are detailed SBN B. 1-1-15: 2012 "Structure and content of the plan of human settlements".[98]

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[96] On Procedure for the development of urban planning documentation. Order of the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine, dated November 16, 2011, No 290. *Official Bulletin of Ukraine*. 2011, 100:215.

[97] On Regulation of Urban Planning Activity. Law of Ukraine No 3038-VI. *News from the Verkhovna Rada of Ukraine.* 2011, 34: 343.

[98] Structure and content of the plan of human settlements. SBN B. 1-1-15: 2012. Order of the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine, dated July 13, 2012, No 358. Retrieved from:

Systematic analysis of the LCU (Articles 39, 40, 41), regulations of the Law No 3038-VI (preambles, Articles 16, 17, 18 and 19) gives grounds to state that the restrictions according the discrepancy of the object to requirements of the master plans of settlements and other town planning documentation can be applied only in resolving the issue of land plots allocation for the construction and maintenance of dwellings, farm buildings and structures, garage construction, as well as housing (residential) and garage construction co-operatives and land for residential and community development, that is in the cases of granting land plots for urban development needs.

Furthermore, unlawful can be a refusal of the public administration body to grant permission for the development of a land management plan for allocation of a land plot of agricultural purpose for personal farming, because the use of such land plot is not provided for urban needs, that is because of the discrepancy of the object to requirements of the master plans of settlements and other town planning documentation (normative basis, defined in part 7 of Article 118 of the LCU – cannot be applied). Thus, reference of the public administration body to the approved town planning documentation as a ground for refusing the plaintiff permission for the development of a land management plan for allocation of a land plot of agricultural purpose for personal farming, and therefore the decision in this part is suggested to be considered as such that is not based on the rules of the current legislation and accordingly to be recognized as illegal one.

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http://ombk.odessa.ua/images/documents/dbn_B1_1_15_2012_generalniy_plan_naselenogo_punktu.pdf

On the other hand, according to Article 1 of the Law No 3038-VI, town planning documentation, apart from the master plan of the settlement, also include: 1) General scheme of planning of the territory of Ukraine; 2) regional planning scheme; 3) detailed plan of the territory; 4) a zoning plan (zoning); 5) document is a kind of land management documentation, which, in accordance with Article 17 of the Law No 3038-VI, is an integral part of the general plan of the settlement – a plan of land management system.[99]

The normative analysis of the content of the mentioned types of documentation gives grounds to assert that not meeting the requirements of the General scheme of planning of territory of Ukraine, scheme of planning of territory at regional level, master plans of settlements, detailed plan of territory, zoning plan (zoning) while the development of a land management plan for a land plot allocation is enough legal basis for refusing the applicant in granting permission for the development of a land management plan for a land plot allocation. That is why interested persons should take them into account.

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[99] On Regulation of Urban Planning Activity. Law of Ukraine No 3038-VI. ***News from the Verkhovna Rada of Ukraine.*** **2011, 34: 343.**

SECTION (2.3)

ESTABLISHING THE FACT OF THE DISCREPANCY BETWEEN LOCATION OF THE OBJECT AND SCHEME OF PLANNING OF TERRITORY AND TECHNICAL AND ECONOMIC FEASIBILITY FOR USE AND PROTECTION OF LAND OF ADMINISTRATIVE AND TERRITORIAL UNITS

According to Article 181 of the LCU, land management system is a set of socio-economic and environmental actions aimed at regulating land relations and rational organization of the territory of administrative and territorial units, economic entities, carried out under the influence of social and industrial relations and the development of productive forces.[100]

According to the clause "c" part 1 of Article 184 of the LCU, land management system, among other things provides drawing up land management schemes, development of technical and economic feasibility for use and protection of land of the respective administrative and territorial units. Moreover, according to part 5 of Article 111 of the LCU, information on restrictions of land use are specified in the schemes of land management and technical and economic feasibility of use and protection of land of administrative and territorial units, plans of land management concerning the organization

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[100] **Land Code of Ukraine. Law of Ukraine No 2768-III.** ***Information from the Verkhovna Rada of Ukraine*****. 2002, 3-4: 27.**

and establishment of area boundaries of natural-reserved fund other nature-oriented purposes, health-improvement, recreational, historical and cultural, forest purposes, water fund lands and water conservation zones, restrictions in land use and their regime-forming objects, land management plans that ensure eco-economic grounds for rotation of crops and arrangement of lands, land management plans according to land plots allocation, technical documentation of land management regarding establishment (renewal) of boundaries of a land plot at the location site (on-site). Information about such restrictions is added to the State Land Cadastre.[101]

Taking into account the systematic analysis of the land legislation (in particular, Article 186 of the LCU), it is considered that land management schemes and technical and economic feasibility of use and protection of land of administrative and territorial units are documentation of land management for adoption and development of which an appropriate procedure has been established.

Furthermore, the stipulation provided in part 7 of Article 118 of the LCU[102] concerns exactly the restrictions on the use of land, which are specified in the schemes of land management and technical and economic feasibility for use and protection of land of administrative-territorial units.

According to part 2 of Article 111 of the LCU such restrictions determine the following: a) condition to start and finish building or

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[101] ***ibid.***

[102] ***ibid.***

development of a land plot within the time limits; b) prohibition on the performance of certain activities; c) prohibition on changing the designated purpose of the land plot, landscape; d) a condition to carry out the construction, repair or maintenance of the road, road section; e) the condition of compliance of nature-oriented requirements or performance of certain works; f) conditions to grant the shooting right, fishing, wild collection on your own land plot in the prescribed time and manner.[103]

Therefore, only in case of following the procedure of development of relevant documentation on land management, which contains the restrictions provided in part 2 of Article 111 of the LCU, and confirmation of the fact of discrepancy it can be considered as a legitimate reason for refusing an applicant in granting permission for development of a land management plan for a land plot allocation.

In this case, the discrepancy of the location of a land plot should be explained by a clear directions for the law, adopted in accordance with it regulatory acts, the master plan of settlements and other town-planning documentation, land management schemes and technical and economic feasibility of use and protection of land of administrative and territorial units, etc.

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[103] ***ibid.***

CONCLUSIONS AND SUGGESTIONS

The system of factors that adversely affect the effectiveness of the mechanism for exercising the right of citizens to obtain permission for the development of a land management plan for a land plot allocation into ownership at the stage of appeal to public authorities make:

1) regulatory ambiguity in the definiteness of the type and form of the request for granting permission for the development of a land management plan for a land plot allocation.

It is substantiated that such an appeal from an interested person should be submitted to the relevant executive authority or local self-government body in the form of an application/request and only in written form. Herein it is emphasized that there is a need to adjust part 6 of Article 118 of the Land Code of Ukraine regarding the information, which should be provided by an applicant, and suggested to add provisions to relevant applications that will include the following information about the applicant: identifying information such as surname, first name, patronymic, dwelling place, date of filing the application and signature of the person;

2) regulatory uncertainty of the requirements concerning the form (type, size, scale) of graphic materials, which should be provided by a person "interested" in the land plot.

One maintains an attitude, which should be followed by the authorities and citizens, which consists in cases, when a person who appealed to the respective authority has fulfilled all the prerequisites

for obtaining the relevant permission, including graphic materials, then there are no grounds for refusal to grant such permission.

In order to prevent conflicts in these relations, the following legal position is suggested: in case of a situation, in which the implementation of an administrative procedure is impossible due to the incompleteness or inconsistency of the information provided by the applicant, it should be recognized that the authority is deprived of an opportunity to make an appropriate legal decision (as a refusal is given under Article 118 of the Land Code of Ukraine will be accomplished on the grounds of non-conformity) and indeed is forced to fail to act under the conditions of violation of the order of filing a request.

To confirm this position, it is suggested to amend Article 6 of the Land Code of Ukraine by extension of the grounds of refusal in obtaining permission, in particular, in case, when the applicant submit not all necessary documents for obtaining administrative service, or revealing inaccurate information in documents submitted by the applicant, etc.; or extension of the administrative procedure by supplementing the new optional stage – suspension of the administrative procedure until the full and accurate information will be given, specifying a certain term. In such case, an administrative authority should prepare written refusal to the applicant, concerning removal of the identified deficiencies within the time limits provided by applicable law. In case of removal of causes, which led to the refusal to provide administrative service, an applicant should again submit the initial package of documents.

3) ambiguous approach of the authorities while verifying the fact of the discrepancy of location of the land plot indicated in the request by the applicant.

In such situations, first of all it is suggested to find out the correlation of designated purpose of the use of the land plot, which a person would like to receive into ownership, and the rules establishing the legal regime of the certain category of land.

4) artificial modelling of the situations by the authorities, when applicants cannot obtain information on the master plans and other town-planning documentation.

Under the conditions of legislative uncertainty, in order to protect the interests of citizens, one maintains an attitude that the restrictions according the discrepancy of the object to requirements of the master plans of settlements and other town planning documentation can be applied only in resolving the issue of land plots allocation for the construction and maintenance of dwellings, farm buildings and structures, garage construction, as well as housing (residential) and garage construction co-operatives and land for residential and community development, that is in the cases of granting land plots for urban development needs.

Unlawful should be considered a refusal of the public administration body to grant permission for the development of a land management plan for allocation of a land plot of agricultural purpose for personal farming, because the use of such land plot is not provided for urban needs, that is because of the discrepancy of the object to requirements

of the master plans of settlements and other town planning documentation

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POPULATION MENTAL HEALTH AS A PREREQUISITE OF SOCIAL AND LEGAL SECURITY OF A SOCIETY AND A STATE

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Abstract.

The research paper provides the analysis of factors influencing population mental health which is a social value of particular importance for the development of any state. The level of mental health of the country's population has been the indicator of well-being and the quality of life as important aspects of social and legal security of a society and a state. It is ascertained that despite the fact that the basic principles of mental health protection of the countries' population in the world have been stipulated in international legal acts and implemented through the national legislations of the majority of states, this has not always been a guarantee of effective realization of that

protection of the rights of population to mental health. Regarding to the analysis of the effectiveness of the mechanism for the implementation of the right to mental health protection, the need to intensify the attention to psychological rehabilitation of persons suffering from post-traumatic stress disorder (combatants, internally displaced persons, etc.) is emphasized. The results of the social research on employees' protection from employers' interference in their psycho-emotional state conducted by the authors of the paper are presented. The authors suggest the definition of the concept of "mental health factors of the population".

Keywords: mental health factors of the population, mental disorder, population mental health, post-traumatic stress disorder, social and legal security.

INTRODUCTION

Formulation of the problem and its relevance.

Mental health has been the basis of a person's spiritual potential, the key to self-awareness, self-realization, and active socialization. The level of mental health of the country's population reflects the peculiarities of social policy in the field of social protection and welfare. The present-day complex realities in Ukraine and in the world, caused by armed hostilities and economic crisis and accompanied by migration, unemployment and impoverishment of population, intensify the problems of social and legal support for physical, social and spiritual welfare of the society, and as a consequence, cause the spread of psychological and neurological disorders that are considered to be mental health disorders. The specified fact does not contribute to the

stepping up of the progressive driving processes for the development of the society and the state. It is worth mentioning that a considerable number of Ukrainian scientists were engaged in the research of the system of mental health protection of the population, in particular the latest scientific developments covered the topics of psychological mechanisms of psychotic disorders protection (O. Avramchuk), psychological features of a values-based attitude to a healthy lifestyle amplification (M. Martsenyuk), psychological patterns of a person's socialization within the virtual space (A. Luchinkina), the importance of family values for the professional self-fulfilment of a person (O.Ugrin), display of psychomotor problems among the subjects of extreme professional activity (R. Simko), etc.

However, the outlined researches are primarily focused on medical, sociological, and psychological components of the given issue, while the area of social and legal security of population mental health as one of the mainstreams of the constructive and harmonious development of the society requires further scientific research as well as systemic reforms.

Purpose of the study.

The purpose of the paper is to determine the effectiveness of public law mechanisms for the protection of the population mental health as one of the most important factors of social and legal security of the state in present day conditions, as well as reflect certain aspects of social tendencies of mental health of the Ukrainian population based on sociological research.

Object and Subject of the Research.

The object **of the research is the sphere of social and legal security of the society and the state in the context of population mental health.**

The subject **of the research is the population mental health as a prerequisite of social and legal security of the society and the state.**

Research methods.

In accordance with the specified purpose of the research, while drafting the research paper the authors used a set of general scientific and special methods and techniques of scientific knowledge. General methods of scientific knowledge (generalization, comparison, analysis, synthesis, etc.) were applied in formulating the current state of legal regulation of relations conserning mental health of the population of Ukraine and scientific development of problems of social and legal security of society through the prism of population mental health. On the basis of the dialectical method of scientific knowledge, that forms the basis for the research, the general features of practical implementation of the population's mental health protection in modern Ukraine and in the world were determined. The sociological method is based on the study of the effectiveness of rehabilitation of post-traumatic stress disorders of certain groups of the population of Ukraine, as well as the attitude to the unlawful interference of employers to their mental health (215 respondents – the students of the Institute of Postgraduate Education of Taras Shevchenko National University of Kyiv). The use of the logical-semantic method allowes to improve the conceptual framework of social and legal sphere through

the definition of the concept: "factors affecting the population mental health." The comparative-legal method is used to clarify the issue of compliance of national legislation of Ukraine with the provisions of international acts and the study of foreign experience of legal regulation of the given sphere along with identifying the trends concerning its assimilation.

RESULTS AND DISCUSSION

The statutory provisions of the World Health Organization (hereinafter - WHO) stipulate that the achievement of the highest level of health has been one of the fundamental rights of every person regardless of race, religion, political beliefs, economic or social status. The health of all nations has been the major factor for the achievement of peace and security and depends on the complete cooperation of individual states and persons.

THE FIRST TOPIC

SOCIAL AND LEGAL TRENDS OF THE PROTECTION OF MENTAL HEALTH OF THE POPULATION IN THE WORLD

Mental health is a state of well-being in which each person can realise individual potential to its full extent, cope with life challenges, operate productively and effectively while contributing to the life of the community.[104] According to WHO, more than 450 million people with mental illness live on the planet these days. *In Western countries one in*

[104] The Constitution of the World Health Organization, 1946.

seven people is either paranoic personality or schizophrenic one, or prone to depression and alcoholism. It is estimated that as early as in 2020 mental disorders will be included to the top five deseases in terms of loss of lives. **Ukraine has been at the forefront in the number of mental disorders in Europe for the last several years.There are approximately 1 200,000 people with mental illness (more than 3% of the total population) in Ukraine. According to experts, every third Ukrainian suffers from various nervous disorders. In terms of the number of persons with disabilities the figure is 588 persons per 100,000 of population.They are mostly the patients with schizophrenia, schizoaffective and schizotypal disorders (208 people per 100,000 of population), mental retardation (211 per 100,000 of population) and epilepsy (63 per 100,000 of population).[105] One of the components of social and legal monitoring of the countries' population that was conducted in the process of the Human Development Index (HDI) spesifying as an integral rating indicator of individual needs and their satisfaction as well as the level of individual rights ensuring in a particular country has been the protection of health in general and mental health in particular.[106] In modern Europe the high prevalence of mental health problems may be primarily due to rapid changes in society. Such phenomena as unemployment or part-time employment, uncertainty in keeping a job, poverty, homelessness, wars, economic**

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[105] **Mental health as the basis for healthy life of a person. Retrieved from: http://irpinmed.com.ua/ua/news-1-0-89-psihichne-zdorov'ya-–-osnova-schaslivogo-zhittya-lyudini**

[106] **Pozniak, O., 2013.**

and political shocks prevent people from satisfying their basic needs and make them doubt of realization of their hopes and achievement of their goals. In short, a lot of people experience the feeling of disillusion in their own strengths and the prospects of personal development under such circumstances. New forms of life, work and communication reduce the ability of personal communication outside of social networks. The vast gap that exists between the rich and the groups of people with different values and standards, the rapid process of urbanization and, as it was stated above, the loss of personal contacts due to the development of modern information technologies, detrimentally influence on the support system that helps to successfully overcome problems and difficulties in life.

When people find that they are losing control of their lives, they also lose the feeling that their contribution to society really means something, they feel lonely and unwanted.[107] According to the study conducted by the US National Institute of Health, one of the main causes of mental illness has been attention deficit disorder, in which a person feels lonely even among the loved ones, that destroys that person's mental health.[108] The practice shows that a significant indicator of minimization of mental illness in society is the level of the population's welfare and the effective implementation of social protection which is considered to be a supporting factor in the face of

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[107] Mental health of the population in Europe. Decline isolation. Provide help. Retrieved from: http://www.euro.who.int/__data/assets/pdf_file/0012/120243/E72161R.pdf

[108] Barchi, B., 2019.

contemporary socio-economic challenges in the world. According to German social psychologist Erich Fromm the society of wealthy people is the society of healthy people.[109] For this reason, the indicators of disability due to mental disorders and suicide death rates reflect the level of well-being and welfare of the population. Creating a complete and effective system of mental health protection will entail the improvement of mental health along with the improvement of quality of life of the population.

Conceptual approaches to the importance of mental health for social interaction within a society are reflected in the legal documents of the world's leading international institutions. One of the documents is the United Nations Declaration on the Rights of Mentally Retarded Persons, adopted in 1971, according to which a mentally retarded person should exercise the same rights as other people to the fullest extent; a mentally retarded person has the right to adequate medical service and treatment, as well as the right to education, training, rehabilitation and protection, which enable them to develop their abilities and maximum capabilities; a mentally retarded person has the right to financial support and a satisfactory standard of living. That person has the right for effective work or engagement in some other useful activity to the fullest extent.[110] That is, the need to promote the maximum inclusion of people with mental health problems in society is emphasized. In addition, in June 10, 1983, the World Association of

[109] **Fromm, E., 1964.**

[110] **UN, Resolution 2856 (XXVI), 1971.**

Psychiatrists in Austria approved the Declaration of Hawaii II, which sets out the rules for the tolerance of psychiatrists on which the treatment of persons with mental disorders should be based. It includes the following provisions: the purpose of psychiatry has been the treatment of mental disorders and improvement of mental health. The psychiatrist must use all the abilities to serve the patient's best interests, as well as care for the common good and fair allocation of health care resources, in accordance with academic knowledge acquired and ethical standards accepted.[111] UN Resolution No. 46/199 "On the Protection of Persons with Mental Illness and Improvement of Mental Health Care" of February 18, 1992, approved the Principles for the protection of mental illness and the improvement of mental health care. The principles stipulate that all patients are entitled to the best psychiatric help; all persons with mental disorders should be treated humanely and with respect for human dignity; all people with psychiatric disorders should be protected from economic, sexual and other exploitation; there should be no discrimination on the basis of mental health; everyone with a mental disorder should have the right to enjoy all civil, political, economic, social and cultural rights as well as the right of a person to protection against unreasonable involuntary hospitalization.[112]

We will consider the last provision in more detail. According to international law, involuntary hospitalization may occur when the information obtained gives sufficient grounds for a reasonable

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[111] WPA, 1983.

[112] UN, Resolution 46/119.

assumption that the person has a severe mental disorder, which causes that person to commit, or, manifest a real intention to commit acts that are imminent or dangerous, or, the person is unable to meet individual basic needs on a self-sufficient basis and can cause significant damage to health due to deterioration of mental state in case of insafficient psychiatric help. According to Article 3.10 of Recommendations to member states on the legal protection of persons with mental disorders forcibly maintained as patients, adopted by the Committee of Ministers of the Council of Europe No. R (83) in February 2, 1983, the patient can only be retained in the facility, when, as a result of his mental disorder, he poses a serious danger to himself or to others; however, the states may stipulate that a patient may also be detained in the facility if, owing to the serious nature of his mental disorder, failure to maintain him in the facility would lead to an aggravation of his disorder or make it impossible for him to be adequately treated. In all circumstances, the human dignity of the patient must be respected and the necessary measures must be taken to protect that patient's health.[113] The exemplary case in terms of practical implementation of the protection of the rights of persons forcibly detained as patients on the basis of mental disorder diagnosis, which, if left untreated, can cause deterioration of mental health, is the case of Stork v. Germany (ruling of the European Court of Human Rights dated June 16, 2005, No. 61603/00). According to the case file, the applicant alleged in her complaint to the European Court that she had been sent to various psychiatric clinics against her will where she was wrongly diagnosed

[113] **Cabinet of Ministers of the Council of Europe, 1983, 22 February.**

and forced to take medication resulted in physical and psychological harm.

In addition, due to her medication, she developed post-polio syndrome* (*Post-polio syndrome manifests itself in chronic fatigue, pain and weakness in the muscles, both, affected and non-affected by the disease, after the years of polio. Pain, insomnia, shortness of breath and swallowing, cold intolerance can develop as symptoms as well.). She suffered polio at the age of three, and she is now a 100% disabled person. The main issue of her complaint concerned her placement in a private health care facility in Bremen and detention there from 1977 to 1979, which had been made at the request of her father following a series of serious conflicts between the applicant and her parents. At that time, she was 18 years old; no guardianship has been placed on her, and she had never signed a statement of consent to her placement to that medical facility. No court decision was rendered regarding her compulsory treatment in a psychiatric facility while in detention. Once, the applicant made an attempt to flee the facility, but she was taken back by police. In 1981, she was placed to the same facility for the second time (several months). In 1991 and 1992 the applicant was treated at the University health care facility in Mainz. In 1994, at the request of the applicant, a medical report was made stating that she had never suffered from childhood schizophrenia and her violent behavior was explained by the impact of conflicts in family on her mental state (the report was later confirmed by another medical assessment report). In 1997, Ms Stork went to court with a claim against the private health care facility in Bremen for compensation. The Court found that there

had been a violation of Article 8 of the Convention in the given case (unanimously). The Court awarded the medical facility in Bremen to pay EUR 75,000 compensation for pain and suffering. The court also ruled in favor of the applicant for the costs and expenses incurred in connection with the proceedings.[114] In our view, the given case illustrates the processes that are taking place in Europe to step up the protection of the rights of persons with health disorders. The Comprehensive Mental Health Action Plan 2013-2020, approved in May, 2013 by 66 Session of the World Health Assembly, signifies the same trend.

The Plan stipulates that mental disorders lead to impoverishment of individuals and families. Lack of housing and unjustified imprisonment are much more common for people with mental disorders than for the general population. That situation increases their marginalization and vulnerability. As a result of the stigmatization and discrimination of persons with mental disorders, their human rights are often violated and many of them are denied economic, social and cultural rights, with the exception of restrictions on the right to work and get education, as well as reproductive rights. They may also experience the absence of hygiene and inhumane treatment, physical and sexual abuse, negligence, and over-humiliating treatment at health care facilities. They are often denied civil and political rights, such as the right to marry and have a family, personal freedom, right to elect and

[114] **The Decision of the Chamber of European Court of Human Rights, case Storck v. Germany, (2005, 16 June) (Case No. 61603/00). Retrieved from: http://search.ligazakon.ua/l_doc2.nsf/link1/SO2883.html**

effectively and comprehensively participate in social life. As such, people with mental disorders often find themselves in vulnerable situations and may be isolated and alienated from society, which is a significant obstacle to achieving national and international development goals.[115] However, despite the stepping up of the efforts made by international community to improve social and legal status of persons with mental health problems, the present-day realities specify that there is a high risk of mental illness in the countries with fragile economic development to which Ukraine belongs.

THE SECOND TOPIC

MENTAL HEALTH PROTECTION IN UKRAINE: URGENT PROBLEMS

In Ukraine, the basic normative act, which defines the legal and organizational framework for providing citizens with psychiatric service based on the priority of human and citizen's rights and freedoms, establishes the responsibilities of executive authorities and local self-government bodies in organizing the provision of psychiatric service, legal and social protection, training of persons who suffer from mental disorders, regulates the rights and duties of specialists, other workers involved in the provision of psychiatric service, provision of social protection and training of persons with mental disorders is "On Psychiatric Service", the Law of Ukraine No. 1489-III dated February 22, 2000 (hereinafter - the Law of Ukraine "On Psychiatric Service").

[115] **WHO, 2013**

Article 5 of the Law of Ukraine "On Psychiatric Service" establishes the state guarantees for the provision of psychiatric service and social protection for persons suffering from mental disorders. Namely, adequate financial support for the provision of psychiatric service to the population, approval and implementation of state targeted programs in this field; free provision of medical assistance to persons with mental disorders in state and municipal health care facilities and free or preferential supply with medicine and medical products in accordance with the procedure established by the Cabinet of Ministers of Ukraine; financial assistance in accordance with the procedure established by the Cabinet of Ministers of Ukraine to a person living together with a person with disability group I or II due to mental disorder which, according to the assessment of the medical commission of the medical institution, requires permanent care.

The amount of the allowance is calculated as the difference between the three subsistence minimums for each family member and the average monthly total family income for the previous six months, but may not exceed the personal subsistence minimum per month; outpatient or inpatient provision of free diagnostic, counseling, treatment, rehabilitation services at state and municipal helth care facilities; realization of all kinds of examination of the mental state of the person; protection of the rights, freedoms and legitimate interests of persons with mental disorders; resolving issues of guardianship and care for persons suffering from mental disorders in the manner prescribed by law; provision of social services to persons with disabilities and the elderly people suffering from mental disorders,

including medical care, in accordance with the procedure established by the Cabinet of Ministers of Ukraine; free obtaining of appropriate education for persons with mental disorders at state and municipal educational institutions; setting mandatory job quotas for enterprises, institutions and organizations for the employment of persons with disabilities related to mental disorders in accordance with the procedure established by law and supervising for compliance with those quotas.[116] It is worth mentioning, that the adoption of the Law of Ukraine "On Psychiatric Service" has not solved the problem of creating a modern effective system of social and legal support for persons with mental health disorders. The Concept of Mental Health Care in Ukraine for the period up to 2030, approved by the Cabinet of Ministers of Ukraine, Decree No. 1018-p of December 27, 2017, specifies the following essential components of the problem in the field of mental health care in Ukraine: lack of regulation in the field of mental health protection; insufficient number of psychologists, psychotherapists, social workers and other staff involved in mental health care provision, lack of the system for the formation and maintenance of professional competencies among mental health professionals and other related professions; absence of systematic implementation of sectoral and cross-sectoral standards in the field of mental health care and quality control of care in the field; the over-focus of mental health care in specialized and residential health care facilities; low availability of psychological and psychotherapeutic assistance; shortage of services based on territorial communities, rehabilitation and social services;

[116] **On Psychiatric Service. Law of Ukraine, 2000.**

absence of systems of supported employment and preoccupation along with supported accommodation; the lack of effective support system for families of people with mental illness, and the lack of development of crisis psychological assistance and early intervention programs at the community level; limited use of current mental health assessment technologies, methods and procedures, and assistance to people with mental health problems at the level of primary care.[117] The problem of rehabilitation and resocialization of persons with mental and intellectual disabilities should be addressed separately. In fact, there is no effective social work aimed at preventive activity regarding to violations of legislation by the given group of population as well as initiatives to focuse them at effective activity to the fullest extent. Scolars T. Revuk, E. Krajnikov, Je. Prokopovych examining the problems of resocialization and rehabilitation of persons with mental disorders specify that the measures of psychosocial rehabilitation vary depending on the needs of patients, the place where the rehabilitation impact takes place (society or health care facility) and cultural and socio-economic environment in the country where the sick person lives. As a rule, such measures are based on labor rehabilitation; employment; vocational training and retraining; social support; education; psychiatric and psychological education (learning how to cope with symptoms, improving the overall psychological and cultural level, acquiring skills to restore and maintain mental health); acquisition and restoration of communication skills; acquisition of

[117] The Concept of the National Mental Health Program in Ukraine for the period until 2030. Direction of the Cabinet of Ministers of Ukraine No. 1018-d.

independent living skills; realization of spiritual needs, interests and leisure activity.[118] In 2016, the experts of the Research Institute of Labor and Employment of the Population of the Ministry of Social Policy of Ukraine and National Academy of Sciences of Ukraine drafted Recommendations for organizing cultural and leisure activities for persons with persistent physical, intellectual and mental disorders in residential institutions of the social protection system. The Recommendations emphasize the change of policy ideology towards people with disabilites within a society, the social model based on the leading principle of modern society is created (implemented), which is the principle of equal rights and opportunities granted to every person regardless of their physical, mental, intellectual and other circumstances. Hence, people with disabilities are viewed not only as objects of social concern, but as subjects of their own lives as well. The availability and awareness of those needs depend on the development of the individual's ability to understand and evaluate the environment, personal nature and the place within the social world, which is largely determined by the timeliness, complexity and effectiveness of the rehabilitation process, that, in its turn, depends on a number of objective and subjective circumstances and is limited by the amount of socio-economic resources of a particular society.[119] Russia's armed aggression against Ukraine, started in February 20, 2014, has had significant negative effects on Ukrainian population mental health. As a result of these illegal actions Crimea was annexed and the part of the

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[118] Revuk, T., Kraynikov, E. & Prokopovych Je., 2013.

[119] Irpin medical portal, 2018, 18 October.

Ukrainian population appeared to live in the uncontrolled territory of Donetsk and Luhansk regions. Armed conflicts in eastern Ukraine has led to the spread of post-traumatic stress disorder (hereinafter referred to as PTSD) among combatants directly involved in the counter-terrorism operation (operations of united forces), their families, the population of uncontrolled territories, internally displaced persons and others. In this regard, the Order of the Ministry of Health of Ukraine No. 121 of February 23, 2016, approved medical and technological documentation on standardization of health care of post-traumatic stress disorders in response to severe stress, adjustment disorders and post-traumatic stress disorders. In accordance with the "Research Diagnostic Criteria" of the International Statistical Classification of Diseases and Health Problems (ICD) - 10, PTSD is defined as a delayed or prolonged response to a stressful event or situation of an extremely threatening or catastrophic nature that can cause distress of almost any person. PTSD is a disorder that has the following basic symptoms: repeated disturbing memories of a traumatic event; nightmares; intense psychological suffering or somatic reactions, such as sweating, palpitations, and panic, when reminded of a traumatic event, avoidance or emotional numbness resulted in avoiding specific activity, places, thoughts, feelings, or conversations associated with the event; limited emotions; loss of interest in ordinary activities; feelings of detachment from others; excessive excitement, insomnia, annoyance, difficulties with collection, excessive concern, excessive start-reflex. In addition, it includes dissociative symptoms such as alienation, emotional deafness,

derealization, depersonalization and dissociative amnesia.[120] It should be noted that there is no official data on the prevalence and incidence of PTSD in Ukraine. According to O. Jehorova, the analysis of the phenomenon of post-traumatic stress disorder and so-called combat stress in Ukraine showed that combat PTSD is more diverse and lasts longer than peacetime PTSD because of accumulated (collected) in memory and repeatedly experienced horrors of war, physical and mental overstress, grief of loss, empathy with the wounded.

But, they can be eliminated with effective therapy ... If you do not influence the situation, you can face serious consequences for the health of not only the individual but also society as a whole. The situation can be improved with the use of foreign experience and introducing a full cycle of psychological support for combatants and their families before being sent to the area of armed conflict, during the service and after leaving the combat area.[121] As it is noted by A. Basylevych and I. Suliatytsky in their analyzis of medical and psychological resources of rehabilitation of victims of war in the eastern Ukraine, amendments made to the Law "On Social and Legal Protection of Military Servicemen and Members of Their Families" require psychological recovery of combatatnts after returning from the combat area. The adoption of the above mentioned regulation was accompanied by a

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[120] On approving and implementation of health care records on standardization of medical service in post-traumatic stress disorder. Order of the Ministry of Health of Ukraine No. 121. Retrieved from: http://search.ligazakon.ua/l_doc2.nsf/link1/MOZ25625.html

[121] Jehorova, O., 2019.

flurry of criticism, since it directly contradicts the Ukrainian legislation on health care, containing the direct prohibition of obligatory and compulsory medical or psychological intervention. The lack of budget financing makes it impossible for ATO servicemen to undergo obligatory psychological assessment and rehabilitation.[122] As it was mentioned above, the problem of psychological rehabilitation of internally displaced persons is also significant for Ukraine. According to data provided by the official website of the Ministry of Social Policy of Ukraine and set in the Unified Information Database on Internally Displaced Persons, as of February 3, 2020, 1 438 571 displaced persons from the temporarily occupied areas of Donetsk and Luhansk regions and the Autonomous Republic of Crimea were registered.[123] According to the research "Hidden Consequences of Conflict: Mental Health Issues of Internally Displaced Persons" conducted by International Alert in Ukraine, among 2203 internally displaced persons, the prevalence of PTSD constitutes 32% (22% of men, 36% of women), and the prevalence of depression constitutes 22 % (16% men, 25% women). Mental disorders have been found to have a significant impact on relationships between family members, decreasing work capacity and ability to perform daily tasks, namely the inability to move. The key factors that are statistically significantly related to mental disorders include female gender, older age, cumulative impact of trauma, recent

[122] **Bazylevych, A. & Suliatytskyi, I., 2018.**

[123] **Internally displaced persons. Retrieved from: https://www.msp.gov.ua/timeline/Vnutrishno-peremishcheni-osobi.html**

displacement, and poor economic status.[124] Practice shows that there are problems with discrimination in the labor market due to health conditions, in particular, on the basis of mental health disorders. Often, discriminatory actions become a barrier to the employment of persons with mental disorders by the employers who became aware of those persons' treatment in specialized health care facilities. The clear example illustrating the problem can be the consideration of the well-known case of K. Ustymenko by the Constitutional Court of Ukraine in 1997. The documents sent to the Constitutional Court of Ukraine and written statements of K. Ustymenko reveal that in 1988-1990 he was registered with Dnipropetrovsk Psychoneurological Dispensary following a request of the administration of Dnipropetrovsk Railway College. The applicant, who became aware of this fact in July 1990, considered that it had limited his employment opportunities and caused moral and financial damage to him. In order to compensate through the civil procedure, he appealed to the Chief Medical Officer of the dispensary, requesting information on who, when and on what grounds registered him; who was issued medical notes with information on his registering; by whom, when and on what grounds he was withdrawn from the register; whether the actions of psychiatrists to restrict his employment in 1988-1990 were legitimate and who was responsible for the physical and financial damage caused. The Chief Medical Officer, pleading privileged medical information, refused to provide the relevant information. In this regard, for almost seven years Ustymenko's case has been repeatedly and ambiguously considered by

[124] **Roberts, B., Mahashvili, N. & Djavahishvili, D., 2017.**

courts of general jurisdiction of various branches. The court's last decision satisfied the applicant's claim partially, he received a copy of his dispensary card and some other information, which did not satisfy him. The Constitutional Court of Ukraine, having analyzed the circumstances of the case, concluded that medical information, i.e evidence of a person's health, medical history, the purpose of the proposed research and medical measures, prognosis of the possible development of the illness, including the presence of risk for life and health belongs to confidential information with limited access. The doctor is obliged to provide such information in a complete and accessible manner at the request of the patient, the members of his family or legal representatives.[125] On the basis of the given case it was recognized that health information is considered to be confidential information that could not be spread without the consent of the person, except as required by law. Article 11 (2) of the Law of Ukraine "On Information" dated October 26, 1992 No. 2657-XII specifies the regulation.[126] When analyzing the confidentiality of information on mental health in employment relationships, it is necessary to pay attention to the provisions of Article 286 of the Civil Code of Ukraine dated January 16, 2003, No. 435-IV, which states that an individual has the right to confidentiality regarding the health status, the fact of

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[125] The Decision of the Constitutional Court of Ukraine regarding to official interpretation of Articles 3, 23, 31, 47, 48 of the Law of Ukraine "On the Prosecutor's Office" and Article 12 of the Law of Ukraine "On the Prosecutor's Office" (case of K.H. Ustymenko).

[126] On Information. Law of Ukraine No. 2657-XII.

addressing for medical service, a diagnosis and information obtained during medical assessment. It is forbidden to require and provide information on the diagnosis and the methods of treatment of an individual at the place of work or study.[127] Indeed, according to the International Classification of Diseases, diagnosis is being coded. However, this does not protect any person from making the employer aware of their health status in the disability leaflet, since it is easy to check the code using online resources. For example, class F covers mental disorders, which may give rise to ungrounded warnings and obstacles in the exercise of the right to work, which, in turn, creates additional barriers to the socialization of the given category of persons. In the course of the research, the authors conducted a survey among the students of the Institute of Postgraduate Education of Taras Shevchenko National University of Kyiv (215 respondents surveyed) in order to identify the awareness of individuals receiving postgraduate education in matters of protection of a person's right to mental health in the field of employment relations. The research found that 12% of the survey participants were hired through testing, with a large proportion of the test questions not related to their professional skills, but aimed at identifying their level of conflict and adapting to a new team as well as analyzing their psychotype. It should be noted that 26% of the respondents do not believe that the employer violates their rights while interfering with their privacy, taking into account the essence of test questions concerning the psycho-emotional sphere of potential employees, since it helps the employer to select employees potentially

[127] **Civil Code of Ukraine. Law of Ukraine No. 435-IV.**

getting on well withing the working environment. 48% of respondents reported the pressure from their employers in the course of their work, which, they felt, had a direct impact on their emotional state and mental health. As we can see, there are cases where a paradoxical situation arises, in which the workers, as the participants in the employment relationship, consider it legitimate and justified for the employer to interfere with their privacy, in particular, mental health.

CONCLUSION

The following conclusion can be made on the basis of the research:

1. The trends in the spread of disability of the world population due to deterioration of mental health indicate the significant crisis phenomena observed in the social sphere, which directly affect the possibility of effective realization of the individual in modern globalized world.

2. The factors of population mental health have been the factors that characterize social, economic, legal position of the population of the country and determine the level of social and legal security and the effectiveness of self-realization of the society members as the indicator of the population welfare and quality of life.

3. The fundamental principles of mental health protection contained in the international legal instruments of the UN, WHO and other provisions have remained the norms of declarative sound in many respects for a long period of time (for example, in the last third of the XXth century) even in the leading countries of Europe. However, we

are now witnessing the increase in the protection of the rights of persons with mental health problems in leading countries in Europe and in the world. At the same time, the current system of mental health care in Ukraine needs urgent and drastic changes in the context of psychiatric care. In particular, more attention should be put on preventive and psychosocial mental health care. In Ukraine, rehabilitation of persons suffering from post-traumatic stress disorder (combatants (anti-terrorist operation, united forces operation), persons residing at temporarily non-controlled territories of Donetsk and Luhansk regions, internally displaced persons) as a result of challenging circumstances has not been effective. There is a lack of awareness in the community regarding to mental health, that leads to untimely addressing for professional help; imperfection of national legislation on mental health and violation of the rights of people with mental health problems; lack of evidence-based mental health prevention systems and effective mental health promotion.

4. In practice, the violation of a person's right to protect confidential information related to mental health is traced in Ukraine, which leads to discrimination in the employment market and unlawful restriction of the right to work of persons with health disorders.

5. One of the main tasks of protecting the rights of persons with mental health disorders in modern context should be the creation of an effective mechanism for active socialization of persons with mental health disorders. This will be promoted by social humanity and tolerance. Creating a holistic and effective system of mental health

protection for the population will entail improving the mental health of the population and improving the quality of life.

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HUMAN DIMENSION AND ENVIRONMENTAL HUMAN RIGHTS IN THE INTERNATIONAL SYSTEM OF THE ENVIRONMENTAL PROTECTION

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Abstract

The purpose of this research is to identify the patterns and current trends in the formation of human consciousness and environmental human rights in the process of modernizing world civil society in order to form a single international environmental protection system. An important component of the new worldview should also be the noospheric thinking, the main motive of which is the responsible attitude of man towards the future of the planet on the basis of awareness of both the destructive possibilities of modern humanity and the conditionality of its existence for the preservation of a healthy environment. Taking into account the drawbacks of the formation of international law on the basis of exclusively interstate agreements, international law, at the present stage, should actively involve various social groups, social movements, representatives of territorial communities and other subjects of private law relations in making valid decisions, activating their influence on humanization and socialization of activities of the governments, and for states – to develop recommendations for building a new style of relations with their citizens in order to build a single international system of the environment protection.

Keywords: environmental human rights, global environmental crisis, human consciousness, international environmental protection, world civil society.

INTRODUCTION

Formulation of the problem and its relevance.

The international environmental protection system, which has formed over the last few decades, has developed a considerable array of principles, international legal treaty obligations, standards and recommendations, created a comprehensive system of international intergovernmental and non-governmental institutions, actively cooperates with national official bodies, business representatives and non-governmental organisations, whose activities are related to the protection of nature and environmental human rights, the development of resource-saving technologies, prevention and prompt elimination of environmental disasters. These efforts have certainly improved the overall attitude of mankind to the natural environment, which has become anthropogenic.

At the same time, the threat of global environmental disaster remains urgent, and environmental problems are perceived by the average inhabitant of the planet, mainly beyond the realities of his daily life, which continues to be a source of environmental pollution. The fact that the state of public consciousness is a deep and primary source of any social problems, including local environmental disasters and the global environmental crisis, is realized by the leaders of nations, the international community, as well as by the general public too slowly Despite the modern saturation of the information space with slogans of ecological and humanistic content, the inertia of irresponsible exploitation of nature by a human, as a legacy of the mentality that has recognized the exploitation of man by man for millennia as a norm,

remains the basic motive for most earthlings, especially in disoriented and disorganized societies of developing and transitional countries.

The resuscitation of such a mentality at the turn of the century is embodied in the well-known historical phenomenon defined by A. Toynbee as a metaphor from the New Testament as "new wine in dilapidated bellows": new technologies and means of communication are being used for purposes motivated by the obsolete values of caste societies that have dominated during the past few millennia, dehumanizing humanity by the practice of continually keeping a large part of it in a state that is not free, devoid of legal personality and a means of a decent life. Modern times and industrial civilization have only accelerated this process, forming a "one-dimensional man" subordinate to technocratic control and deprived of a real freedom of choice. The transition to the postindustrial information era will not significantly change the dehumanized nature of social relations until the social consciousness that remains subordinate to technocratic dominants is reoriented to socially humanistic priorities, that is, becomes anthropocentric.

Purpose of the study.

The purpose of the paper is to identify the patterns and current trends in the formation of human consciousness and environmental human rights in the process of modernizing world civil society in order to form a single international environmental protection system.

Methods and theoretical background.

The basis of the research methodology consists of the "Critiques" of I. Kant, which study the conditionality of human consciousness in the formation of empirical generalizations and theories regarding the phenomena of objective reality, in planning or justifying practical activity, and in assessing the admissibility of speculative assumptions. In analyzing the development of human consciousness in the transhistorical context, comparative historical and hermeneutical methods were applied, through which the conclusions and concepts of the authors whose works were used were subject to extended interpretation. These are primarily the works of I. Kant, A. Toynbee, W. McNeill and D. Kelly. The analogy method is also used for this purpose. The work also uses legal and sociological methods, in particular to compare the characteristics and social consequences of positivist legal consciousness with characteristics and possible social consequences of the communicative, psychological, and historical approaches to legal consciousness.

The paper uses a limited amount of sources of international law, which only in a general way illustrate the tendencies of development of international legal regulation of environmental protection issues and environmental human rights in the context of concepts of sustainable development and human dimensions.

The article uses works with philosophical and empirical conclusions that illustrate the development of scientific views on the planetary environment, the peculiarities of its organization and the relationship with humanity. These are the works of E. Le Roy, P. T. de Chardin, V. Vernadskyi, V. Kostitsyn, O. Bogdanov, L. von Bertalanffy,

G. Hagen, I. Prygozhyn, H. Maturana and F. Varela and also H. Marcuse.

RESULTS AND DISCUSSION

THE FIRST TOPIC

ENVIRONMENTAL HUMAN RIGHTS AND THE CONCEPT OF THE HUMAN DIMENSION

The establishment of the Institute for the Protection of Human Rights is an integral part of a whole new set of steps of the modern age related to the struggle – in Europe, and further around the world – against the discriminatory caste organization of society for the ideals of civil society based on equal relations of citizens.[128] When, after the Second World War, human rights protection became the subject of international obligations under the UN Charter (1945),[129] and the Universal Declaration of Human Rights (1948)[130] systematized the basic requirements in this area for the UN member states, the international community already had models in a large volume of acts adopted during the XVI – XVIII centuries during the religious and liberation wars, and social revolutions. The provisions of the Universal Declaration were enshrined in international treaties, at the regional

[128] Radzivill, 2017, p. 415.

[129] United Nations (UN), 1945, preamble, para. 3, Art. 1.

[130] United Nations (UN), 1948.

level – in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950),[131] adopted by the Council of Europe, and at the global level in two Pacts.[132,133] These international acts do not yet contain environmental rights, although environmental protection is already being recognized as a matter of international concern at this time. In particular, in 1948, a non-governmental international organization, the International Union for Conservation of Nature (IUCN), was founded, and at the present time a number of (mainly regional) conventions on the protection of individual species of animals and birds and the protection of water bodies against pollution are in force.[134]

Awareness of the need to integrate environmental concerns into the human rights system is in the process of becoming a sustainable development concept, which extends, among other things, to the protection of collective rights related to the state of the environment, as reflected in a number of UN General Assembly resolutions. Thus, UN General Assembly Resolution 626 (VII) of 1953 establishes the practice of regularly affirming the inherent sovereignty of peoples over their natural resources.[135] The XVI session of the UN General Assembly in

[131] Council of Europe, 1950.

[132] General Assembly, 1966.

[133] United Nations (UN), 1966.

[134] Zadorozhny, O. V. & Medvedev, M. O., 2010, p. 28.

[135] United Nations (UN), 1953.

1961 proclaimed the "decade of development",[136] based on proportional and coherent economic and social development, and planning. Considerable attention was paid to the monitoring the impact of nuclear radiation on the environment and nuclear and fusion research and testing.[137]

But a comprehensive systematic approach to environmental issues in the context of development of human rights was initiated by the XXIII Session of the UN General Assembly in 1968. In the UN General Assembly Resolution on Environmental Issues,[138] noting that human interconnection with the environment is undergoing profound changes related to the development of modern science and technology, recognizing that the unprecedented ability of humans to change and redefine the environment to meet their needs and aspirations are associated with a serious risk in the absence of proper controls and that the quality of the environment is deteriorating due to air and water pollution, erosion and other types of soil degradation, waste, noise, biocidal effects and other factors, which are exacerbated by the rapid growth and urbanization of the planet's population, expressing concern that these factors are adversely affecting human life, physical, mental and social health, dignity and full enjoyment of human rights – both in developing and developed countries, convinced of the need to pay more attention to environmental issues for healthy economic and social

[136] United Nations (UN), 1961a.

[137] United Nations (UN), 1961b.

[138] United Nations (UN), 1968.

development, decided to convene the United Nations Conference on Human Environment in 1972 to provide a basis for comprehensive consideration of environmental issues within the UN, to draw attention of governments and the public to the importance and urgency of this issue, and to identify those aspects that can best be addressed through international cooperation. To implement this decision, it was planned to involve all international institutions concerned with environmental issues: specialized international UN agencies: ILO, FAO, UNESCO, WHO, World Meteorological Organization, Intergovernmental Maritime Advisory Organization (at present IMO), IAEA, Organization of African Unity (now the African Union), as well as non-governmental organizations such as IUCN, International Union of Scientific Unions, International Biological Program, Intergovernmental Conference of Experts on the Scientific Basis for Rational Use and Conservation of the Resources of the Biosphere.[139]

The United Nations Conference on the Human Environment was held in June 1972. It outlined and comprehensively discussed the renewed concept of sustainable development, an integral part of which has become effective environmental protection, and which adopted the Stockholm Declaration and Action Plan.[140] The Declaration proclaims that a Human is a creation and creator of environment, which provides her/him with a physical existence and provides opportunities for

[139] United Nations (UN), 1968, p. 2.

[140] United Nations (UN), 1972.

intellectual, moral, social and spiritual development;[141] it is noted that in developing countries, most environmental problems arise from a lack of development.[142] To achieve the recognition of responsibility by citizens and societies and enterprises and institutions at all levels of activity, the Conference calls on all governments and peoples to work together to protect and improve the human environment for the benefit of all people and for the sake of its prosperity.[143]

The Declaration further sets out 26 principles that have formed the basis for a systematic approach to protecting the environment as a common concern for the humanity. According to Principle 1: "A human has the fundamental right to freedom, equality and a favourable living environment, the quality of which allows him/her to lead a dignified and prosperous life, and has the primary responsibility for protecting and improving the environment for the benefit of present and future generations. In this regard, the policy of supporting apartheid, racial segregation, discrimination, colonial and other forms of enslavement and foreign domination is condemned and must be stopped".[144] The principles further call on the international community to preserve all forms of biota and ecosystems for modern and future generations of mankind through careful planning and management, to preserve the properties of natural systems of self-reproduction, to the

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[141] ***Ibid.,*** **paragraph 1.**

[142] ***Ibid.,*** **paragraph 4**

[143] ***Ibid.,*** **paragraph 7**

[144] ***Ibid.,*** **principle 1.**

rational and fair use of non-renewable resources for all peoples, and to support the equitable struggle of all peoples against pollution of their environment, to the joint efforts of States in the conservation of marine ecosystems and their resources, and to particular support in these joint actions of efforts of developing countries.[145]

The Declaration Principles also pay considerable attention to effective planning at various levels of implementation of economic and social programs, urban development, sound demographic policies, and dissemination of programs to educate adolescents and adults about environmental problems and ways of overcoming them, reorientation of scientific activities for the benefit of mankind, including development, dissemination and implementation of resource-saving technologies, effective means of overcoming the effects of environmental disasters, increasing knowledge of ecosystems at all levels.[146] States should cooperate for the development of international environmental law,[147] and international problems related to the protection and improvement of the environment should be addressed in the spirit of cooperation between all countries, based on bilateral and multilateral treaties, for the effective control, prevention, reducing and eliminating the negative impact on the environment. States should also promote the concerted effective and dynamic work of international organizations in protecting

[145] ***Ibid.*****, principles 2-5.**

[146] ***Ibid.*****, Principle 13-18.**

[147] ***Ibid.*****, principle 22.**

and improving the environment.[148] A human and his/her environment must be protected from the effects of the use of nuclear and other weapons of mass destruction, and States should strive to reach an agreement as soon as possible in the relevant international bodies for the elimination and complete destruction of such weapons.[149]

To implement the Action Plan, which contained 109 recommendations, the Stockholm Conference also established a UN subsidiary, the United Nations Environment Programme (UNEP), whose financial support was entrusted to the Environment Fund and the World Environment Day (June, 5) has been established to promote environmentally conscious behaviour by nationals

The Stockholm Conference has activated the process of signing international treaties and launched regular international forums on general and specific environmental issues. When the UN Conference on Sustainable Development ("Earth Summit") in Rio de Janeiro took place 20 years after the Stockholm Summit, there was already an extensive system of codified international environmental law, which, however, required a holistic approach and practical measures in the context of sustainable development. At the Earth Summit, by the Recommendations adopted at the Conference: "Rio Declarations",[150] Agenda 21,[151] Forest Principles, UN, for the first time, addressed

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[148] ***Ibid.***, Principle 25.

[149] ***Ibid.***, Principle 26.

[150] United Nations (UN), 1992a.

[151] United Nations (UN), 1992b.

various social groups, other than governments, recognizing the role of each of them in the implementation of its decisions.

To coordinate efforts to implement the "Agenda 21", the Conference established the UN Commission on Sustainable Development. Two important multilateral conventions were adopted, the Framework Convention on Climate Change and the Convention on Biological Diversity. The next UN Conference on Sustainable Development was held in Rio de Janeiro 20 years later (Rio+20). It, taking into account the changes to the "Agenda 21", presented at the 2002 World Summit on Sustainable Development in Johannesburg,[152] discussed the main practical areas for sustainable development in a supportive environment: the transition to an environmentally sound economy and poverty eradication; protecting the oceans from the destruction of marine ecosystems and the effects of climate change; rational and comfortable arrangement of cities; transition to renewable energy sources; effective management of forests and reduction of their destruction; development of water resources conservation and reduction of desertification.[153]

The results of the Stockholm Conference have significantly influenced the environmentalization of national and regional political and legal systems. During 1971-1975, about one hundred states created environmental ministries, and environmental laws were adopted by all OECD member states. In 1973, the European Communities adopted the

[152] World Summit on Sustainable Development (WSSD), 2002.

[153] United Nations (UN), 2012.

Declaration on the Environmental Action Programme and a number of environmental directives.[154] In 1986, the founding Treaty of the European Economic Community included in the Single European Act the Section "Community Environment Policy".[155] Other regional international associations have also included international environmental commitments of States, mainly in development programs and the human rights protection system. In particular, the San Salvador Protocol on Economic, Social and Cultural Rights of 1988 enshrines the right of everyone to live in a healthy environment and the obligation of States parties to protect and improve it to the 1969 American Convention on Human Rights.[156] The African Charter on Human and Peoples' Rights (1981) proclaims the right of all peoples to a satisfactory and favourable environment for their development.[157]

An important contribution to the creation of a European environmental protection system in the context of sustainable development objectives has been made by the ECOSOC United Nations Economic Commission for Europe. The UNECE Committee on Environmental Policy promoted the adoption of five regional conventions,[158] which enabled the public to participate in the implementation of environmental standards, implementing a new

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[154] Gerden, M., 2008, p. 437.

[155] Council of Europe (CE), 1950, p. 438.

[156] Zadorozhny O. V. & Medvedev, M. O., 2010, p. 84.

[157] *Ibid.*, p. 23.

[158] *Ibid.*, p. 235.

approach to environmental protection, built on the cooperation of governments and civil society. In particular, the Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (1998) sets out a list of procedural environmental rights of citizens and public associations, including: right to access to information, participation in decision-making and access to environmental justice.[159] The 2003 Protocol to the Convention on Pollutant Emission and Transfer Registers initiated the establishment of harmonized, comprehensive national pollutant emission and transfer of registers, which significantly simplified public participation in environmental protection processes.[160]

As an integral part of the concept of sustainable development, which is gradually gaining self-importance, the concept of "human development" appears in international instruments and doctrine. Thanks to the OECD recommendations on the basic components of human development in the economic dimension, investment in education is stepped up, the concept of "human capital" is being formed, which contributes to a gradual change in the understanding of the goals of economic activity towards its humanization.[161] Since 1990s on the basis of the priority of human development in Europe important integration shifts have occured – both in the prospects of territorial expansion of membership in the three leading European structures

[159] United Nations (UN), 1998, Art. 1.

[160] Zadorozhny, O. V. & Medvedev, M. O., 2010, p. 95.

[161] Libanova, Ye. M., 2006, pp. 263-265.

(Council of Europe, European Communities, CSCE) and in the intensification of their cooperation.[162] After the fall of the Berlin Wall, which symbolized the division of Europe into two "camps", in 1991 the EEC and the EFTA formed the Single Economic Space, and the Maastricht Treaty in 1992 established the European Union, identifying achieving sustainable development as its institutions man priority.[163] The necessary conditions for EU membership were compliance with the Copenhagen Criteria[164] and the adoption and adherence by the EU Member States of the provisions of the Council of Europe Convention on Human Rights in 1950.[165] Further, in the process of adapting the human rights standards developed by the Council of Europe, the European Union outlined them in a more modern way in the Charter of Fundamental Rights of the European Union.[166] Created as Part II of the EU Constitution draft, the Charter has become an independent instrument whose provisions, under the Lisbon Treaty, are binding on both EU bodies and its member states when applying EU law. Similar to the UN Declaration of the XXI Century,[167] human values are the main provisions of the Charter. The six sections of the Charter are

[162] Pyvovar, Yu., Radzivill, O., Rozum, I., 2017, p. 23.

[163] European Union (EU), 1993.

[164] Center for European Information, 2007.

[165] European Union (EU), 2007, Art. 6.

[166] *Ibid*.

[167] United Nations (UN), 1945.

dedicated to values such as dignity, freedom, equality, solidarity and the rights of citizens and justice.[168]

Significant shifts in the humanization of regional security policy have been made in connection with the activities of the Conference on Security and Cooperation in Europe (OSCE since 1995), which during the Vienna Forum (1986-1989) declared its focus on "human dimension". From now on, starting from the Charter of Paris for a New Europe of November 21, 1990,[169] the OSCE has consistently developed a comprehensive concept of the human dimension, which has included seven main directions: 1) promoting the exercise of peoples' rights to self-determination; 2) building a democratic society, including, inter alia, the electoral process, decentralization of power, public control of the armed forces, security services and police, the activities of independent human rights groups, transparency of the work of administrations, combating corruption, efficiency of public funds management, rule of law (independence judges and lawyers, accessibility of justice; rights of detainees, etc.); 3) ensuring the exercise of personal human rights, including civil and political rights (abolition of the death penalty, prohibition of torture, ill-treatment or punishment, protection against unjustified imprisonment, freedom of access to information, protection of journalists' activities, etc.); economic, social and cultural rights (workers' rights; cultural rights and cultural heritage, right to education, promotion of cultural and

[168] United Nations (UN), 1953.

[169] United Nations (UN), 1990.

artistic expression of communities, etc.); 4) enforcement of rights of particular social groups in need of special protection, including: national minorities; indigenous population; refugees, displaced persons, returnees, stateless persons; migrant workers; persons with disabilities; children; military personnel; persons deprived of liberty; 5) guarantees of equality, tolerance and non-discrimination; 6) prevention of special threats to human security, in particular: violence and exploitation on the basis of gender and age, human trafficking, illicit traffic in drugs, weapons, other forms of international organized crime and terrorism; 7) compliance with international humanitarian law.[170] Since 2007, constitutional justice has become the subject of OSCE, which should act as a guarantor of compliance with the "human dimension" of legislation, constitutions and the constitutional process.[171] The work in all of these areas is a guarantee of regional security, which is understood primarily as the guaranteed security of people – personal, collective, ethnic, national, regional. Since 1989, the Office for Democratic Institutions and Human Rights of the OSCE, often in cooperation with the Council of Europe, has provided member states with scientifically sound human dimension recommendations designed to foster the work of their public institutions in creating a "friendly environment" for an ordinary citizen, taking into account special needs of certain social groups, women and men of different ages.

[170] Organization for Security and Co-operation in Europe (OSCE), 2012.

[171] Organization for Security and Co-operation in Europe (OSCE), 2008.

Thus, three regional European institutions – the Council of Europe, which aim, from the very beginning of its establishment, has been to protect human rights and freedoms, the European Communities, whose main objective was the economic development of the Member States, and which succeeded as the European Union, and the OSCE, as a forum for regional security, since the 1990s, have subordinated all aspects of their activities to a common priority that can be defined as a human dimension in its broadest interpretation.

THE SECOND TOPIC

INTERNATIONAL LAW AND ORDER AS A COMPONENT OF THE NOOSPHERE

The anthropocentric system of philosophy of I. Kant also touches on the problem of formation of the international law and order, which the philosopher understands as a world civil society – a historical project of organizing humanity on the principles, only according to which, it is possible to achieve the highest goal of nature – full disclosure of the virtues of a man.[172] Kant notes that performing this most difficult task for mankind requires awareness of the basic characteristics of the appropriate public order, which in turn is conditioned by sufficient historical experience and a proper level of culture.[173] But these factors can only contribute to the progress of humanity under conditions of eternal peace, to the principles of achieving which the philosopher

[172] Kant, I., (n. d. a), p. 8.

[173] *Ibid.*, p. 7.

dedicated his work "Perpetual Peace".[174] In the six "preliminary" articles of this work, the demands of which are to be attained as soon as possible, I. Kant formulates the criteria for the conscientious action of governments as a condition for increasing trust between nations: 1) no conclusion of peace shall be held to be valid as such, when it has been made with the secret reservation of the material for a future war; 2) no state having – whether it be small or large – shall be acquirable by another state; 3) standing armies shall be entirely abolished in the course of time; 4) no national debts shall be contracted in connection with the external affairs of the state; 5) no state shall intermeddle by force with the Constitution or government of another state; 6) no state at war with another shall adopt such modes of hostility (the employment of assassins, the instigation of treason and such like) as would necessarily render mutual confidence impossible in a future peace.[175]

Kant's "definitive" articles begin with the postulate: "All people who can influence one another must be united in a civil society",[176] which is understood as subject to legal regulation, not to arbitrariness of the strong. Legal regulation should cover at least three of the most relevant, interconnected and interdependent levels of social relations: 1) the state public order within the nation, which must be republican;[177] 2)

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[174] Kant, I. (n. d. b).

[175] *Ibid.*, pp. 3-5.

[176] *Ibid.*, p. 6.

[177] *Ibid.*, p. 8.

international law in relations of states with each other, which should be based on the federalism of sovereign states;[178] world civil order, which regulates relations – both between states and between people, since each person should be considered as a subject of world civil law,[179] and should be limited only to conditions of general hospitality.[180]

The concept of noosphere, developed in the early twentieth century in the works of E. Le Roy,[181] P. T. de Chardin[182] and V. I. Vernadskyi,[183] became an important worldview orienting point in the movement of humanity towards the ideal of world civil society, according to which humanity, being a new geological force, forms the "noosphere" – the surface of the planet, most comfortably organized by humanity's constructive activity. P. T. de Chardin considers the development of the noosphere of the Earth as a natural consequence of the "predetermined" appearance and development of the Homo sapiens in the evolution of the Universe.[184] V. I. Vernadskyi focuses on the surface (geological) space of the Earth – the place and product of the most intense contact and interaction of the initially "dead" rock solid

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[178] ***Ibid.*, pp. 11-12.**

[179] ***Ibid.*, pp. 16-17.**

[180] ***Ibid.*, p. 7.**

[181] **Roy, E. Le., 1928.**

[182] **Teillard de Chardin, P., 1989.**

[183] **Vernadsky, V. I., 1991.**

[184] **Teillard de Chardin, P., 1989, p. 40.**

planet with the scattered matter and energy of the Space, within which, based on the sequence of geospheres formed in the previous stages of the planet's evolution, the modern noosphere is formed.[185] The unique characteristics of our planet have provided it with the highest rate of evolution, in comparison with other planets, the general direction of which has become the formation, for over 4 billion years, of more and more adequate protective means for the preservation of planetary homeostasis, among which Reasonable Humanity, whose life on a geological scale is the last moment of the planet's history, must become the most effective in the future.

"Noospheric thinking", which was formed during the XX century under the influence of contradictory religious and philosophical and scientific and philosophical approaches, forming different currents in the process of its spreading, has the main, common to all interpretations, the idea that forms the responsible attitude of each person and whole solidary multicultural humanity to the future of the planet on the basis of realization that its natural environment is a space that not only surrounds but also pervades a human at all levels of her organization, with which we suffer from the changes of the solar and cosmic radiation, oscillations of geophysical fields and other fluctuations of its various components. At the basis of natural processes that ensure the duration of biological and geographical systems, which include humanity, there are the millions of years of "self-reproduction cycles" responsible for the self-regulatory properties of the

[185] Vernadsky, V. I., 1991, p. 37.

environment. In the works of V. Vernadskyi,[186] V. Kostitsyn,[187] O. Bohdanov[188] the awareness of this dynamic multilevel is already reflected. Further, in the works of L. von Bertalanffy,[189] G. Hagen,[190] I. Pryhozhyn,[191] H. Maturana and F. Varela[192] and other researchers, science has obtained a number of increasingly adequate characteristics of this multidimensionality, reflecting its various aspects: dissipative structures, bifurcations, cooperative effects and synergistic processes, reverberators, autopoiesis, etc. – allow to become more aware, to model and predict natural processes in their multilevel complexity and multi-inertial dynamics.

In particular, the model of "dissipative system" proposed by I. Pryhozhyn, which can embody ecological, biological and most social systems, is a complex, open, dynamic system, for which the observance of a narrowly balanced mode of exchange with the environment is the key to its existence,[193] and a significant deviation from it (entropy growth) leads to its dissipation – scattering in the environment. H.

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[186] Vernadsky, V. I., 2001.

[187] Kostitsyn, V. A., 1984.

[188] Bogdanov, A.A., 2003.

[189] Bertalanffy, L., 1962.

[190] Hacken, G., Hacken-Krell, M., 2002.

[191] Prigogin, I., Stengers, I., 1986.

[192] Maturana, U. & Varela, F., 2001.

[193] Prigogin, I., Stengers, I., 1986, p. 371.

Maturana and F. Varela suggested a model of autopoiesis – an ensemble of closed microlevel cycles, the balance of which is the key to the internal autonomy (homeostasis) of a complex open system.[194] Due to highly harmonized complexity of many internal dynamic cycles, natural ecosystems have a powerful ability to reproduce themselves, even after the essential destruction of their individual elements.[195] However, on the example of dissipative systems, I. Pryhozhyn formulated the so-called "curse of living system", which consists in their fate to do constant work to maintain their own orderliness (against entropy growth) by destroying the orderliness of other living and non-living systems, that is, their environment that ultimately leads to the downfall of the system itself because of lack of resources. I. Pryhozhyn extends his conclusion to the behaviour of societies, which often also act as subject to the "curse of living systems",[196] manifested both in attitude of mankind to its environment and in the relations between individual societies, some of which, using temporary (history-wide) benefits, aspire to absorb other means of physical violence and ideological pressure that produces in the letter ones cultural shock and inability to resist.

Therefore, only under the condition overcoming by humanity its internal conflicts, inevitable in the process of its formation as the Reasonable Humanity, which can control its biological component, the noosphere can become the most comfortable and safe common to

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[194] Maturana, U. & Varela, F., 2001, p. 14.

[195] Prigogin, I., Stengers, I., 1986, p. 208.

[196] *Ibid.*, p. 271.

humanity oecumene, in which will act unique, corresponding to the categorical imperative of I. Kant, forms and rules of sustaining the harmonious coexistence of multicultural solidarity international communities of nations and their natural environment. For this purpose, social and individual consciousness must be deprived of the desire to strictly subordinate natural and social processes, since these aspirations, being biological in nature, that is, subject-object, do not make it possible to understand the other side of the interaction, which entails unpredictable consequences, in particular "war against all", which may also include nature. Only awareness of solidarity, involvement in multilevel diversity of reality, built on constant feedback and the corresponding operational correlation of one's aspirations, can give the expected effect of harmonized orderliness and the predicted safety of human life within a planetary ecosystem.

An important component of the process of building a global civil society and its modernized project – the noosphere should be international law and a stable international order provided by it. The neoliberal international law and order that formed after World War II, as the last contribution of positivism to the theory and practice of legal regulation, only partially embodied the conditions outlined by I. Kant at the end of the XVIII century. Due to the rule of obligations of the states under the UN Charter,[197] international public law during this period for the first time became systematic unity, rapidly forming a codified legal basis and institutional support for all areas of

[197] United Nations (UN), 1945, p. 103.

international cooperation. However, within the framework of this system, neither natural entities under jurisdiction of the state, whom Kant wanted to see as subjects of the global civil law, nor the collective entities other than sovereign states were not granted their international status. The criteria of legitimacy laid down in the positivist basis of the neoliberal international rule of law do not allow to take into account to what extent the international activities of the governments of the states protect the interests of their citizens and are beneficial to the international community as a whole. The level of decision-making in international law remains interstate in form, although in reality in it play an active role, not subjected to the rules of international law, various groups of influence on governments whose opacity significantly reduces the expectation and level of trust in international relations, and, ultimately, the effectiveness of international law.[198] Most of the national legal systems of the world remain even more archaic: if the principle of sovereign equality of states acts in public international law, then in national legal systems the state remains a privileged entity, whose responsibility to citizens does not have effective procedural support, which produces a lot of abuses by those, who formally represent the state, not corresponding to the conferred, by it powers with its subjective characteristics. Thus, positivist legal consciousness, regulating legal relations on the basis of their strict formalization – to complete dehumanization, does not have proper criteria for assessing the human dimension in the activities of the state or its representatives, in particular, the public benefit of legal acts issued by the authorities or

[198] Dinh, N. K., Daye, P. & Pell, A., 2000, p. 34.

the qualities of representatives of power, whose style of relations with citizens remains, preferably, "subject-object".

The embodiment and product of the "subject-object" approach in industrial society became G. Marcuse's "One-dimensional man", characterized by him at the beginning of the second half of the XX century.[199] The author considers an industrial society as a "purely technological" historical project that completely ignores human nature. Its main purpose – to conquer nature, to adapt it to meet the needs of man – turns against man as a component of nature. A developed industrial society is "non-repressive totalitarian": it overcomes revolutionary contradictions, and totalitarian loyalty of citizens provides without violence economic and informational coordination of the behaviour of its members, aimed at forming standardized needs that are constantly artificially raised.[200] Particularly significant contribution to this process is made by media, which "have no difficulty in betraying the private interests of certain social groups for the standard interests of all reasonable people.[201] According to Marcuse never before a society with such an abundance of intellectual and material resources so completely dominated the individual, whose consciousness was formed within the boundaries of political, economic and cultural nature. Thus, a "one-dimensional man", perceiving the loss of access to standardized goods as a catastrophe, is not capable to

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[199] Marcuse, G., 1994.

[200] *Ibid.*, p. X.

[201] *Ibid.*, p. XI.

resist a system that produces more and more means that can not only destroy humanity but also daily destroy human in man, that is, lead to their complete dehumanization as deprived of freedom of choice, detail of a grand industrial machine. "We obediently accept the need for the peaceful production of the means of destruction, brought to the point of excessive consumption, upbringing and education, aimed at protecting something that deforms the defenders themselves and what they protect", concludes G. Marcuse.[202]

Despite the fact that the alarming symptoms, revealed by Marcuse in Western society during the industrial period, have received quite adequate responses and have largely been overcome, they are still relevant to non-Western societies, especially against the background of the current aggravation of social contradictions caused by unprecedented social and cultural dynamics that turn into cultural shock and impoverishment for the majority of the planet's population, widening the gap, in certain societies, between the rich and the poor, and by regions of the planet – between the depressed national economics and successful countries which, anyway, continue to enjoy the benefits laid during the period of direct exploitation of the colonies. The growth of social entropy in the system of international law and ordrer is facilitated by the modern intensification of the search for new ideological orientation points, most of which are aimed at strengthening the self-identity of non-Western societies, which, after a long period of Westernisation, are trying to restore their own cultural tradition. This

[202] ***Ibid.,*** **p. XIX.**

process could be an important step towards the implementation of the idea of the noosphere as a solidarity poli-civilizational and multicultural international community, if such searches did not come down to one-dimensional totalitarian thinking, which distinguishes all carriers of any distinct points of view that can be solidarity only in primitive resistance "to all Western" as antagonists.

These processes are strengthen by the turn of the century, by a general crisis of confidence in the rationally grounded moral and social orientation points of the previous century, which have supported the solidarity of societies in their efforts to future prospects. The discreditation of these orientation points releases the elemental nature of man, who, ignoring the public interests, seeks to fulfill the rapidly growing individual needs, overcoming any boundaries of common sense. For their prompt substantiation the simplest well-known "traditional" values, which are often formulated in a dishonest and eclectic manner are updated. As a consequence, the general level of awareness, aesthetics, morality, law and other components of culture as a systematic factor of any society decrease. In such an information field, the individual, whose consciousness is subordinated to the motives of hard "Physis", becomes an ideal consumer, for whom a caring attitude towards his natural and social environment, as well as a sense of responsibility to past and future generations, are categories of incomprehensible and senseless.

International law, as the brainchild of the Western legal tradition, which continues to be at the forefront of the processes of liberation of human consciousness and humanization of social relations, since the

end of the XX century, forms new approaches to the regulation of international relations, basing on a set of new concepts of legal consciousness, alternative to positivism.[203] The most important of these novels is the awareness of primacy in relation to collective legal personality – individual legal personality, the source of which is the psychophysical abilities of a person, and the need to recognize the multiple levels of collective legal personality with a certain inalienable set of rights and duties at each level.

At the level of regional institutions, at least in Europe, this approach has consistently implemented by the conventions of the Council of Europe,[204] the aims and principles of the founding treaties of the European Union, including the Charter of Fundamental Rights of the European Union, and the conception of "human dimension" of OSCE. At the global level, within the difficulties associated with the consolidation of the legal obligations of states in multilateral international treaties and taking into account the drawbacks of the exclusively inter-state level of making official decisions of universal importance and the real possibilities of potentially every level of collective legal personality to influence the international law and order, especially during the periods of general growth of entropy processes at the turn of the centuries, international law widely uses opportunities of advisory nature acts, forming joint understanding of the necessary measures by the international community. Accordingly, the numerous

[203] Mark van Hook, 2012, p. 14.

[204] Council of Europe (CE), 1999.

declarations, development strategies and "action plans" of the UN or other international organizations, adopted at the turn of the XX-XXI centuries, call on the states to develop a new style of relations with their citizens, simultaneously appealing to different groups of subjects of private law relations in order to intensify their influence on the governments to reorient their activities to protection of social and humanitarian value.[205] This soft impact mechanism was particularly implemented in international environmental law, when since 1972 against the background of adoption important international treaties on special environmental issues, a comprehensive system of principles is being developed in the recommendation acts, which is constantly improving and contributing to the solidarity of humanity in the issues of environment protection and grater joint awareness of the depth of these problems and the conditions for their overcoming: the World Conservation strategy (1980); the World Charter for Nature (1982); Proceedings of the Conference on Environment and Sustainable Development in Rio de Janeiro, the World Conference on Human Rights in Vienna (1993), the International Conference on Population and Development in Cairo (1994), the Global Conference on the Sustainable Development of Small Island Developing States in Bridgetown (1994), World Summit for Social Development in Copenhagen (1995), UN Conference on Settlements in Istanbul (1996), Summit on Sustainable Development in Johannesburg (2002),[206] finally

[205] United Nations (UN), 2000.

[206] World Summit on Sustainable Development (WSSD), 2002.

the UN Conference on Sustainable Development was held in Rio de Janeiro (Rio +) in 2012.[207]

In the process of establishment institutions of civil society, education should play a decisive role, which due to the variety of new means and opportunities afforded by modern communication systems, should be much more widely understood than in the recent past. The conception of a "global information civil society", which main goals and characteristics are set out in the relevant acts of "soft law",[208,209] opens new educational opportunities for humanity, transferring the capacity of international contacts to the level of interpersonal exchange of information. Focused primarily on comprehensive assistance in a convenient for each subscriber mode, they, among other things, contribute to the awareness of the prospects and opportunities of non-international relations by subjects of global information civil society, as well as their mutual studying and development of a sense of shared responsibilities for choice of humanity of its further development characteristics.

At the conference Rio+ of 2012, this approach was officially implemented. In order to develop a common position of mankind with regard to its future, the Conference systematized the diverse views of entities of the international community, which was presented, in addition to governments and intergovernmental international

[207] United Nations (UN), 2012.

[208] G8, 2000.

[209] World Summit on the Information Society (WSIS), 2003.

organizations, by a wide range of non-governmental institutions, public movements and communities. Strategies for overcoming poverty, promoting social justice, rational urbanization, and providing more favourable living conditions and a range of other social measures have been developed as relevant and necessary, in particular for the environment.[210] Despite the fact that a large number of planned measures and decisions could not be implemented even at the level of agreements, Rio+ became a forum that properly demonstrated the problematic and promising features of the international law of XXI century. In developing Rio+ decisions, the UNGA has identified the main Sustainable Development Goals, which are formulated, as follows: 1) poverty reduction; 2) overcoming hunger; 3) good health; 4) quality education: 5) gender equality; 6) clean water and proper sanitary conditions; 7) renewable energy; 8) decent work and economic growth; 9) innovation and infrastructure; 10) reduction of inequality; 11) sustainable development of cities and communities; 12) responsible consumption; 13) combating climate change; 14) conservation of marine ecosystems; 15) conservation of land ecosystems; 16) peace and justice; 17) partnership for sustainable development.[211]

Thus, it becomes clear that topical for international law improving negotiation and decision-making process at the level of governments with civil society involvement as an observer and controller, should also be accompanied by measures that would contribute to the process of

[210] United Nations (UN), 2012.

[211] State Statistics Service of Ukraine (SSSU), 2019.

forming the worldview of a citizen of the global public information society, for this purpose international institutions should more actively, in the mode of feedback from civil society, undertake the development of publicly available international educational programs, subordinated to new worldviews, which will be based on elementary, but scientifically validated knowledge about the psychophysical abilities of a man, including the ratio of its biological and humanistic components, the basis of social morality, built on the comparison of "subject-object" and intersubjective approach to social relations, and knowledge of the most significant patterns of life of the planet and its natural environment, including familiarization with the most topical problems of preserving its components.

CONCLUSIONS

The multifaceted improvements of modern times under the historical realities and public consciousness are occurring on different scales and in different ways. If the struggle for human rights and fundamental freedoms has become a priority of modern times since its inception, then the need to protect the environment has been fully realized only in the last century, quickly finding an embodiment in the development of the system of environmental human rights. The international environmental protection system, as a relatively young component of international public order, is based on the principles formulated at the Stockholm Conference on the Human Environment, which bound the problem of protecting the environment against anthropogenic pollution to sustainable development. As a major factor of the success of both tasks, the international community becomes increasingly aware of the

need for coordinated efforts to activate ideological changes in the direction of humanization of social relations, which would counteract the priority of man dimension in all spheres of social activity to consumer and technocratic progress criteria.

All the modern times, the social consciousness is influenced by, on the one hand, the inertia of the "subject-object" relation of man to his social and natural environment, inherited from the caste societies that have ruled over the last five millennia of the history of civilizations, on the other – the spreading of an "intersubjective" style of communication, built on the recognition of the equal legal personality of their participants, which is one of the most important conditions for building a civil society. Against the background of the general progress of civil society ideals, this process is complicated by the eclectic and mosaic distribution of new ideas and old customs – in time, space, across different societies and in different spheres of social relations. The inertia of the subject-object relation of man to his social and natural environment, the inertia of which in a certain society is preserved the stronger the longer and more aggressively it is dominated by the dehumanized means of ideological influence and regulation of social relations. An example of its stability over time was the "One-dimensional man" of G. Marcuse – a product of technocratic rule in the industrial period of development of Western society. Although in the Western society the drawbacks of technocratic governance are effectively overcome by the standards of human dimension, implemented in national legal systems, they are still relevant to non-Western societies, especially with the current exacerbation of social

contradictions that turn to marginalization and impoverishment majority of population of the planet.

The "intersubjective" nature of social relations is based on the philosophy of I. Kant, built on the priority of the human dimension, in particular, on the ability of the human consciousness to self-reflection and control over biological instincts, which ensures human freedom. According to Kant, freedom, alternative to arbitrariness and subjected to the rules of law based on moral law, is the overriding goal of the social relations on which a world-wide civil society should be built, where eternal peace will prevail and human rights will be respected.

An important component of the new worldview should also be the noospheric thinking, the main motive of which is the responsible attitude of man towards the future of the planet on the basis of awareness of both the destructive possibilities of modern humanity and the conditionality of its existence for the preservation of a healthy environment.

Only under the condition of overcoming its internal conflicts by the humanity, the noosphere can become the most comfortable and safe all-human oecumene, in which will operate the unique, corresponding to the categorical imperative of I. Kant, forms and rules of support of the harmonious coexistence of the multicultural solidarity international community of people and its natural environment. For this purpose human consciousness should be cleansed of the motives of domination in relationships with nature or other people, since such relationships do not allow us to understand the other side of the interaction that increases the unpredictability of its consequences. The predicted crisis-

free life for humanity can only be ensured by its solidarity in the multilevel diversity of the planetary ecosystem.

International law plays a decisive role in the process of building a global civil society and its modernized project – the noosphere. In the new millennium, this process has accelerated significantly thanks to a program of building a global information civil society, which has transferred the main capacity of international contacts to the level of informal interpersonal communications. Taking into account the drawbacks of the formation of international law on the basis of exclusively interstate agreements, international law, at the present stage, should actively involve various social groups, social movements, representatives of territorial communities and other subjects of private law relations in making valid decisions, activating their influence on humanization and socialization of activities of the governments, and for states – to develop recommendations for building a new style of relations with their citizens in order to build a single international system of the environment protection. Although existing programming documents of the UN and other international institutions devoted to these issues are consistently focused on the human dimension in all aspects of environmental measures, however, the UN, its specialized agencies and bodies, with strong experience in coordinating international cooperation, should more actively promote coordination of worldviews of modern humanity, in particular, to include in their tasks the development of publicly available international educational programs that would contribute to the process of forming the worldview of a citizen of worldwide information civil society.

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THE CONSTITUTIONAL HUMANITARIAN LAW AS A SUB-BRANCH OF THE CONSTITUTIONAL LAW OF UKRAINE

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Abstract

The paper considers the scientific analysis of political and legal prerequisites and objective factors regarding the formation and setting apart a humanitarian component – constitutional humanitarian law, in the system of the constitutional law of Ukraine. The legal nature (substance) and content, subject matter and methods of the constitutional humanitarian law are discussed at the levels of empirical and theoretical research methods. It is substantiated that the constitutional humanitarian law is a sub-branch of the constitutional law, the regulation subject of which covers public relations in the field

of defining, securing and protecting human constitutional and legal freedom.

Keywords: constitutional law, constitutionalism, human rights, humanitarian law, humanization trend.

INTRODUCTION

Scientific, practical problems.

Modern integration processes, political and legal transformations in Ukraine, social relations transformation, as well as constitutional and legal doctrine development lead to an objective need for conceptual development of a new paradigm of the national constitutional law in order to make its role more effective in the process of ensuring the interaction of the state, the public authority and the human in terms of constitutionalism.

Thus, the innovative aspects of constitutional legal research should include the issue of setting apart the constitutional humanitarian law as a sub-branch of the constitutional law of Ukraine. In fact, at the present stage of the national constitutional law development, new areas emerge of the social relations legal regulation through constitutional and legal regulations, which is conditioned by the modern society and state development trends.

However, the constitutional humanitarian law of Ukraine remains understudied. The theory of human rights, which relates directly to the constitutional humanitarian law, was developed in the works by such scholars as: O.V. Batanov, O.M. Boryslavska, S.P. Holovatyi, M.I. Koziubra, O.L. Kopylenko, A.M. Kolodii, A.Yu. Oliinyk, M.F. Orzikh,

V.F. Pohorilko, P.M. Rabinovych, P.B. Stetsiuk, Yu.M. Todyk, V.M. Shapoval et al. At the same time, all these works have a polyaspectual directional vector. Thus, O.V. Batanov looks into the issues of human rights in terms of municipalism.[212] O.M. Boryslavska analyses the fundamental human rights in the constitutionalism system.[213] S.P. Holovatyi looks into the nature of human rights from the perspective of the Western philosophical, political, and legal traditions.[214] M.I. Koziubra defines the essence of human rights through their relationship with the rule of law.[215] Classification of the human rights and freedoms is the subject of scientific research by A.Yu. Oliinyk.[216] Scientific works on the protection and safeguarding of human rights is of great importance for the research topic. In particular, the scientists of the Institute of State and Law named after V.M. Koretskyi[217] consider the issues of safeguarding human rights and freedoms by public administration authorities in Ukraine. The issues are being brought up to date of the protection of human rights by the constitutional jurisdiction authorities.[218] Despite their substantive multidimensionality, certain works are an important basis for the

[212] Batanov, 2010, p. 72-22.

[213] Boryslavska, 2018.

[214] Holovatyi, 2016.

[215] Koziubra, 2010, p. 24-25.

[216] Oliinyk, 2018, p. 170-175.

[217] Andriiko, 2015.

[218] See, for example: Derkach, 2019; Hultai, 2019, etc.

theoretical and legal concept development of the constitutional humanitarian law; however, they are fragmentary in relation to the integrity of this concept. There is no comprehensive research on the definition and elucidation of the legal nature, concept, content and structure of the constitutional humanitarian law.

The practical significance of the results obtained is that the provisions developed in the paper can be applied in the research area for further scientific developments in the field of constitutional law in terms of its humanization; to improve law enforcement activities – in the process of judicial review and resolution of legal disputes by judicial authorities, consideration of the constitutional complaints of citizens by the Constitutional Court of Ukraine; in the educational process – when writing textbooks, developing training programs, educational and methodological complexes for constitutional and legal training courses.

Purpose of the study.

Purpose of the paper is to create a theoretical and legal concept of the constitutional humanitarian law as a sub-branch of the constitutional law of Ukraine, with the definition of political and legal grounds for setting apart the constitutional humanitarian law and substantiating legal specificity of this sub-branch of law.

Object and Subject of the Research.

***Object* of the research is the constitutional law in terms of the scientific and practical paradigm of the modern constitutionalism.**

***Subject* of the research is the constitutional humanitarian law as a sub-branch of the constitutional law of Ukraine.**

Research methods.

The methodological basis of the research include system of interconnected conceptual principles (anthropologism, cognition, genuineness and objectivity of scientific knowledge, unity of theory and practice, determinism), methodological approaches (directions) and methods (philosophical-belief, general-scientific, general-scientific, special-scientific) enabling a comprehensive and complex study of the constitutional humanitarian law in terms of the scientific and practical paradigm of the modern constitutionalism.

Integrative, systematic and essential methodological approaches (directions); logical, technical-legal methods, as well as the constitutional and legal modeling method made it possible to discover the specifics, determine the essence, content, subject matter, methods and principles of the constitutional humanitarian law as a sub-branch of the constitutional law of Ukraine.

The international legal documents, current legislation of Ukraine, acts of the Constitutional Court of Ukraine, press and Internet resources, statistical materials constitute the legal and empirical research basis.

RESULTS AND DISCUSSION

THE FIRST TOPIC

GROUNDS FOR SETTING APART THE CONSTITUTIONAL HUMANITARIAN LAW AS A SUB-BRANCH OF THE CONSTITUTIONAL LAW OF UKRAINE

Traditionally, the humanitarian law is a concept characteristic of international law, that is, international humanitarian law, which along with the traditional law of war (armed conflicts),[219] covers international documents on the status and protection of human rights and freedoms, including international legal responsibility for violations thereof.

The most characteristic division of the international humanitarian law includes international documents on human and citizen rights (civil and political rights, economic, social and cultural rights, status of refugees, prevention of genocide, torture, etc.); international humanitarian law applicable during armed conflict (treatment of prisoners of war, protection of wounded and population, use of weapons, protection of cultural property, etc.); responsibility for crimes against peace and humanity.

International humanitarian law is closely linked to the international human rights law, since the subject of their regulation covers relationship between states and individuals with respect to the human rights and freedoms safeguarding. The main difference is that such

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[219] See: for example: Tsiurupa & Diachenko, 2008; Hans-Peter Gasser & Hans Haug, 1993, et.al.

regulation is carried out in various aspects, namely: international humanitarian law as a sub-branch of the international law is a set of norms pertaining to hostilities and norms providing protection to persons under enemy's authority[220] (that is, in the context of hostilities); international human rights law – a system of principles and norms that define and enshrine human rights and freedoms, the obligations of States and international organizations to respect thereof, as well as the international mechanisms for ensuring and controlling the international law entities compliance with their obligations in this area and direct protection of rights of individuals or groups of people[221] (i.e. in the context of a peaceful, ordinary life).

Consequently, these areas of international law are aimed on securing and protecting human rights and freedoms, but at the same time, one of the aspects of international legal regulation of the field of human rights and freedoms (in particular, international human rights law) is the control of human and citizen's rights and freedoms protection at the national level, that is, by specific states. This factor mainstreams the need for more detailed regulation of the national constitutional law in the area of human rights and freedoms, which is also determined by this area constitutionalization. The emphasis is made in the legal literature that in the modern world the process of constitutionalization of the human rights system is ongoing, namely: "Moreover, there is an ongoing process of implicit constitutionalization in both the human

[220] Repetskyi & Lysyk, 2007, p.25.

[221] Shemshuchenko, 2007, p. 460.

rights system itself and international law as a whole, although both continue to be constrained by the still important role of state consent and the failure of human rights generally to bind international organizations. These developments in the human rights system have combined to further and promote global constitutionalism".[222]

It should be emphasized that "global constitutionalism" relates directly to the constitutionalism national systems. First of all, through their single liberal-humanistic theoretical basis, which is manifested in the humanization trend of the national constitutional law.

Thus, the constitutional reform and political and legal transformations aimed on developing Ukraine as a democratic, rule-of-law state, its gradual entry into the European legal space, determine the relevant development trends of modern constitutional law, among which the main trend can be distinguished, namely: humanization and increase of human measuring of the constitutional and legal realities. This means that the "alpha and omega" of the state and society activity is a human as the highest value, whose rights should be safeguarded by integral, comprehensive and meaningful state guarantees system.

The humanization trend effects to one extent or another all other development trends of the constitutional law, runs like a golden thread through the entire system of the modern constitutionalism[223] – a core

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[222] Stephen Gardbaum, 2008, p. 768.

[223] Modern constitutionalism is a public-law system of the constitutional organization of modern society on the basis of law, democracy and the affirmation of human constitutional-legal freedom, the content of which is the constitution and

around which all the modern constitutional-legal scientific and practical issues of the constitutional law turn, versatile carrier of theoretical energy of modern constitutional science, and basic paradigm of constitutional-legal realities. Therefore, an important factor for isolation and formation of the humanitarian constitutional law is system formation and development of the modern Ukrainian constitutionalism.

Therefore, isolation, formation and development of the constitutional humanitarian law as a sub-branch of the constitutional law is objectively conditioned: first, by the constitutionalization processes of the human rights system in the modern world, that is, in the international and national law, which are interrelated (in particular, by proceeding on the dualistic concept of the relation between international law and national legal systems); second, the development of the scientific and practical paradigm of the modern constitutionalism, at the core of which is the human, who determines the humanization trend manifested in all spheres of the Ukrainian society and the state, namely: through perception of a human as society's value; recognition of its right to develop freely and show its abilities and capabilities; respecting the honor and dignity of the human; affirmation human well-being as a criterion for the social relations assessment, etc.

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constitutional legislation, constitutional relations, constitutional justice, constitutional rule of law, functioning of which is aimed at restriction (self-restriction) of public authority for the benefit of civil society, human rights and freedoms (*A.R. Krusian*).

THE SECOND TOPIC: SUBJECT, METHODS AND PRINCIPLES OF THE CONSTITUTIONAL HUMANITARIAN LAW OF UKRAINE

In addition to these political and legal grounds for setting apart constitutional humanitarian law, it is theoretically necessary to identify the basic features that characterize the legal specificity of this sub-branch as a regulatory subsystem of constitutional law, namely the presence of the subject of legal regulation – social relations of a particular type, which constitute an integral part of the constitutional law as a branch of law; specifics (features) of the legal regulation method; a combination of legal integrity (unity) and, at the same time, internal structural differentiation; special principles; legal integrity, that is, the existence of an interlinking and interdependent element ensuring the unity of the entire sub-branch of law.

With regard to the latter feature, it has an integrative value with respect to the entire system of legal features (characteristics) of constitutional humanitarian law. It is well known that the unity is possible only if there is interconnectedness and interdependence of all elements. The human constitutional and legal freedom is such an element with regard to the constitutional humanitarian law, which relates substantially to certain relationships between the human and the state.

In order to identify the essence and content of the constitutional humanitarian law, the study of public relations arising between the state and the human in the process of exercising public (state) authority is of theoretical and practical importance.

These relationships study remains relevant for a long time, starting from the birth of the classical theory of liberalism; by recognizing the freedom of the individual and integrity of the state in H. Spencer's[224] political and sociological interpretation; through its understanding from the philosophical point of view in terms of the natural human rights theory[225] to contemporary research on setting apart relevant models of relations between the state and the indivdual in the exercise of public authority. Thus, the modern approaches to defining these models include the system-centric and person-centric directions. Person-centrism defines a human as the highest point and "criterion of all things". The system-centric (sociocentric) approach has no person at all, or treats it as something auxiliary, capable of bringing greater or less benefit only to the achievement of some transpersonal goals. According to this approach, the state dominates over the individual.[226]

Third direction is getting widespread use in the contemporary legal literature, the essence of which is that, by denying hypertrophied perceptions of individual or collective origins in the human rights concept and its relationship with society, state and other forms of collective existence that are inherent in the past, it recognizes the need for organic combination of both personal and collective basis in the content of human rights and responsibilities.

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[224] **Herbert Spencer, 2018, p.380.**

[225] **Jacques Maritain, 1998, p. 219.**

[226] **Todyka & Todyka, 2004, p. 102.**

This approach is based on the "law of individual and collective balance", which is a condition of evolutionary (not revolutionary) society development and is universal. Yu.M. Todyka and O.Yu. Todyka substintuated this approach in the Ukrainian science, suggesting that "it is important to maintain the balance of the citizen and the state interests".[227] Such scientific directions can be described as the balance concept of the individual and the state insterests.

Undoubtedly, the balance of interests of the state and the individual and the partnership (social partnership) between these entities are attractive scientific concepts of the modern society development. However, it is difficult to build a partnership between a subject (state), which has authority and all its inherent means and attributes, and a subject (individual), who does not have such authority, but is a mere freedom bearer. At the same time, natural human rights give it the right to demand from the state the recognition, protection and guarantee of individual freedom in the system of relations with other people, society and the state. The extent of this freedom depends on the degree of restriction that the state imposes on itself and on other subjects of social relations. That is why such a concept is needed in this case, which would link the unified restriction (self-restriction) structure of public authority and the constitutional-legal freedom of the individual (the theory of constitutionalism).

V.M. Selivanov's position is worthy of support, who, considering the issue of the relationship between individuals and the state, believed:

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[227] ***Ibid*, p. 103.**

"Indeed, the legal order as the organization of relations between the subjects of law in the field of legal regulation in the society is possible only on the basis of a clear delineation of the activity areas of the state and individuals, which in a certain way effects the definition of all human and citizen's rights and freedoms: both private civil rights and subjective public and political rights.[228] This argues for the concept: "just as an individual in his rights and freedoms should be limited by the public interests of the society, enshrined in the norms of public law, so the state is not omnipotent in relation to the individual, because in its activities it must be limited, "binded" by the constitutionally enshrined human rights and freedoms, norms of the private law.[229] In addition, it is necessary for the state and society to take into account and perceive a provision having the status of an international standard and enshrined in Part 2 of Art. 29 of the Universal Declaration of Human Rights of 10 December 1948, namely: "in exercising one's rights and freedoms, each person shall be subject only to such restrictions as prescribed by law solely for the purpose of ensuring the due recognition and respect of the rights and freedoms of others and providing for fair requirements of morality , public order and general well-being in a democratic society".[230]

It seems that such a restriction is possible only on the basis of recognition and constitutional consolidation of the priority principle of

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[228] Selivanov, 2002, p. 169.

[229] *Ibid.*, p. 173.

[230] Universal Declaration of Human Rights, 1948.

human rights and interests in relations with the state. Only under these conditions the state will not have global control over the individual and will be deprived of the possibility of arbitrary actions, vigilanteism, etc.

To define the aggregate characterization of human rights and freedoms in the context of defined relations with the state, while recognizing the value of modern constitutional law in the context of human-centrism as its humanization trend, the verbal structure is reasobable of the "human constitutional-legal freedom".

The content (manifestation) of constitutional-legal freedom of a person is its individual freedom, while it has certain areas of its manifestation, which depend on the needs of the individual. The legal literature defines the so-called "pyramid" of the English sociologist D. Maslow (theory of natural needs), according to which the structure ("pyramid") of human needs in its sequence looks as follows: physiological needs; the need for safety; the need to communicate with similar ones; the need for respect from other society members; the need for self-fulfillment. This "pyramid" is justly referred to as the "steps of freedom" based on the assumption that each of these levels of human needs is the next step towards freedom. The relationship between the "pyramid" and K. Vasak's three generations of rights theory is precise: depending on the time of proclamation of different human rights and freedoms, rights are divided into three generations: public and political rights; socio-economic rights and collective rights.[231] Fundamental human rights ensure various spheres of life: personal, political, social,

[231] Domashenko & Rubanyk, 2002, p. 40.

economic, cultural. It should be emphasized that these rights not only relate to the different areas of human life, but also differ in time of origin. Hence the emergence of the "human rights generation" concept. It should be noted that the modern science has a new perspective on the understanding of human rights through the prism of their relation to human dignity, and in particular it is proved that: "Human dignity is frequently found in close proximity to human rights. Human dignity is a concept that is increasingly used in legal discussions and has become a standard ingredient of, inter alia, the right to life, integrity and fairness".[232]

These theories analysis allows determining the structures of human needs based on the principle of separation of tangible (physical) and intangible (spiritual) being of a human in order to ensure its individual freedom. Physical and economic freedoms are required to ensure tangible existence of human. The intangible (spiritual) part of an individual's life depends on its spiritual, cultural and political freedom.

Ensuring of physical, spiritual existence and human development requires the creation of conditions, first of all, of a legal nature, that is, constitutional securing and guaranteeing of the respective rights, freedoms and responsibilities of the individual and the citizen. This conclusion is in line with the legal position of the Constitutional Court of Ukraine, stated in the judgment of 11 October 2005 (case of the pension level and monthly life allowance):[233] "the content of human

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[232] **Shaibakova, 2019, p. 409.**

[233] **Decision of the Constitutional Court of Ukraine, 2005.**

rights and freedoms constitutes the conditions and means determining tangible and spiritual human capacity required to meet the needs of its existence and development.". It is noted that "the scope of human rights is the quantitative indicators of the corresponding capabilities that characterize its multiplicity, magnitude, intensity and degree of manifestation and expressed in certain units of measure" (p. 4 of the judgement reasoning).

Therefore, the modern concept of human rights and freedoms and the entire system of relevant Ukrainian legislation should aim on ensuring human constitutional and legal freedom. This concept is based, above all, on the theory and practice of modern constitutionalism. On this basis, the concept of human rights and freedoms should be based on the best combination (not confrontation) of natural law and positivist theories of human rights. The essence of such a combination is that the inherent human natural rights and freedoms, owned from birth, should be enshrined in positive law, that is, the state, as an authority sovereign, should recognize (not "grant") such rights and freedoms, ensure implementation thereof, safeguard and protect against unlawful encroachment. M. Cappeletti's opinion supports this conclusion. He noted,

> ***"Modern constitutionalism...is the only realistic implementation of values of the natural law in our modern world. …More precisely,… modern constitutionalism is an attempt to remove the contradiction between positive and natural law. Modern constitutions, the bill of rights that constitute thereof, and judicial control are the synthesis between positive and natural law. They reflect the most important***

attempt of the millennia to "promote" these values, but with no absolutization or transferring thereof under the complete control of the situational desires of changing parliamentary majority".[234]

Thus, such a scope of human rights and freedoms should be enshrined at the constitutional level, which would legally secure all spheres of the individual human freedom.

However, as has already been argued, constitutional-legal freedom cannot be unlimited, since freedom does not imply a complete disregard for the interests and rights of others, society and the state. The State, having committed itself to the assertion and protection of human rights and freedoms (Part 2 Art. 3 of the Constitution of Ukraine), acquires the right to demand lawful conduct from the individual and the citizen. Hence, the constitutional affirmation of the obligations of the individual and citizen is logical. Here, it is appropriate to conclude that the inclusion of obligations in the legal status of individual does not violate the rule of law, since the rights of some individuals not confirmed with the obligations of others cannot be exercised.[235] **In addition, "everyone shall have certain responsibilities to a society, the only place, where the free and full development of his or her personality is possible", which is enshrined in Part 1 Art. 29 of the Universal Declaration of Human Rights, 1948.**[236] **Thus, the Constitution of Ukraine enshrines the**

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[234] **Cappeletti, 1989, p. 210.**

[235] **Ierusalimov, Stakhurskyi & Ierusalimova, 2004, p. 43.**

[236] **Universal Declaration of Human Rights, 1948.**

respective obligations of the individual and citizen (Part 2 Art. 51, Part 1 Art. 53, Articles 65–68).

Thus, human constitutional-legal freedom is the legal (constitutional-legal) and actual state of individual in the society and the state, according to which the individual is physically, economically, politically, spiritually independent (free) of any unlawful (unconstitutional) restrictions and interference with all areas of individual freedom by public authorities and other social entities.

The human in a relationship with public (state) authority acquires a certain legal (civil) status. Depending on the membership (or nonmembership) with a particular state, the human may have the following types of legal condition: citizenship, poly-citizenship, statelessness and foreignism, which determines its legal status. After all, the appropriate legal status is the basis and at the same time a prerequisite for the possession and enjoyment of the set of rights, freedoms and fulfillment of obligations enshrined in the legislation of a particular state. In this aspect, issues of citizenship, dual citizenship, etc. are gaining increasing significance.

Consequently, the subject of the constitutional humanitarian law is public relations in the field of human constitutional-legal freedom, which is determined by specific methods and principles of such regulation.

The defined concept of human constitutional and legal freedom necessitates a shift of emphasis in the choice and application of the constitutional and legal regulation methods in the field of human rights.

After all, human rights and freedoms and guarantees thereof determine in general the "content and focus of the state's activity" (Article 3 of the Constitution of Ukraine), and concern for "ensuring human rights and freedoms and decent living conditions" is one of the main motives for adopting the Constitution, the necessity for its protection (Part IV Preamble of the Constitution of Ukraine). Thus, the "human" becomes not only the main category of constitutional law, but the main value orientation of its development, as well as assessment indicator for the implementation effectiveness of constitutional laws, theories, ideas, institutions, political and legal practice.

Constitutional law establishes the nature and extent of interaction, the relationship between public authority and human freedom, providing not only freedom "for" the lawful, authority-independent human activity, but also "against" unlawful interference of authority in human life and activity. The human's "constitutional-legal freedom" means certain relations of "penetrating" possibilities of law and "legal free space", stipulated by the constitutional order, which is based on the principles according to which "no one can be compelled to do what is not provided by law", but the human rights and freedoms are recognized as inalienable and inviolable, as is the right to "free development of one's personality" (Articles 19, 21, 23, 29 of the Constitution of Ukraine).

This, in turn, determines the increasing role and significance in these legal relationships, along with the imperative method (inherent in subordination and coordination relations), of such a method of

constitutional regulation as the dispositive method (based on parity principles and inherent in coordination relations).

The legal regulation methods are determined by the principles which should constitute basis for the constitutional humanitarian law system. Given its humanitarian essence (nature) and functional-causal relation with the scientific and practical paradigm of constitutionalism, it seems theoretically correct and practically conditioned to conclude that the principles of this sub-branch of law correspond to the principles of modern constitutionalism.[237]

THE THIRD TOPIC: PROTECTION OF THE HUMAN CONSTITUTIONAL AND LEGAL FREEDOM

In order to ensure the reality of constitutional legal freedom, it is not enough to legally "formulate" it through law (objective and subjective public law), the protection required of this freedom, the mechanism of which is an integral part of constitutional humanitarian law. The value of any right or freedom, including constitutional and legal freedom, depends on the mechanism of protection thereof.

Protection of the human's constitutional and legal freedom in the context of humanitarian definition of law is covered in two planes, namely: protection against the state (its possible arbitrariness) and protection by the state. With regard to the protection of human rights

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[237] **See: Krusian, 2010, subsection 2.3. Principles of Modern Ukrainian Constitutionalism.**

by the state, it is important to emphasize that the modern state must ensure and protect not only positive but also negative human rights, which determines the existence of corresponding negative and positive obligations. Thus, in its Judgment of 24 April 2018, the Constitutional Court of Ukraine stated that the human right to respect for its dignity, as well as its right to life, is inalienable, inalienable, inviolable and subject to unconditional protection by the state; Articles 27, 28 of the Constitution of Ukraine institutionalize not only the negative obligation of the state to refrain from acts that would violate human rights for life and respect for its dignity, but also the positive obligation of the state, which includes, in particular, the obligation to ensure a proper system for national protection of constitutional human rights by developing appropriate regulatory framework; implementation of an effective protection system for human life, health and dignity; creating conditions for an individualto exercise its fundamental rights and freedoms; guarantee the procedure for the compensation for damage caused by violations of constitutional human rights; ensuring the inevitability of liability for violations of constitutional human rights (paragraphs 4, 5, subparagraph 2.1 of paragraph 2 of the reasoning).[238]

State protection of the human's constitutional and legal freedom means the existence of a technical and legal protection mechanism for the rights and freedoms of the individual and the citizen. Such a mechanism, in the context of constitutional humanitarian law, includes

[238] **Decision of the Constitutional Court of Ukraine, 2018.**

normative (substantive and procedural) and institutional forms and means.

The normative part is represented by a large number of normative acts: the Constitution of Ukraine, international treaties, the consent to bindingness of which was provided by the Verkhovna Rada of Ukraine, laws and subordinate legislation. The shortcomings should be noted of the regulatory part of the human rights protection mechanism in Ukraine. First, legal acts contain more than half of the prohibition norms that do not meet global standards. Second, the implementation level of regulations on human and citizen rights and freedoms is unsatisfactory.[239] Third, the issue remains in question of harmonization of human rights legislation with international legal standards and compliance with these standards.

A great significance for Ukraine in the context of the European integration is the implementation of the "Association Agreement between Ukraine, on the one part, and the European Union, the European Atomic Energy Community and their Member States, on the other part"[240] (Agreement ratified by the Law No. 1678-VII of

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[239] See: Annual Report of the Ukraine's Human Rights Ombudsman on the Status of Observance and Protection of Human and Citizen's Rights and Freedoms in Ukraine, 2018.

[240] Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, 2014.

16.09.2014[241]). In particular, the Agreement stipulates that one of the Association objectives is: "to promote the gradual rapprochement of the Parties, based on common values and close privileged links, as well as through deepening Ukraine's relationship with EU policies and its participation in programs and agencies". These shared values include the "respect for democratic principles, the rule of law, good governance, human rights and fundamental freedoms..."

Thus, in connection with further European integration processes in Ukraine, the need becomes relevant for implementing legal measures on observance of human rights and fundamental freedoms, which constitute the basis of the constitutional order of the state and form modern constitutionalism. At the same time, according to the Ukraine's Human Rights Ombudsman, there are many problems in Ukraine regarding the observance of international standards in the field of human rights and freedoms.[242]

Thus, it is important not only to improve the legislation of Ukraine in accordance with international instruments, but also to observe and enforce the same, in order to overcome violations of human rights and freedoms and bring them in line with the international standards in this field.

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[241] On the ratification of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, 2014.

[242] See, for example: Annual Report of the Ukraine's Human Rights Ombudsman on the Status of Observance and Protection of Human and Citizen's Rights and Freedoms in Ukraine, 2018.

The regulatory part of this mechanism is directly related to the institutional one, which is represented by the state institutions. Considering that the rights and freedoms of the individual and the citizen and their guarantees determine the content and orientation of the state's activity, and the assertion and protection of human rights and freedoms is the main obligation of the state (Part 2 Article 3 of the Constitution of Ukraine), all public authorities shall perform the function of the state to protect the rights and freedoms of the individual and the citizen. At the same time, as M.P. Orzikh rightly points out, "none of these and other authorities and organizations possesses as much universal competence and human rights remedies as judicial instances do".[243] This conclusion is based on the functional characterization of the court as the only authority exercising justice in Ukraine (Article 124 of the Constitution of Ukraine). Therefore, the judicial reform in Ukraine acquires significance, and in particular, the adoption of the Law of Ukraine 'On Amendments to the Constitution of Ukraine (on Justice)'[244] in order to ensure the autonomy and independence of the judiciary, implementation of effective and fair justice.

The mechanism for the protection of human's constitutional and legal freedom will be complete provided that the human rights and freedoms can be protected not only on the part of the state but by the state itself, perceiving human rights in this case as "rights against

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[243] **Orzykh & Krusian, 2006, p. 79.**

[244] **On Amendments to the Constitution of Ukraine (on Justice), 2016.**

society represented by the state and its officials".[245] The need to protect human rights against the state is confirmed by the legal position of the Constitutional Court of Ukraine. The decision of 24 March 2005 (tax lien case) states that, "recognizing an individual as the highest social value, the Fundamental Law of Ukraine establishes a list of rights and freedoms, guarantees the protection thereof, including against violations by the state, its authorities and officials "(p. 4.2 of the reasoning). According to Yu.S. Shemshuchenko, "the main issue is that the rights and freedoms enshrined in the Constitution of Ukraine are not properly implemented, and in many cases violated. As a result, we have high levels of crime and corruption and a low level of law and order in the country".[246]

Important in the context of strengthening the mechanism for the protection of human's constitutional and legal freedom is the introduction of a constitutional complaint institute in Ukraine. The introduction of this institute will contribute to elimination of certain obstacles to the proper exercise of the rights and freedoms of the individual and citizen by the Constitutional Court of Ukraine, facilitate the implementation of the constitutionally guaranteed right of every individual to its rights and freedoms protection (Article 55 of the Constitution of Ukraine), facilitate the effective implementation of the constitutional principle of direct effect of norms of the Constitution of Ukraine (Part 3, Art. 8 of the Constitution of Ukraine). In addition,

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[245] Henkin, 1978, p.2.

[246] Shemshuchenko, 2008, p. 4.

consideration of constitutional complaints by the constitutional justice authority may also contribute to reduced scope of appeals of Ukrainian citizens to the European Court of Human Rights. In fact, an effective individual complaint to the Constitutional Court of Ukraine can become a national filter for referral of cases to the European Court of Human Rights.

However, the Institute of Constitutional Complaint in Ukraine is under implementation. In order to make it effective, it is necessary to step up the activities of the Constitutional Court in this area, carry out more informational-analytical and scientific-applied activities, as well as amend the current legislation of Ukraine in order to establish this institution as an important tool of the modern safeguarding mechanism for the rights and freedoms of the individual and citizen in Ukraine.[247]

Of great importance is the protection of constitutional-legal freedom against the arbitrariness of the state, which means, first of all, the ability of an individual to apply personally to the international courts for the protection of its rights. The Constitution of Ukraine enshrines the right of everyone, following exercise of all national remedies, to apply for the protection of the rights and freedoms to the relevant international judicial institutions or the relevant authorities of international organizations, of which Ukraine is a member or participant (Part 4, Art. 55). Therefore, the human is given international legal remedies to protect own rights and freedoms. This protection is independent, that is, protection with no state interference.

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[247] For more details see: Krusian, 2019a, p. 13-21; Krusian, 2019b, pp. 270-274.

The European Court of Human Rights holds an important place in such a protection. Its decisions are legally binding (Art. 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950), which is also provided for by the Law of Ukraine of 23 February 2006 'On the Enforcement of Judgments and the Practice of the European Court of Human Rights' (Art. 2).[248] Due to this, the observance and enforcement by the Member States of the Convention on the Protection of Human Rights and Fundamental Freedoms is subject to the direct control of the Council of Europe, which makes it possible to respond quickly and effectively to violations of human rights and fundamental freedoms in a given country. This substantiates the existence and the reality of the existence of a mechanism for the protection of human rights and freedoms against the state (its unlawful, arbitrary actions, inaction or interference with the sphere of individual human freedom, etc.), which is necessary in the context of ensuring human constitutional and legal freedom.

CONCLUSIONS

In the current conditions of the constitutional development of Ukraine, favorable circumstances arise regarding the formation and isolation in the system of national constitutional law of such a humanitarian component (sub-branch) as a constitutional humanitarian law. The need for setting apart the formation and further

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[248] On the Enforcement of Judgments and the Practice of the European Court of Human Rights, 2006.

development of constitutional humanitarian law is due to the following: first, the current stage of constitutional transformations in Ukraine, which determines such a tendency for the national constitutional law development as its humanization and enhancement of the human criterion of constitutional and legal realities; second, processes of constitutionalization of the human rights system in the modern world, that is, in international and national laws, which are interrelated (in particular, based on the dualistic concept of the relation between international law and national legal systems); third, the development of the scientific and practical paradigm of modern constitutionalism, the "core" of which is an individual, thus determining the need for comprehensive constitutional and legal regulation of social relations in the field of human's constitutional and legal freedom. After all, the Constitution stipulates that Ukraine admits an individual, its life and health, honor and dignity, integrity and security as the highest social value. Human rights and freedoms and their guarantees determine the content and focus of the state operation. The state is responsible to the individual for its activities. The establishment and protection of human rights and freedoms is the main obligation of the state (Art. 3 of the Constitution of Ukraine). This provision is part of the constitutional order in Ukraine. It is imperative to create a legal basis for implementing the constitutional provisions into modern realities. For this, inter alia, it is necessary to improve the system of modern constitutional legislation in the field of human and citizen's rights and freedoms, create an effective mechanism for safeguarding thereof by the state. Hence, it is important to create a theoretical and legal concept of constitutional humanitarian law, which will contribute to the

formation and further development of the modern Ukrainian constitutionalism system, the purpose of which is to establish human's constitutional and legal freedom.

The nature of constitutional humanitarian law is noted in the fact that modern constitutional law has a certain connection with humanism ("humanism" – Latin "Human"), which is manifested in its humanitarian focus, i.e. – focus on the establishment and maintenance of human's constitutional and legal freedom.

Constitutional humanitarian law is a sub-branch of the constitutional law, the regulation subject of which is public relations in the area of defining, securing and protecting human constitutional and legal freedom.

Increased social significance of relations in the field of human constitutional-legal freedom, their specificity and development in the context of humanization of constitutional law and the formation of modern Ukrainian constitutionalism, in the system of which it is important not only to legally define and consolidate the relevant human rights, freedoms and responsibilities, but also to establish a set of requirements for safeguarding thereof, both by the state and encroachments from the state – all this determines the nedd for setting apart and formation within the constitutional law of independent sub-branch – the constitutional humanitarian law, the subject of which is public relations in the field of human's constitutional and legal freedom.

Within the framework of the constitutional humanitarian law, the differentiation of legal material (while preserving its unity on the basis of an integrative concept – human constitutional-legal freedom) is methodologically justified, which makes it possible to identify such basic institutions as: the institute of human rights and freedoms; institute of human responsibilities in the democratic society and the state, institute of civil (legal) personality statuses (citizenship, foreignism, statelessness, poly-citizenship); institute for safeguarding human constitutional and legal freedom. It is thought that such structuring will contribute to the effective functioning of the constitutional humanitarian law.

Therefore, based on the foregoing, it is possible to summarize the recognition of the constitutional humanitarian law as the sub-branch of the constitutional law of Ukraine, the formation and development issues of which require further researches taking into account the constitutional and legal realities of the present.

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VRU (Verkhovna Rada of Ukraine). (2014). On the ratification of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part. Law of Ukraine, dated September 16, 2014. Retrieved from: http://zakon.rada.gov.ua

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INFORMATIZATION AND DIGITIZATION OF LAND RELATIONS IN UKRAINE: PROBLEMS AND PROSPECTS

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Abstract

The relevance of the topic is due to the integration of Ukraine into the world information space. The low level of information society development, e-government and e-democracy, and the digital development of Ukrainian society require immediate steps. The purpose of the paper is to summarize theoretical and normative approaches to the implementation of the process of informatization and digitization of land relations. The study covers the period from 1998 to the present. The author used both theoretical and empirical methods. The creation of the Ministry of Digital Transformation for the first time in the

history of Ukraine was a positive innovation. Land management documentation has maintained electronically since 2019. Introduction of electronic land bidding is an important innovation in the field of land relations. Informatization of land relations and reform of the State Land Cadastre will promote transparency of the land market in Ukraine, reduce the cost of planning territories of communities, timely receipt of reliable information about landowners and the value of the land contracts. This will create more favourable conditions for the implementation of land reform and revitalize the investment climate.

Keywords: digitization, electronic auction, geospatial data, informatization, land relations, state land cadastre.

INTRODUCTION

Scientific, practical problems

The intensification of the development of information resources and services in modern Ukraine is conditioned by the unsatisfactory situation in the field of informatization. The level of development of the information society, e-governance and e-democracy, the digital development of Ukrainian society is relatively low compared to the EU countries.

The proclamation of independence, the integration of Ukraine into the world information space and the development of the market economy became the prerequisites for the formation of legal, organizational, scientific and technical, economic, financial, methodological and humanitarian preconditions for the informatization

development. Transformation of all spheres of public life in Ukraine has gradually become impossible without the usage of modern technologies of digital economy and digital innovations. Need for the formation of a national information resources system has led to the creation of a nationwide network of information support for land relations.

In domestic science problems of improving the effectiveness of land relations regulation through the development of their information support have repeatedly become the subject of scientific research. At first, dissertations of S. Grynko (2003)[249], T. Lisova (2004)[250], S. Goshtynar (2008)[251], Z. Yaremak (2009)[252], Y. Pyvovar et al. (2019)[253] investigated the problems of complexity and corruption of administrative procedures, issues of providing and receiving information on land plots, maintenance of the state land cadastre and

[249] Grynko, S. V. (2003). Legal aspects of land rights registration. (Unpublished PhD dissertation). Taras Shevchenko National University of Kyiv, Ukraine.

[250] Lisova, T. V. (2004). Legal regulation of land management. (Unpublished PhD dissertation). National Law Academy of Ukraine named after Yaroslav Mudruy, Ukraine.

[251] Goshtynar, S. L. (2008). Legal regulation of the state land cadastre in Ukraine. (Unpublished PhD dissertation). National Agricultural University, Ukraine.

[252] Yaremak, Z. V. (2009). Legal regulation of state cadastre of natural resources. (Unpublished PhD dissertation). National University of Bioresources and Environmental Management of Ukraine, Ukraine.

[253] Pyvovar, Y., Pyvovar, I., Babyak, A., Nazar, Y., & Ostrovskiy, S. (2019). Permission for the development of a land management plan for a land plot allocation as an administrative service: A theoretical approach for legal practice. *Amazonia Investiga*, *8*(22), 370-380.

land management.

Later National report "On the land reform completion" had been prepared by scientists of the National Academy of Agrarian Sciences of Ukraine under the leadership of L. Novakovsky. Shortcomings and problems of a legal, economic and organizational nature of Land reform had been analized in the report. The necessity of information support of quantitative and qualitative land registration, registration of boundaries of administrative-territorial units, which would be formed as a result of administrative-territorial reform, transparency and accessibility to the population of land-cadastral documentation, was proved. The scientists proposed to expand the list of bodies, organizations and persons who have access to the information of the state land cadastre in readable mode.[254]

The problems of legal support for the provision of contactless administrative services in the field of land relations were investigated by O. Drozd and O. Levchenko in the monograph "Contactless administrative services of the State Service of Ukraine for Geodesy, Cartography and Cadastre; questions of theory and practice". The authors of this monograph have characterized the condition of regulatory support for contactless administrative services in the field of state land cadastre. They also have examined the stages of administrative procedure for providing contactless administrative services, outlined the standards for providing contactless administrative services by the State Agency of Geocadastre. It is worth supporting the

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[254] National Report on Completion of Land Reform. (2015). Novakovsky, L.A. (Eds.), p. 47.

proposal of the authors to introduce on-line state portal of administrative services on-line questioning of the customers of services in order to improve the quality of administrative services provision within the relevant integrated information systems (including the Public Cadastral Map of Ukraine).[255]

In the monograph "Scientific bases of solving the problems of land management of rural territories on the basis of geoinformation-cartographic modelling of land use parameters" (2016) authors I. Kovalchuk, T. Evsyukov, A. Martin, R. Tychenko, I. Openko, O. Atamanyuk, I. Demyanchuk, N. Lishchuk, O. Patichenko propose algorithms for solving socio-economic, managerial, environmental problems and land use risk assessment. According to them, one of the methods of creation of information support for the development of rural territories is the modeling of the parameters of land use with the use of geoinformation. The important role of geoinformation systems and on-line mapping is ascertained.[256]

D. Busuyok in the monograph "Administrative and Service Legal Relations in Land Law of Ukraine" (2017), examining the procedure of providing and receiving data from state cadastres and registers came to the right conclusion that the existing set of cadastres should be

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[255] **Drozd, O., Levchenko, O. (2016). Contactless administrative services of the State Service of Ukraine for Geodesy, Cartography and inventory; questions of theory and practice, p. 172.**

[256] **Kovalchuk, I.P., et al. (2016). Scientific bases of solving the problems of land management of rural territories on the basis of geoinformation-cartographic modeling of land use parameters. Kovalchuk, I.P. (Eds.), p. 5.**

transformed into an interdependent cadastre system through their connection. When someone includes or excludes certain data from the relevant cadastre, automatic changes will be made to the available information throughout the cadastre system. Including or excluding particular data will not only result in their normal accumulation within one cadastre. The existence of such a system will be facilitated by the automation of the maintenance of existing inventories, which will be based on the use of GIS technologies.[257]

Despite the availability of these scientific papers, the modern challenges require a thorough study of the legal issues of informatization and digitization of land relations, that is extremely important due to Ukraine's European integration.

Purpose of the study

The purpose of the paper is to summarize theoretical and normative approaches to the implementation of the informatization and digitization process in land relations, to identify the main tendencies of development and features of their application in Ukraine. The main aim of the paper is to characterize the theoretical and practical experience of conducting the State land cadastre, the organization of electronic bidding and other land relations in the field of informatization and digitization in order to determine the main ways of improving the legislation of Ukraine.

Object and Subject of the Research

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[257] Busuyok, D. (2017). Management and service legal relations in the land law of Ukraine, p. 342.

The object of the study is the patterns of development of legal regulation of land relations in the context of informatization and digitization. The subject of the research is the legal regulation mechanism of informatization and digitization in the area of State land cadastre, electronic land biddings, geospatial data infrastructure and other land relations that recently have been changing because the influence of informatization and digitization processes.

Research Methods and Techniques

The study covers the period from 1998, when the National Program for Informatization was adopted by Ukrainian parliament to the present day, when the state policy in the sphere of providing electronic and administrative services is being actively implemented and national electronic information resources are being developed. Theoretical methods (analysis, synthesis, generalization) and empirical method (observation) were used. Formal-logical method has ensured the reliability and scientificity of the information and made it possible to identify the inconsistency of certain land-legal norms with the realities of public life, as well as the contradictions between normative-legal acts. The formal legal method was used to study legislation solely within positivism. The effectiveness of the implementation of information was investigated while using the functional-legal method. System-structural method helps to view the legislation as an orderly, holistic, logically constructed set of legal acts. The specificity of the formation of the legislative definitions was investigated using the logical-semantic method. The prognostic method application made it possible to make forecasts of the development of informatization and digitization of land relations.

THE FIRST TOPIC
THE HISTORICAL PREREQUISITES AND THE THEORETICAL SUBSTANTIATION OF THE INTRODUCTION OF INFORMATIZATION IN THE FIELD OF LAND RELATIONS IN UKRAINE

The Land reform had been conducted in Ukraine since 1990. Land reform had legally formalized the change of the land system, economic priorities, ideology. Deep revision of the land legislation had been conducted. Ukraine's accession to the new historical era implied a critical reassessment of past experience in the regulation of land relations, theoretical understanding of the processes and phenomena taking place in the area of land use and protection, development of new approaches to their study.

Land is important for national sovereignty and functioning of the economy, it`s also a basic for agricultural production. Land is a spatial basis for the location of all sectors of the economy. Just as a legal category (means of production, spatial basis, object of real estate, etc.) land is an object of land relations. The legal value of land is determined by its properties. Land is a special object of nature that has properties that are not inherent in other natural or artificial objects.

Fundamental and central to all the rules of land legislation are the rules of Part 1 of Art. 13 of the Constitution of Ukraine: "... land, its subsoil, atmospheric air, water and other natural resources within the territory of Ukraine, the natural resources of its continental shelf, exclusive (maritime) economic zone are objects of property of the Ukrainian people". Constitution of Ukraine legally expressed freedom,

equality and justice for each person. Human rights are guaranteed in the Constitution of Ukraine and in the fulfillment of obligations regarding the use of land for the satisfaction of private and public needs and interests.

The Constitution proclaimed that land within the territory of Ukraine is not only an economic component of social development, but foremost emphasizes the importance of land as a component of the environment. The indispensability of the land determines its special status, enshrined in Art. 14 of the Constitution of Ukraine, according to which "... land is the main national treasure under special protection of the state". Being under special protection of the state is ensured by the land protection function of the state. The state's land protection function, enshrined in the Constitution of Ukraine, envisages carrying out activities in three main areas: land protection, rational land usage and environmental security.

The purpose of land legislation is to establish state guarantees of land rights and freedoms of citizens, to develop effective mechanisms for their implementation as a prerequisite for the transition from the existing declarative nature of legal regulation of land relations to an effective system of enforcement of legal norms. The basic tasks of the land legislation at the present stage of its development are: creation of optimal legal conditions for the exercise of the right of every citizen to land and the fulfillment of the obligation to protect the land as the main national wealth, to treat the land with care; legal support for reducing the negative impact of economic and other activities on the state of land; definition of the legal basis of the state policy in the field of land use and protection, which will provide a balanced solution of socio-

economic problems, strengthening the law and order in the field of land use and protection.[258]

Processes of informatization and digitization in the field of land relations have been initiated and have actively been implemented to ensure the rights and legitimate interests of each citizen. The adoption of the Concept of the National Program of Informatization and the Law of Ukraine "On the National Program of Informatization" of February 4, 1998 was caused by the growing society needs for ensuring transparency and accessibility of information in all spheres of public life, including land relations.

The National Informatization Program has identified a strategy for solving the problem of providing information needs and information support for socio-economic, environmental, scientific, technical, defense, national-cultural and other activities of national importance. The Program helped to improve state policy and priority directions of creation of modern information infrastructure of Ukraine. It was initiated due to the concentration and rational use of financial, material and technical and other resources, production and scientific and technical potential of the state, as well as coordination of activities of state bodies and local self-government bodies in the field of information.

Informatization is an objective stage of social progress. The definition of the term "informatization" can be found in Art. 1 of the Law of Ukraine "On the National Program of Informatization" of February 4, 1998:

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[258] **Sydor, V. D. (2012).** ***Theoretical problems of development of land legislation of Ukraine.*** **Abstract of the Doctor of Science dissertation (2012), p. 14.**

"Informatization is a set of interrelated organizational, legal, political, socio-economic, scientific and technical, production processes aimed at creating the conditions for meeting the information needs of citizens and society based on the creation, development and use of information systems, networks, resources and information technologies that are built on the base of modern computing and communication technology".[259]

Unlike the term "informatization", the term "digitization" is a neologism, which means changes in all spheres of public life related to the use of digital technologies. This term was introduced into the Ukrainian language only a few years ago. The current legislation defines digitization as "saturation of the physical world with electronic-digital devices, means, systems and establishment of electronic-communication exchange between them, which in fact allows for the integral interaction of the virtual and the physical, that creates cyberphysical space".[260]

Unfortunately, land relations for a long time were in corruption sphere. In order to prevent corruption and abuse in relations of land transfering, to introduce competitive basis of land usage through the electronic land biddindgs pilot project on the introduction of electronic

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[259] **On the National Program of Informatization. Law of Ukraine. (1998). Retrieved from: https://zakon.rada.gov.ua/laws/show/74/98-%D0%B2%D1%80**

[260] **On Approval of the Concept of Development of the Digital Economy and Society of Ukraine for 2018-2020 and Approval of the Plan of Measures for its Implementation. Order of the Cabinet of Ministers of Ukraine. (2018). Retrieved from: https://zakon.rada.gov.ua/laws/show/67-2018-%D1%80**

land bidings for state-owned agricultural land was provided from October 1, 2017 to October 1, 2019.[261]

Nowadays land biddings are conducted through a single electronic trading system, in real time on the Internet. As a result of the bidding, a contracts for the sale, lease, superficies or emphysesis of the land plot will be concluded with the winner who offered the highest price. In accordance with the adopted bill, a new procedure for holding land biddings is recognized. It provides automation for a number of processes. All documentation related to the land bidding will be open and ensure the efficiency of the organization and conduct of the biddings.

We can confirm the availability of state's information function. The importance of the state's information function, covering the relations associated with the creation, storage, processing, transmission of information, is growing. The purpose of the state's information function is the formation of the information space in Ukraine and the development of the information society. To fulfill the information function effectively, the Government of Ukraine approved the Concept of Development of the Digital Economy and Society of Ukraine for 2018-2020 on January 17, 2018. This Concept envisaged the implementation of appropriate incentives for digitization of the economy, public and social spheres, awareness of existing challenges and tools for digital infrastructure development, acquisition of digital

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[261] Procedure for implementation of the pilot project on conducting electronic land bidding. Resolution of the Cabinet of Ministers of Ukraine. (2017). Retrieved from: https://zakon.rada.gov.ua/laws/show/688-2017-%D0%BF

competencies by citizens, and identifies critical areas and projects for digitization, promotion of the internal market for digital production.[262]

An important milestone in the process of informatization and digitization of land relations was the creation for the first time in the history of Ukraine the Ministry of Digital Transformation on September 18, 2019. Nowaday the Ministry is the main central body of executive power, which ensures the formation and implementation of state policy in the areas of digitalization, digital development, digital economy, digital innovation, e-government and e-democracy, development of the information society; in the field of digital citizens' rights development; in the areas of open data, development of national electronic information resources and interoperability, development of broadband infrastructure for Internet access, e-commerce and business; in the field of electronic and administrative services; in the area of electronic trust services and electronic identification.[263]

The Ministry of Economic Development, Trade and Agriculture of Ukraine presented the Open Land Project on November 20, 2019. The main purpose of the Project was the ensurance of transparency and traceability of land relations, as well as providing information about

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[262] On Approval of the Concept of Development of the Digital Economy and Society of Ukraine for 2018-2020 and Approval of the Plan of Measures for its Implementation. Order of the Cabinet of Ministers of Ukraine. (2018). Retrieved from: https://zakon.rada.gov.ua/laws/show/67-2018-%D1%80

[263] Issues of the Ministry of Digital Transformation. Resolution of the Cabinet of Ministers of Ukraine. (2019). Retrieved from: https://zakon.rada.gov.ua/laws/show/856-2019-%D0%BF

landowners, the value of sales and lease agreements, the concentration of land in one person's ownership. The main tool of the Project is the geoportal, where the results of the data processing of remote sensing of lands of Ukraine are collected and the public cadastral map is connected (https://map.geoportalua.com). On this map of the geoportal anyone can see the boundaries of the agricultural fields, whether they are cultivated or not, what crops are growing there, what is the moisture of the soil, what is the vegetation index of the crops at the time of shooting and so on. Geo-portal data also discovers unregistered, unused land plots.[264]

THE SECOND TOPIC
LEGAL SUPPORT OF INFORMATIZATION AND DIGITIZATION OF LAND RELATIONS

The analysis of the legal framework governing the informatization of land relations should be started from the Concept of the National Informatization Program, approved by Parliament in the Law of Ukraine of February 4, 1998. Paragraph 8 of this Concept provided for informatization in the field of ecology and use of natural resources. Multipurpose information and technological base using geoinformation technologies for collecting, storing, analyzing the whole set of information for modeling and further forecasting the ecological status of the territories was created on the basis of cartographic databases.

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[264] **Open Land Project. Retrieved from: http://www.me.gov.ua/News/Detail?lang=uk-UA&id=908f6040-fd0d-4faf-9b4f-f5868bae0c42&title=TimofiiMilovanovPresentationProjectvidCriteriaZemlia**

The software and hardware complex for solving the problems of environmental pollution forecasting, analysis and assessment of the risk of ecological and economic conflicts, forecasting the consequences of human-made impact and natural catastrophes for reliable protection of the ecological space of Ukraine, rational use of natural resources on the basis of management of harmonized management types of production activities was created.[265]

Later the Parliament adopted the Law "On Topographic, Geodetic and Cartographic Activities" on December 23, 1998. This law regulated the procedure for conducting scientific, production and management activities aimed at determining the parameters of the figure, the gravitational of the Earth, the coordinates of the points of the earth's surface and their changes over time, the creation and use of state geodetic and gravimetric networks of Ukraine, a network of permanent satellite observation stations, topographic, thematic maps, creation and updating of the cartographic basis for state cadastres, geospatial database and geoinformation systems (Article 1).[266]

The adoption of the Law of Ukraine "On State Land Cadastre" of July 7, 2011 became the milestone of all land data transfer from paper to digital media.

Since 2013 the State land cadastre has been maintained as a single

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[265] **On the Concept of the National Program of Informatization. Law of Ukraine. (1998). Retrieved from: https://zakon.rada.gov.ua/laws/show/75/98-%D0%B2%D1%80**

[266] **On topographic-geodetic and cartographic activity. Law of Ukraine. (1998). Retrieved from: https://zakon.rada.gov.ua/laws/show/353-14**

state geoinformation system of information on land located within the state border of Ukraine, their purpose, restrictions in their use, as well as data on the quantitative and qualitative characteristics of land, their assessment, distribution land between owners and users.

The geodetic basis for the State land cadastre is the State geodetic network. The cartographic basis of the State land cadastre are maps drawn up in form and scale in accordance with state standards, norms and rules, technical regulations. Objects of the State land cadastre are lands within the state border of Ukraine; land within the territory of administrative-territorial units; land use restrictions; land plot (Article 10).[267]

According to the Order of Administration of the State Land Cadastre, approved by the Ministry of Agrarian Policy and Food of Ukraine on December 27, 2012, the administration of the State land cadastre was carried out due to ensure the functioning of the State land cadastre: 1) the basic means of automated processing, storage, transmission and protection of information; network equipment and telecommunication networks; 2) infrastructure systems and complexes for providing the environment for the functioning of information processing and storage facilities, network equipment; 3) monitoring, security and alarm systems and systems; 4) objects and individual complexes; 5) general software of the State land cadastre; 6) specialized software of the State land cadastre.

New large-scale changes in the management of the state land

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[267] **On the State Land Cadastre. Law of Ukraine. (2011). Retrieved from: https://zakon.rada.gov.ua/laws/show/3613-17**

cadastre have begun in Ukraine since 2018. Firstly, it is planned to create orthophotos and a 3-D terrain model of the territory of Ukraine. Secondly, the filling of the information of the state land cadastre provides for one hundred percent inventory of state agricultural lands; inventory of other state lands; making information about land quality characteristics. Thirdly, the transformation of the State land cadastre system aims at creating new electronic registers, above all – the Electronic Register of Certified Land Engineers and Surveyors.

The advantages of using information technology in this area include a reduction in the time decision-making and improving the quality of management procedures; increasing the efficiency of information; ensuring the reliability of the information about land resources; improving the organization of the processes of preparation, adoption and implementation of decisions.

It should be noted that legislative support in the regulation of land problems requires immediate improvement. The government stipulates that land use documentation should be in electronic form since 2019. Opening of the coordinates of the turning points of land is planned. In addition to this, the reform process foresees the cancellation of the registration of satellite radio navigation equipment.

Great prospects for land relation development has implementation of electronic biddings. The active use of the advantages of the network economy, which has been observed in Ukraine recentlys, and as a result, an increase in investment in the Internet, leads to the rapid development of electronic commerce systems. Introduction of electronic land bidding is an important innovation in the area of land relations. According to the Resolution of the Cabinet of Ministers of Ukraine of

October 23, 2019, No. 884, responsible for ensuring the functioning of the electronic trading system has been designated the state enterprise «PROZORRO.SALES», which belongs to the sphere of management of the Ministry of Economic Development, Trade and Agriculture. An e-commerce system has a two-tier information and telecommunication system consisting of a central database and electronic platforms that interact through an application programming interface, which is provided in the form of open source code and defines the functionality of the e-commerce system. This system provides the ability to create, post, publish and exchange information and documents in electronic form necessary for the bidding in electronic form. The winner of the lot is the bidder who offered the highest price in the electronic trading system. Bidding is conducted through an electronic platform – a hardware and software complex that operates on the Internet, connected to the electronic trading system and provides the auction organizer, users and participants with the opportunity to use the services of such system with automatic exchange of information about the process of electronic biddings.[268]

Creation of a National geospatial data infrastructure in Ukraine also an important innovation in land relations. Development of this infrastructure is foreseen by Directive 2007/2/EC of the European Parliament and of the Council "On Infrastructure for Spatial Information in the European Community (INSPIRE)" on March 14,

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[268] **Some issues of alienation of state property objects. Resolution of the Cabinet of Ministers of Ukraine. (2019). Retrieved from: https://zakon.rada.gov.ua /laws/show/884-2019-%D0%BF**

2007.

The system should combine all the registers and information bases of the state. It can help to anyone to receive relevant documents in a simplified manner. Nowadays there are currently more than twelve sectoral cadastres in Ukraine that display mapping information. In addition, there are separate geoinformation systems created by state and local governments. For example, the State forest cadastre contains information on the environmental, economic and other quantitative and qualitative characteristics of the forest fund. The Water cadastre keeps records of water features and records of their use. In the Agrochemical map of soils it is possible to get acquainted with the composition of soils, to assess the fertility and content of the main trace elements. State cadastre of wildlife, state cadastre of deposits and manifestations of minerals, Cadastre of treatment natural resources, Flora, Territories and objects of the nature reserve fund, Interactive map of soils – here is an incomplete list of systems that include scattered information related to the land relations.

Development of National geospatial data infrastructure aimed at ensuring effective administrative decision-making by public authorities and local self-government, eliminating duplication of work and expenditures of the state budget for the creation of geospatial data at all levels of public administration and local self-government, meeting the needs of society in all types of geography, integrating Ukraine into the European and global spatial data infrastructure.

The scale of the existing problems and the importance of the development of land relations in order to ensure the successful implementation of the socio-economic development of Ukraine

determines the expediency of developing the main directions of state policy on improving the use and protection of land. Development of space technology for monitoring the land use efficiency is a perspective direction of informatization of land relations. EU-backed World Bank launched Pilot Project on Satellite Monitoring of Agricultural Land Use in Ukraine. The project "Supporting Transparent Land Governance in Ukraine" has been improving transparency and efficiency of land asset management in Ukraine during 5 years. It is being implemented by EOS (Earth Observation System), based on space monitoring data, analyzed the vegetation of the earth's surface, that allowed to create a map of crops, determined the exact boundaries of fields. Within the framework of the World Bank and EU Program, the company based on space monitoring data analyzed the vegetation layer of the earth surface, that contributed creation of crops maps and helped to determine the exact boundaries of farmland. The discrepancies in the cadastral data and the fact that there were no changes in agrocultures were also identified.[269]

[269] **Supporting Transparent Land Governance in Ukraine. (2018). Support Supporting Transparent Land Management in Ukraine. World Bank Program with EU. Retrieved from: https://ukraine-landpolicy.com/newsletter-1-for-the-world-bank-and-eu-program-supporting-transparent-land-governance-in-ukraine-october-2018/**

CONCLUSIONS

The development of Ukraine as a democratic state involved the formation of a consistent system of law that would meet the needs and interests of society. The adoption of a large number of new laws in the area of land use and protection were conditioned by the long-term implementation of Land reform in Ukraine. Land reform affected a lot of spheres of public life and cannot be carried out without adequate changes in the legal regulation of land relations.

Over the last decade the process of improving computer technology and Internet technologies, as well as the process of their inclusion in everyday life, has intensified. Digital technologies are being implemented in all areas of public life. The sphere of land relations is no exception.

To sum up, the informatization of land relations should be based on the following principles: (1) general availability and openness of information about land resources; (2) ensuring the safety of person, society and the state; (3) awareness of citizens about the activities of land authorities; (4) the legality of the search, receipt and transmission of information about land; (5) providing reliable information about the land; (6) protection of the right to information.

The creation of a digital database of on all land within the territory of Ukraine should be carried out on the principles of objectivity, transparency, efficiency, flexibility, innovation, ensuring the performance of functions of control, supervision and monitoring of land condition and transactions with land plots.

Land relations informatization and State land cadastre reform should promote transparency of the land market in Ukraine. Reduction

in the community planning cost is expected. It will lead to economic growth of regions and a positive investment climate of Ukraine.

Digitization will allow tracking of land relations, receipt of reliable information about landowners or about the value of the transaction on time. Of course, personal data about land owners and users will not be disclosed.

Through the development of the National geospatial data infrastructure public authorities, local self-government and private sector will be able to rely on a complete database of information for decision-making on land relations and territorial development. It will provide needs in the area of construction and engineering research, ecology and navigation.

In our opinion, a clear systematization and creation of a unified system, which would summarize all information about the land resources – from the quality of the soil and to with the resource potential of a separate land plot. The State land cadastre has already contained the following information: administrative boundaries; index-cadastral map; orthophotos; ground section; agro-production groups of soils; hydrography; points of the state geodetic network; land use restrictions; normative monetary valuation data. In the near future Public cadastral map will include the following new information: coastal protection strip; unregistered territories; forests; nature reserve fund; minerals (special permissions).

Such information has been already opened: decisions on the disposal of state-owned agricultural land; conclusions of land management documentation expertise; conclusions on consideration of land management projects for land allotment; measures of state control over

land use and protection and their results. The land information available to the land managers should be open and accessible to both citizens and investors. It will create more favorable conditions for Land reform in Ukraine.

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JUDICIAL CONTROL AS A MEANS OF ENFORCEMENT OF JUDICIAL DECISIONS IN MODEL CASES: STATE AND PROSPECTS IN UKRAINE

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Abstract.

The purpose of the article is to find out the status and tendencies of the development of the institute of model case in Ukraine and to check its compliance with international legal requirements, as well as to determine the effectiveness of enforcement of judicial decisions in model cases. It is emphasized that the mechanism of the institute of model cases in Ukraine is gradually gaining a set of characteristics of a judicial precedent and is becoming a model for lower courts, attorneys and citizens. In the existing state-legal mechanism for ensuring the enforcement of judicial decisions in model cases, judicial control is considered to be effective, which in the conditions of political competition of state executive bodies is able to act as an external authoritative and recognized instrument of state influence on the activity of these bodies, turning their way to recognition and respect of a human and a citizen, ensuring human-centricity and the rule of law in Ukraine. It is considered appropriate for the courts to use this method as a daily tool, to increase its frequency of application, in particular in the cases of the obligation of the authorities to submit a report on the enforcement of the judicial decision, especially in model cases. It is established that the existing process of enforcement of decisions in model cases in Ukraine only partially meets the requirements of the Consultative Council of European Judges.

Keywords: administrative legal proceedings, enforcement of judicial decisions, judicial control, judicial precedent, model case, typical administrative cases.

INTRODUCTION

Scientific, practical problems.

The Code of Administrative Proceedings of Ukraine, amended by the Law of Ukraine of October 3, 2017 No. 2147-VIII (CAP), in contrast with other codes of judicial practice (Civil Procedure, Economic Procedure, Criminal Procedure) for the first time enshrined, in particular, such new legal categories as "typical case" and "model case" as well as peculiarities of proceedings in typical and model cases. The analysis of the legal norms for the mentioned categories of cases shows that a typical case can only be considered after a model case has been resolved.

At the same time, existence of only a judicial decision is not enough to achieve the purpose for which individuals turn to the justice system – the protection of violated rights, freedoms and interests. Therefore, the enforcement of court decision naturally becomes the main and the most important indicator of the real and proper protection of the violated rights, freedoms and interests of an individual and an integral part of the right to a fair trial.

As the European Court of Human Rights has repeatedly stated in its decisions, the enforcement of a decision given by any court should be regarded as an integral part of the "legal process" for the

implementation of Article 6 of the European Convention on Human Rights, which provides the enforcement of judicial decisions in the states, respecting the rule of law cannot remain unfulfilled (CE).

The Code of Administrative Proceedings of Ukraine contains a Section IV, which is entitled and devoted to "Procedural issues related to the enforcement of judicial decisions in administrative cases". However, neither this section of the CAP of Ukraine, nor its other legal provisions, as well as in general normative legal acts (in particular, the Law of Ukraine On Enforcement Proceedings (LEP) do not contain the peculiarities of enforcement of judicial decisions in model cases. That is, there is no specific legal mechanism.

At the same time, establishing mechanisms for the effective enforcement of judicial decisions is an important step towards building a rule of law and democracy state, in which respect for the law and citizens' rights should prevail.

Choosing a course of European integration and signing the Association Agreement between Ukraine and the European Union obliges Ukraine to reform the field of justice and bring its initiatives and legislation in line with European ones. The European integration vector means, inter alia, that the EU acquis communautaire is the horizon Ukraine is seeking to approach. Therefore, to change approaches to the formation and exercising political, executive and judicial power, the standards recognized by the progressive international community should be taken into account. In particular, in the field of justice, standards are manifested in the principles, recommendations, rules, criteria, which are enshrined in various legal

acts and can be both binding and advisory for Ukraine. Taking into account the transition period of Ukraine's membership in the European Union, when the state and Ukrainian society is taking a test of legal maturity and readiness to coexist equally in the European Community, "optional" acts and directives become valuable and important in this process, because they accomplish interpreting and clarifying the standards enshrined in obligatory international documents adopted according to the results of information collection and study of long-standing case law on specific matters in legal systems of different countries, which accumulate their experience in various areas, and contain conclusions, evaluated processes analysis and practical recommendations for implementation of certain principles. Such documents include, inter alia, the findings of the Consultative Council of European Judges to attention of the Committee of Ministers of the Council of Europe (CCEJ). The key to justice is recognized – Opinion of the Consultative Council of European Judges (CCEJ) No13 on the role of judges in the enforcement of judicial decisions (Strasbourg, November 19, 2010), which states that the effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It emphasizes that the independence of the judiciary and the right to a fair trial are futile if the decision is not enforced. In addition, by this international act are defined the criteria for assessing the effectiveness of the process of enforcement of judicial decisions, towards which, in turn, should be directed Member States, in particular points "g", 11, 12, 13, 17, 18, 31.

Literature Review.

Certainly, in such a short period of existence in Ukraine, the institute of model case is getting a scientific maturity in the theory of administrative law. However, the vast majority of available scientific work concerns the issues of expediency of implementing the institute of model cases, examining the experience of the European Court of Human Rights in using this institute, or exploring the nature and differences of model and typical cases. Thus, Tetiana Podorozhna, examining model and typical cases as a new mechanism of administrative justice in Ukraine, positively assesses it, pointing that a great number of legal controversies can be summarized by its means and integrated by systematic approaches to solving them. [270]

The researcher Vasyl Ilkov substantiates her position that model cases in administrative legal proceedings will facilitate the resolution of problems of numerous conflicts of laws in administrative legislation,[271] and court decisions in such cases are judicial precedents, which are obligatory for administrative courts to apply in resolving such issues in public-law disputes.[272] Aliona Oksiuta also points out the positive prospects for establishing the institute of model cases in Ukraine, and herewith warns of possible delays in the procedures for examining model cases.[273] Paranytsia and K.M. Tyshchenko, in determining the nature of an model and typical case and the mechanism of their legal

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[270] Podorozhna, T., 2018.

[271] Ilkov, V., 2017, p. 16.

[272] *Ibid.*, p. 19.

[273] Oksiuta, A., 2018.

regulation in Ukraine, conclude that there is a large number of risks associated with their implementation. Researchers have noted, in particular, that problems may arise during the identification of cases as typical for their further consideration by the model proceedings procedure.[274] At the same time, at the initial stage of implementation of the institute of model cases in ukraine, some scientists expresses doubts about facilitating model proceedings for the speedy consideration of a large number of similar cases,[275] and some criticize this judicial institute and assert that institute of model administrative cases does not meet the principles of continental law, according to which is built the legal system in Ukraine.[276]

At the same time, such an important area as the state and prospects of the implementation of court decisions in model cases has remained almost without the attention of legal scholars. The judicial and administrative reforms that are currently underway in Ukraine also add urgency to this issue.

Purpose of the Paper.

In view of the above mentioned, *the purpose of the article* is to find out the status and tendencies of the development of the institute of model case in ukraine and to check its compliance with international legal requirements, as well as to determine the effectiveness of enforcement of judicial decisions in model cases. To this end, a number

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[274] Paranytsia, S.P. & Tyschenko, K.M., 2018.

[275] Kucheruk, N., 2017.

[276] Nehanov, V., 2017.

of tasks should be consistently accomplished, in particular: to investigate the state of development of the institute of model cases in ukraine; to establish and characterize the criterion of efficiency of the institute of model cases; to check the criterion of unity of law enforcement practice of courts and bodies of executive power while enforcing judicial decisions in model cases.

Research Methods and Materials of the Research.

A complex of scientific methods was used in the research to accomplish the set tasks. In particular, by means of the historical and legal method, the prerequisites for the introduction of the Institute of Model Cases in Ukraine were identified. The statistical evaluations and generalizations contributed to the identification of court model cases over a period of 2017-2019. Methods of classification, systematization and quantitative assessment have contributed to the division of judicial model cases into categories of administrative cases. Methods of qualitative and quantitative evaluation of the practical experience of appellate review of court decisions in model cases helped to identify the negative tendencies of this court procedure and to identify their certain causes. A technical method allowed to identify and point out the abuse of state executive bodies in the process of enforcement of judicial decisions in model cases. The methodological basis of the research was the critical analysis approach. The substantive grounds of the research were the decisions of the CAP within the Supreme Court in model cases, official letters and reports of executive authorities according to the enforcement of judicial decisions, statistical and analytical

information of the Supreme Court, as well as international and national legal acts on the subject of research.

THE FIRST TOPIC

THE STATE OF DEVELOPMENT OF THE INSTITUTE OF "MODEL CASE" IN UKRAINE

The term "model administrative case" is a novel of the CAP of Ukraine. It is important that the Supreme Court considers such a category of cases in the status of the court of the first instance by filing of one or more administrative courts, in which there are typical administrative cases, the number of which determines the expediency of making a model decision (part 1 of Article 290 the CAP). Only the Grand Chamber of the Supreme Court (part 11 of Article 290 of the CAP) can review judicial decisions of such cases on appeal.

The law identifies several characteristics that give grounds to classify a case as a model one, in particular: a) one and the same power entity (its separate structural unit); b) the dispute arose on similar grounds; c) relations are regulated by the same rules of law; d) the plantiffs have made similar claims.

The review of the practice of the Administrative Cassation Court within the Supreme Court (ACC/SC) indicates that Ukraine has already acquired experience in using the institute of "model cases", namely, examining exemplary model cases, adopting model decisions and their executing.

According to the official data of the Supreme Court for the period from 15 december 2017 to 5 december 2019 the Administrative Cassation Court received 82 *cases (records)* for consideration according to the rules of proceedings in model cases[277], in particular: in 2017 – 2 , in 2018 – 58, in 2019 – 22 (Web site of the SC). However, it should be noted that not all materials have been classified as model one.

Table 1. ***Statistics of Records over 2017 – 2019***

Reach ACC SC for concide-ration (number of records)	Declined in opening a model proceeding (number of records)	Opened model proceedings (number of records)	No judicial decision yet (number of records)
82	60	20	2

Source: Authors, based on Web site of the SC, 2017-2019 database

Also the statistics shows little of records, judicial decisions of which entered into force.

Table 2. ***Results of consideration of records according to the rules of model proceedings***

Examined	among them:

[277] **"proceedings in model cases" hereinafter – "model proceedings"**

cases according to the rules of model procee-dings (number of records)	entered into force without appeal (number of records)	entered into force after appeal (number of records)	reversed judicial decisions (number of records)	Undergo appeal proceedings at the present time (number of records)
15	1	6	2	6

Source: Authors, based on Web site of the SC, 2017-2019 database

As a result of the analysis and synthesis of case law, in order to determine the reasons of refusing to open model proceedings, we have established the following.

As a general rule, the court refuses to open proceedings if the administrative case does not meet the characteristics of the model one: 1) the defendants are different power entities; 2) different grounds for a dispute; 3) excellent statutory regulation; 4) various claims.

As it was established, the largest category of cases that cannot be considered as model ones, is related to disputes concerning the referral of case by the court of the first instance, similar to those, in which the positions of the Supreme Court and the previous courts of cassation are defined. For example, the judicial decisions of April 2, 2018 in the Case No 826/20408/16[278]; 29 March 2018 in the Case No 806/855/18[279]; May

[278] **Decision of the Supreme Court of the Ukraine, 826/20408/16, Kyiv, 2.4.2018.**

2, 2018 in the Case No 818/1076/18[280]; May 4, 2018 in the Case No 802/544/18-a[281]; May 8, 2018 in the Case No 820/1148/18[282]; May 15, 2018 in the Case No 810/1431/18[283]; May 21, 2018 in the Case No 816/1159/18[284]; June 11, 2018 in the Cases No 812/965/18[285], No 820/2589/18[286], No 825/1922/18[287]; June 13, 2018 in the Case No 812/1094/18[288]; July 6, 2018 in the Case No 363/591/18[289]; August 31, 2018 in the Case No 823/2417/18[290]; September 3, 2018 in the Case No 810/1750/18[291]; November 2, 2018 in the Case No 0640/4409/18[292]; November 28, 2018 in the Case No 2340/2681/18[293] etc.

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[279] **Decision of the Supreme Court of the Ukraine, 806/855/18, Kyiv, 29.3.2018.**

[280] **Decision of the Supreme Court of the Ukraine, 818/1076/18, Kyiv, 2.5.2018.**

[281] **Decision of the Supreme Court of the Ukraine, 802/544/18-a, Kyiv, 4.5.2018.**

[282] **Decision of the Supreme Court of the Ukraine, 820/1148/18, Kyiv, 8.5.2018.**

[283] **Decision of the Supreme Court of the Ukraine, 810/1431/18, Kyiv, 15.5.2018.**

[284] **Decision of the Supreme Court of the Ukraine, 816/1159/18, Kyiv, 21.5.2018.**

[285] **Decision of the Supreme Court of the Ukraine, 812/965/18, Kyiv, 11.6.2018.**

[286] **Decision of the Supreme Court of the Ukraine, 820/2589/18, Kyiv, 11.6.2018.**

[287] **Decision of the Supreme Court of the Ukraine, 825/1922/18, Kyiv, 11.6.2018.**

[288] **Decision of the Supreme Court of the Ukraine, 812/1094/18, Kyiv, 13.6.2018.**

[289] **Decision of the Supreme Court of the Ukraine, 363/591/18, Kyiv, 6.7.2018.**

[290] **Decision of the Supreme Court of the Ukraine, 823/2417/18, Kyiv, 31.8.2018.**

[291] **Decision of the Supreme Court of the Ukraine, 810/1750/18, Kyiv, 3.9.2018.**

[292] **Decision of the Supreme Court of the Ukraine, 0640/4409/18, Kyiv, 2.11.2018.**

[293] **Decision of the Supreme Court of the Ukraine, 2340/2681/18, Kyiv, 29.11.2018.**

The quantitative criterion for denial to commence proceedings on the model case is the second largest category. It is a small number of typical cases (3–12) in such legal relations, which does not make it feasible to consider them as model ones by the Supreme Court. In particular, the judicial decisions of January 29, 2018 in the Case No 825/4/18 (concerning 4 cases)[294]; February 26, 2018 in the Case No 820/617/18 (concerning 3 cases)[295]; April 19, 2018 in the Case No 816/103/18 (concerning 4 unconsidered cases, others were considered)[296]; June 11, 2018 in the Case No 822/1335/18 (concerning 1 unconsidered case, others already considered)[297]; June 19, 2018 in the Case No 815/2529/18 (concerning 12 cases)[298]; October 24, 2018 in the Case No 0640/4481/18 (concerning 6 cases)[299].

At the same time, adherence to only a quantitative criterion is not sufficient to consider an administrative case essentially as a model one. First of all, the criterion of typical nature is a subject to legal assessment. The case has no typical characteristics under conditions, when there is no dispute concerning the correct application of the substantive law rule; or when in the case of a court ruling on the merits

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[294] **Decision of the Supreme Court of the Ukraine, 825/4/18, Kyiv, 29.1.2018.**

[295] **Decision of the Supreme Court of the Ukraine, 820/617/18, Kyiv, 26.2.2018.**

[296] **Decision of the Supreme Court of the Ukraine, 816/103/18, Kyiv, 19.4.2018.**

[297] **Decision of the Supreme Court of the Ukraine, 822/1335/18, Kyiv, 11.6.2018.**

[298] **Decision of the Supreme Court of the Ukraine, 815/2529/18, Kyiv, 19.6.2018.**

[299] **Decision of the Supreme Court of the Ukraine, 0640/4481/18, Kyiv, 24.10.2018.**

plaintiff's claim will be resolved the dispute between a plaintiff and a defendant in a particular case.

For example, in the judicial decisions of August 22, 2018, in the Case No 826/3783/18[300] the court resolved that adjudication on the merits of a claim for recognition of a normative act (a government decree) will resolve the dispute in a particular case and exhaust the controversy of the ruling.

Cases, in which the subject matter of the dispute is exclusively individual and cannot be supposed as a typical one, cannot be considered. In specific cases, the difference of circumstances depends on the circumstances of the case (enrollment of privileged length of service to a pensioner, payment of fees for participation in the ATO, etc.). Thus, in the judicial decisions of September 20, 2018 it is established: "(T)he issues of payment of remuneration for direct participation in the ATO are resolved by the court individually in each case based on the availability of the grounds (conditions) provided by the legislation. The similarity (unity) of the subject-matter of the claim and the identity of the parties of the dispute, under the condition of availability ща other essential circumstances, which are subject to establishuing in the course of a judicial proceeding, do not indicate a typical nature of such cases and, accordingly, the possibility of their equal resolution. The Supreme Court has no grounds to deviate from the aforementioned legal position, and therefore concludes that the opening of proceedings <...>

[300] **Decision of the Supreme Court of the Ukraine, 826/3783/18, Kyiv, 22.8.2018.**

on consideration of Administrative Case No 812/1786/18[301] as a model one should be rejected".

THE SECOND TOPIC

THE EFFICIENCY OF THE INSTITUTE OF "MODEL CASE"

In general, the state institute of "model case" is the procedural instrument and the legal means by which the litigation is accelerated, in particular by reducing the number of passing court instances by a case (which frequently lasts at least one year from the moment of filing a lawsuit to the court of the first instance to the state of enforcement of judicial decisions rendered by the Supreme Court).

The positive need for such "reduction of instances" of the legal process is obvious and predetermined, first of all, by the fact that there is no need for appeal and cassation against decisions that will be made by the courts of first instance on the consequences of consideration of typical cases, taken into account in the legal opinions, set in the decision of the Supreme Court, adopted on the basis of a model case (generally hearing of a large number of typical cases will be significantly accelerated as it takes less time for the courts to make judgement); second, by simplifying the procedure for appealing the similar cases.

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[301] **Decision of the Supreme Court of the Ukraine, *812/1786/18*, Kyiv, 20.9.2018. Retrieved from http://www.reyestr.court.gov.ua/Review/76614289**

Effectiveness as a characteristic and criterion of conformity of model cases is indicated in particular by the *procedural consequences* that come after the decision in the model case becomes valid, namely:

typical cases **(administrative cases, the defendant of which is the same power entity or his separate structural unit, the dispute arose on similar grounds, in relations governed by the same rules of law, and in which the plaintiffs file similar claims)** ***have the status of cases of minor complexity*** **(Articles 4 and 12) and, accordingly,** ***are not subject to cassation appeal*** **(Article 328);**

in such cases the dispute with the participation of a judge is not allowed (Article 184).

Moreover, it should be noted that despite the fact that the enforcement of judgments in a model case is carried out in the context of a typical case considered by the Supreme Court as a court of first instance, at the same time, the procedural tools applied by the court can be used in other typical cases.

Thus, administrative procedural legislation stipulates that, if necessary, the manner, terms and procedure of enforcement of a court decision may be determined in the court decision itself (part 1 of Article 372 of the CAP). Also part 1 of Article 371 of the CAP outlines the categories of cases in which decisions are allowed to be immediately enforced or subject to such enforcement prior to their entry into force, that is, immediately after their adoption; and part 2 of Article 372 of the CAP provides that a judicial decision, which has entered into force or is to be enforced immediately is the basis for its enforcement.

An efficiency is further indicated by the rule of procedural law, which vest a court, which made the decision, with authority at the request of the participants of a case *or on its own initiative*, to make *a decision* in written procedure or mention it in the decision to appeal to the immediate enforcement of a judgment in the case of recovery of the whole judgment in awarding pension payments, other periodic payments from the State Budget of Ukraine or extrabudgetary state funds – within the amount of one month's exaction and awarding payment of wages or other allowance in the relations of public service – within the amount of penalty for one month (par. 2 of Article 371 of the CAP).

Thus, in model case No 805/402/18 concerning the suspension of age pension payments for an internally displaced person, the Administrative Court of Cassation within the Supreme Court within the limits of the claims regarding the award of a pension payment within the amount of one month's exaction in accordance with paragraph 1, part 1 of Article 371 of the CAP is a subject to immediate enforcement.

However, it should be noted that the procedure for simplified appeals of "typical cases" within the limits of a model one can lead to both "delaying the time" of the lawsuit and to "freezing of movement" of a number of administrative lawsuits brought to the courts of various instances. In particular, when a typical case is heard and the Supreme Court make public notice of the initiation of proceedings in the relevant model case, the court of the first instance or appellate court has a right to suspend the appropriate judicial proceedings in the case at the

request of a party to the case or on his own initiative. Such a break (delay) continues until the date of enterying into force the Supreme Court's decision in the model case. However, the procedural legislation provides for additional risks of the possibility of delaying the deadline – delay in the entry into force of the decision due to the appeal to the Grand Chamber of the Supreme Court against the decision in the model case of the Administrative Cassation Court. Such a legal fact contributes to the delay for another 30 days from the date of the full judicial decision and the procedure for joining the complaint. In the case of an appeal, only the decision, which was not revoked after the appeal was returned, as a result of the refusal to open or close the appeal proceedings or the adoption of a resolution by the Court of Appeal following the consequences of the appeal review, becomes valid.

The analysis and generalization of the practical experience of appeal review of decisions in model cases, unfortunately, indicates the negative tendency of this procedural procedure and, accordingly, the "delay" of the judicial process as a whole.

Table 3. ***Status and duration of appeal review of decisions in model cases***

Model case	Appeal review	Status and duration of appeal review of decisions in model cases
The decision of ACC/SC of 12.3.2018	Resolution of GC/SC	completed (9 months)

in the Case No 802/2196/17-a over the failure to draw up a new certificate on the amount of cash collateral for pension recounts	**of 12.12.2018**	
The decision of ACC/SC of 26.3.2018 in the Case No 806/3265/17 over the form of preparation of the passport of the citizen of Ukraine	**Resolution of GC/SC of 19.09.2018**	**completed (6 months)**
The decision of ACC/SC of 30.3.2018 in the Case No 812/292/18 over cancellation of decision on punitive sanctions and penalties for non-payment or late payment of a social security tax	**Resolution of GC/SC of 06.12.2018**	**completed (9 months)**
The decision of ACC/SC		**in process**

of 16.4.2018 in the Case No 825/506/18 over refusal of the prosecutor's office to issue salary certificates for pensions recounts		**(over 9 months)**
The decision of ACC/SC of 4.4.2018 in the Case No 825/506/18 over the transfer from a disability pension to a civil servant's pension	**Resolution of GC/SC of 13.02.2019**	**completed (10 months)**
The decision of ACC/SC of 3.5.2018 in the Case No 805/402/18 over termination of the retirement pension for an internally displaced person	**Resolution of GC/SC of 04. 09.2018**	**completed (4 months)**

Source: Authors, based on Web site of the SC, 2018 database

THE THIRD TOPIC

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THE UNITY OF LAW ENFORCEMENT PRACTICE OF COURTS AND EXECUTIVE AUTHORITIES WHILE ENFORCING DECISIONS IN MODEL CASES

An integral part of the right to a judicial defence is the enforcement of a judicial decision as the final stage of court proceedings. The importance of this stage is evidenced in the constitutional principles of the legal proceeding, in particular: "... 9) the bindingness of a judicial decision (Article 129), the court makes a decision in the name of Ukraine. The legal judgment is binding. The state shall enforce the judgment in the manner prescribed by law. The control over the enforcement of the judicial decision is exercised by the court (Article 129-1)" (Constitution of Ukraine).

It should be noted that the mentioned norms of the Constitution of Ukraine were reflected in the administrative procedural legislation of Ukraine. Thus, Article 14 of the CAP stipulates that the court decision, which ends the case in the administrative court, is made in the name of Ukraine. Effective court decisions are binding on all state authorities, local self-government bodies, their officials and officers, individuals and legal entities, and their associations throughout Ukraine. And failure to comply with a legal judgment entails liability imposed by law (the CAP).

A certain disclaimer and a method of legal safeguard have been established by an administrative procedural law for making decisions on typical cases that meet the characteristics set out in the Supreme Court's decision on the results of the consideration of the relevant

model case. In such proceedings, the court must take into account the legal conclusions of the Supreme Court set out in the decision on the results of consideration of the model case (part 3 of Article 291 of the CAP).

As a result of the historical and legal comparison of the new and previous mechanisms of "precedent-setting" judicial activity in Ukraine, we have established the following. In the previous edition of the CAP, the decisions of the Supreme Court of Ukraine influenced the decisions of the lower courts, formed the case law and de-facto became a judicial precedent-setting. However, it could take a year and a half by the time the case was brought to the Supreme Court of Ukraine (as the court of the fourth instance). During this time, the courts of the first instance could hear hundreds or even thousands of similar cases with very different results. In particular, the conclusions of the Supreme Court of Ukraine concerned specific cases, which were mainly related to the unequal application of substantive and procedural law, that is, had a rather specific character and envisaged eliminating unequal application, overcoming legal conflicts. At the same time, in the new mechanism, the conclusions of model cases are of a *general nature*, reflecting the generalization of typical approaches to solving such cases.

Consequently, the conclusions of the model cases are directed more towards the discharge of the courts, the simplification of the hearing of cases, rather than the resolution of complex legal issues. From this point of view, of course, this institution should be evaluated positively, since a considerable part of legal cases can be summarized and combined with

systematic approaches to their resolution, and further their effective implementation can be ensured.

THE FOURTH TOPIC: THE MECHANISM OF ENFORCEMENT OF JUDICIAL DECISIONS IN MODEL CASES

Turning to the coverage of the issue of the enforcement of judicial decisions, we would additionally emphasize that according to part 5 of Article 13 of the Law of Ukraine On the Judiciary and Status of Judges (LJSJ), the conclusions on the application of the rules of law, set out in the rulings of the Supreme Court, are binding on all authorities that apply a regulatory legal act containing the relevant rule of law in their activities.

In order to put this legal rule into practice, and in connection with being informed of the legal conclusions drawn from the results of the model cases, to prevent human rights abuse, the Supreme Court shall send such conclusions to the relevant authorities in the form of letters. In doing so, the Supreme Court "asks" such authorities to report on the measures taken. For example, in 2018, the Litigation Chamber for consideration of cases on the protection of social rights of the ACC sent legal conclusions stated in the resolutions of the Supreme Court in 4 model cases to the authorities (to the Ministry of Internal Affairs of Ukraine (1 letter), the Pension Fund of Ukraine (3 letters). However, the case law analysis revealed only one case (namely, model case No 820/6514/17) when a report was received only from the Pension Fund of Ukraine about the organization of a series of measures and control over their implementation.

It is also important to note that a decision in a model case is generally concerned with an unlimited number of persons, and therefore ensuring *complete enforcement of the decision in that case and similar cases is, in fact, outside the competence of the specific defendant in the case (for example, a territorial body of the Pension Fund of Ukraine).*

Examining model cases allows not only to consider all the typical cases of the respective category faster, but also it gives the possibility of *resolving such conflict situations out of court in the future* to the appropriate authority, usually the defendant in the case.

In addition, having a legal conclusion based on the results of a model case enables the public authority *to eliminate the violations committed* in the exercise of power in a particular legal situation (for example, to recount pension).

As mentioned above, the case law indicates evasion of the enforcement of judicial decisions by the authorities, which is perceived negatively by the state and society. This issue is particularly relevant in the context of administrative proceedings, since in such cases a public authority is always one of the parties to the dispute.

To eliminate such a shameful public relations practice of non-compliance with judicial decisions, the legislator resorts to various rulemaking methods. One of these was the introduction by law of the institute of judicial control (the CAP) into the administrative proceedings. The function of monitoring the enforcement of judicial decisions helps to ensure the effective protection of the interests of the

subject that is not vested with powers, that is, citizens and legal entities under private law within the framework of administrative proceedings

With the entry into force of the new edition of the CAP, the normative regulation of judicial control over the enforcement of judicial decisions in administrative cases has partially changed. However, the changes were not significant, namely – to replace Art.267 of the CAP, Articles 382, 383 of the CAP were adopted in the new edition, which separated different ways of judicial control, namely: Article 382 of CAP contains the obligation to report on the enforcement of judicial decisions and the imposition of a fine for failure to fulfill the mentioned obligation; and Article 383 of the CAP defines the procedure for declaring unlawful decisions, acts or omissions made by the power entity – a defendant for the enforcement of a judicial decision.

We consider that the rules in the Constitution of Ukraine and the procedural legislation on judicial control over the enforcement of judicial decisions can also be applied in model cases.

At present, the practice of establishing judicial control over the enforcement of judicial decisions in model and typical cases already exists in administrative cassation proceedings. For example, in model case No 805/402/18 (ACC SC decision of May 3, 2018) regarding the termination of the pension for an internally displaced person, one of the methods of judicial control was applied – the obligation to submit a report on the enforcement of judicial decisions by the time specified by the court. Thus, the regulatory part of the decision stated: "…considering that the enforcement of judicial decisions in the present case is of considerable public interest and requires the defendant to

take certain actions, namely the resumption of pension payment to the plaintiff, the Court in order to protect the plaintiff's rights and the proper enforcement of judicial decisions considers it necessary to oblige the defendant to submit a report on the enforcement of judicial decisions within one month from the date of entry into force of the decision …" (No 805/402/18). On October 8, 2018, the Supreme Court received a report on the enforcement of the Supreme Court's decision of May 3, 2018 No 8961/01 from the PFU Office. The said report states that for the enforcement of the judicial decision of the Supreme Court of May 3, 2018, the Office of the Pension Fund of Ukraine:

"… the retirement pension has been renewed for the period from April 1, 2017;

according to the protocol of the appointment of the pension of May 25, 2018, the said decision of the Supreme Court was enforced in the part of payment of the pension within the amount of the penalty for one month;

payment of the current amount of the pension was made in July, August, September 2018 on the 11th day of each month to the account opened at the JSC "Oshchadbank", which is confirmed by the relevant information;

payment of the pension for October 2018 will be made on October 11, 2018 – on the set date of payment of the pension;

arrears for the period from April 1, 2017 to May 31, 2018 in the amount of 24 141,02 UAH. will be paid on October 4, 2018".

The analysis of this report clearly shows that the court's decision *was not fully enforced*. In response to such a report, the Supreme Court within the Board of Judges of the Administrative Cassation Court, guided by part 1, 2 of Art. 382 of the CAP of Ukraine, adopted an additional new decision, which set a new deadline for submission of the report regarding the payment of pension arrears for the period from April 1, 2017 to May 31, 2018. In this way, the Court extended the term of the enforcement of the judicial decision and accordingly obliged the Bakhmut Joint Directorate of the Pension Fund of Ukraine of Donetsk region to file a report on the enforcement of the judicial decision within a new fifteen-day period from the date of receipt of a copy of this decision (ACC/SC Resolution of October 6, 2018 in the Case No 805/402/18). It is noteworthy that the following report from the PFU Office to the Supreme Court already contained information on the full enforcement of the judicial decision.

Thus, the example above demonstrates that the method used by the courts to exercise their supervisory powers in adopting a decision in a model case has been sufficiently tested and put into practice and has had effective results. And most importantly – it had a positive impact on the practice of enforcement of judicial decisions, because with its help a real restoration of the violated social law and interests of the plaintiff (retired citizen) took place.

At the same time, unfortunately, the proportion of decisions to which the Court's supervisory powers are enforced remains small. Therefore, it is considered appropriate for the courts to use this method as a daily tool, to increase its frequency of application, in particular in the cases of

the obligation of the authorities to submit a report on the enforcement of the judicial decision, especially in model cases.

THE FIFTH TOPIC: THE ROLE OF RETROACTIVE LEGISLATION IN THE MECHANISM OF ENFORCEMENT OF JUDICIAL DECISIONS

While the European Court of Human Rights has ambiguous attitude towards retroactive legislation, the position of the court in the case "Dimopulos v. Türkey" should be taken into account, in which the court considers that retroactive legislation may undermine the fairness of proceedings, the right to equality of parties and undoubtedly affect the outcome of the dispute (paragraph 38)[302].

In the national justice, the existence (appearance) of retroactive legislation only confirms its negative role in the enforcement of judicial decisions. An example is the following case.

In the model case No 820/6514/17 on the recomputation of pensions of servicemen, the results of its consideration, on the one hand, achieved an ideal mechanism for cooperation with the Government, which proposed general measures aimed at overcoming the structural problem (non-recomputation and non-payment of pensions). These measures were reflected in the Resolution of the Cabinet of Ministers of Ukraine of February 21, 2018 No 103 "On transfer of pensions to persons who have been dismissed from military service and to some other categories of persons". Thus, it could be considered that this case

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[302] **Decision of the European Court of Human Rights, «*Dimopulos v. Türkey*». 2.7.2019.**

has become a model one in its essence and in the manner of enforcement.

However, as a result of the legal analysis of the provisions of this Cabinet of Ministers of Ukraine Resolution No 103, in particular paragraph 3, it can be concluded that, on the one hand, the Government had a new procedure for payment of the amount of the recalculated pension increase that had to be recalculated and paid from 1.1.2016 to 24.2.2018; on the other hand, *the new legal mechanism actually led, firstly, to a 50 percent reduction in payments, and secondly, to the introduction and application by the State of such a long-term payment installment mechanism (during years 2018-2020).*

Therefore, it follows, firstly, that paragraph 3 of the Cabinet of Ministers of Ukraine Resolution No 103 establishes a new procedure for payment of the recalculated pension amounts, which provides for the payment of *reduced payments, and the payment of the difference in the amount of the recalculated pension is spread over a long period*; secondly, as a consequence of the adoption of the said new order – on the doubtfulness of the lawfulness of the application of the said provisions to the past legal relations, from 1.1.2016 to 24.2.2018 (effective date of the Cabinet of Ministers of Ukraine Resolution No 103 of 21.2.2018), especially taking into account the Provisions of Article 58 of the Constitution of Ukraine and the Decision of the Constitutional Court of

Ukraine of 9.2.1999 No 1-rp/99[303], and the Cabinet of Ministers of Ukraine Resolution No 103[304].

From the legal situation mentioned above, it can be stated that, on the one hand, the decision of the Armed Forces of February 15, 2018 in the model case No 820/6514/17, in which the citizen's claim to the Main Department of the Pension Fund of Ukraine in Kharkiv region on the recognition of illegal inaction and obligation to take certain actions in a typical case was satisfied, encourages the state to develop a mechanism for enforcement of this decision; on the other hand, the rules adopted at the request of the court to settle the relevant procedure (recalculation and payment of pensions), by their nature, were retroactive and did not facilitate the full implementation of the following typical administrative cases and were in fact intended to change enforcement the alleged decision in the case.

CONCLUSION

To sum up, model (typical) cases proceedings are a valuable and progressive novel of the new CAP of Ukraine, which potentially has a significant positive impact on ensuring effective justice, including promptness, uniformity of case law and law enforcement in general. The mechanism of the institute of model cases in Ukraine is gradually

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[303] **Retrieved from https://zakon.rada.gov.ua/laws/show/v001p710-99**

[304] **Retrieved from https://zakon.rada.gov.ua/laws/show/103-2018-%D0%BF**

gaining a set of characteristics of a judicial precedent and is becoming a model for lower courts, attorneys and citizens.

At the same time, as practical experience has shown, there are many risks in Ukraine related to model cases proceedings and enforcement – from "delaying" the legal process to public authorities interference with the judicial decision-making process, including through rulemaking.

The current state of the practice of administrative proceedings demonstrates the existing inconsistency as well as opposition of judicial and executive branches of power in the enforcement of judicial decisions in model cases, which is manifested in the efforts of the courts to act in accordance with the current legislation in restoration of violated rights of citizens on the one hand, and the enforcement of various forms of lawmaking by executive bodies, including retroactive nature (decrees, instructions, orders, etc.), alternative to the ones revoked by courts with the aim of minimizing deviation from the public policy selected for the implementation in the relevant fields (especially in the social sphere).

At present, in the existing state-legal mechanism for ensuring the enforcement of judicial decisions in model cases, judicial control is considered to be effective, which in the conditions of political competition of state executive bodies is able to act as an external authoritative and recognized instrument of state influence on the activity of these bodies, turning their way to recognition and respect of a human and a citizen, ensuring human-centricity and the rule of law in Ukraine.

Therefore, it should be noted that the courts' use of their supervisory powers in adopting a decision in a model case was tested and put into practice, and had effective results that had a positive impact on the practice of enforcement of judicial decisions, since the violated rights and interests of the plaintiff were actually restored. Unfortunately, the proportion of decisions to which such supervisory powers apply remains small. Therefore, it is considered appropriate for the courts to use this method as a daily tool, to increase its frequency of application, in particular in the cases of the obligation of the authorities to submit a report on the enforcement of the judicial decision, especially in model cases.

With regard to establishing the conformity of the existing process of enforcement of decisions in model cases in Ukraine with the modern requirements of the Consultative Council of European Judges, the following should be noted:

firstly, in Ukraine enforcement of most of decisions in model case is not rapid, efficient and proportionate;

secondly, the current state of enforcement of judicial decisions in model cases indicates that public entities, in particular the executive branch, do not respect judicial decisions properly, admitting facts of refusal to enforce a court decision, which generally undermines the concept of primacy of the law in Ukraine;

thirdly, there is the practice of undermining the process of enforcement of judicial decisions by the executive and legislative bodies by imposing retroactive legislation;

fourthly, in model cases proceedings, the Ukrainian administrative court demonstrates conformity with the concept of "independent court", which is ensured by the absence of explicit interference by other branches of state power in the judicial decision-making process;

fifthly, the Ukrainian judiciary still has the practice of delaying the enforcement of the decision, mainly due to the lack of sufficient budgetary funds to make timely state social payments to the recoverers under court decisions;

sixthly, there is no practice in Ukraine to provide for accelerated or urgent enforcement of decisions where delay may lead to irreparable wrong, again due to the lack of adequate financial support for the decisions enforcement process;

seventhly, in order for judges to fulfil their tasks, the judiciary should be entrusted with the task of enforcing decisions, which would require that at the final stage the judge should use all possible means to ensure enforcement, including through an effective judicial control institution.

To bring the institute of model cases in Ukraine closer to European standards, a the study of foreign experience, in particular the one of Germany and the European Union in the enforcement of judicial decisions in model (typical) cases is a promising and urgent task for scientists and practitioners in the near future.

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ADAPTATION OF NATIONAL LEGISLATION IN THE FIELD OF DUTY FREE SHOPS ACTIVITY TO NORMS OF EUROPEAN UNION

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Abstract

Purpose of this paper. Find the appropriate ways for adapting national legislation on Duty Free Shops activity to European Union norms. Methodology of research. Such methods as analysis and synthesis, legal analysis and elements of content analysis, comparative analysis are used. There are three main ways of development of the adaptation

process: to leave opened the issue of adaptation of the national legislation regulating on the Duty Free Shops activities; to adapt the national Customs legislation to the legal system of one or several of the most relevant Ukrainian realities of the European Union member states; the refusal of the Duty Free Shops. Possible changes of the national customs legislation on Duty Free Trade suggested. The findings can be used by the relevant authorities to improve Duty Free Trade in Ukraine.

Keywords: adaptation of national legislation, duty free trade, duty free shops, European Union, customs legislation.

INTRODUCTION

Scientific, Practical Problems.

Europe-oriented vector of development of Ukraine includes such priority component as adaptation of Ukrainian legislation to the norms and standards of European Union. Ukraine has finally recognized the need for its further movement towards the European community at the late 90's of XX century; and in this context, also identified Customs regulation and business activity as a priority socio-economic development area.[305] Activity of Duty Free Shops is at the intersection of fields are mentioned above, and this is the reason to suppose that the

[305] On the Concept of Adaptation of Ukrainian Legislation to the Legislation of the European Union. Decree of the Cabinet of Ministers of Ukraine, dated August 16, 1999, No. 1496. Retrieved from: https://zakon.rada.gov.ua/laws/show/1496-99-%D0%BF

adaptation of national legislation in the field of Duty Free Shops activity to norms of European Union is one of the most urgent directions of integration of Ukraine into European space. We confirm the statement above in the Law of Ukraine on National program of adaptation of Ukrainian legislation to the legislation of the European Union No. 1629 of March 18 2004; it proclaims that Customs Law is one of the priority fields of adaptation of national legislation to norms of European Union.[306]

The issues of functioning of the field of Duty Free Trade are reflected in researches of economic, law, governmental characters. For instance S.A. Danileyan,[307] V.V. Karpova, O.V. Kostyana[308] research Duty Free Trade at the border between Tax and Customs fields. Research by Yu. S. Remyga, V.E. Marchuk, Yu.O. Gradyskyi is dedicated to the issue of digitalization of Duty Free Trade in Ukrainian airports.[309]

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[306] On National Program of Adaptation of Ukrainian Legislation to the Legislation of the European Union. Law of Ukraine No. 1629-IV. Retrieved from: http://www.singlewindow.org/docs/64?lang=ukr

[307] Danileyan, S.A. (2013). Taxation of Duty-free shops' activity, *Finansove pravo*, *3,* 169-173 Retrieved from http://dspace.nlu.edu.ua/bitstream/123456789/5141/1/Danieljan.pdf

[308] Remyga, Yu.S., Marchuk, V.E., Gradyskyi, Yu.O. (2016). Virtual Duty-free shop: is it possible in Ukrainian airports? *Visnyk KhNTUA, 167*, 73-80. Retrieved from http://journals.uran.ua/index.php/wissn021/article/viewFile/109018/103951

[309] Karpova, V.V., Kostyana, O.V. (2018). *Problem aspects of taxation and law regulation of Duty-free shops in Ukraine*, Economic development and heritage of Semen Kuznets. Kharkiv, Ukraine. Retrieved from

Nevertheless, wide volume of researches, the issue of adaptation of National Legislation regulating the field of Duty Free Trade and the Duty Free Shops activity to norms of European Union is remained unaddressed by scientists. This problem is delighted by Melnyk M.V. in his Candidate Dissertation particularly only.[310]

Purpose of the Study.

The purpose of the article is finding of potential directions of adaptation of national legislation in the field of Duty Free Shops activity to norms of European Union.

Research Methods and Techniques.

Theoretical base for research consists of international normative and law acts and scientific researches on issues of Duty Free Trade and Duty Free Shops. Such methods of scientific research as law analysis and elements of content analysis (to analyze international normative and legal acts with the help of which the field of Duty Free Trade is regulated), comparative analysis (to compare particular statements of normative and legal acts of European Union and Ukraine) are used to achieve the purpose of the research.

Scientific value of research includes such items as establishing the plane of possible changes of the national Customs Legislation on the

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http://repository.hneu.edu.ua/bitstream/123456789/19278/1/тези_Карпова_Костяна%20%281%29%20Пробл.%20аспекти.pdf

[310] Melnyk, M.V. (2016). *Institution of Customs Regimes in Customs Law of Ukraine.* (Candidate dissertation). Retrieved from :https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

Duty Free Trade in the context of its adaptation to European Union norms; and suggesting of tree ways for the following development of adaptation of normative and law provisions of Duty Free Shops activity.

The issue is urgent both for Ukraine and other states that are involved in integration into European Union as experience of Ukraine could be useful to avoid typical mistakes in the process of adaptation of legislation to the norms of European Union. Moreover, the issue is actually for the appropriate European Union Institutions as it is important for them to understand which partner is working with them.

Research hypothesis states that necessity of finding out of alternative ways of adaptation of Ukrainian legislation on Duty Free Shops to norms of European Union exists and it is caused by objective impossibility to compare normative and law provisions of European Union and National Customs Legislation on Duty Free Shops, as European Union has refused of Duty Free Trade.

RESULTS AND DISCUSSION

Taking in account the above-mentioned, we can note, that the adaptation of national legislation in general and Customs Legislation in particular to norms of *acquis communautaire* of European Union is urgent task for Ukraine. Nevertheless, domestic scientists and Customs specialists face a number of obstacles and find themselves at a dead end in their searches of adaptation the part of Customs Legislation on Duty Free Shops activity. The reason of such current set-up is a lack of a basic legal act with the help of which Duty Free Shops' activity is

regulated. This lack is caused by the European Union's policy of phasing out Duty Free Shops and transforming their activity into temporary transitional mode.[311]

THE FIRST TOPIC

PREREQUISITES FOR THE DILEMMA

Until 1999, persons traveling within the European Union were able to purchase goods, VAT and excise duties free on board of ferries and aircraft, as well as at airports. Establishing of Single Market caused elimination of tax borders for Members-States. The Council proclaimed the Transition Mode until June 30, 1999 to assistance to certain industries to adjust to the Single Market rules. The Transit Mode allowed Duty Free Shops to set fixed and controlled seller surcharges on the price of goods. Goods could be sold duty-free in a certain amount and goods that cost more than 90 euros could not be sold duty-free at all, in the frame of the Transition Mode.

However, as practice demonstrated, business entities in the field of Duty Free Trade expanded their activity instead to prepare to abolish of the Transit Mode, since Transit Mode was stated. The fact of creation of 140.000 job places in the field of Duty Free Trade including

[311] EUR-Lex. (1999). Tax- and duty-free sales. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al31042

100.000 job places related to the field of Duty Free Trade directly in the borders of European Union.[312]

That is why at the Vienna European Council on 11-12 December 1998, the Commission and the Council (Ecofin) were invited to consider before March 1999 the problems that may arise from the abolition of Duty Free Trade. The Duty Free Trade sector, outlining a number of indicators, has formulated theses on the problematic issues that may arise from the abolition of Duty Free Trade:

1) Decreasing of sale volumes and declining profits in the retail Duty Free sector;

2) Increasing of logistic expenses;

3) Decrease in demand for goods presented in the Duty Free Shops;

4) Reducing the number of jobs.

However, the Commission and the Council appealed on these issues, stating that job cuts in Duty Free Shops were offset by a corresponding increase in jobs in regular stores. As a rule, both "status" goods (for example, brand perfumes) and "habit" goods (for instance, tobacco goods) are represented in Duty Free Shops; so, consumers are attracted by price of goods on the one hand, and goods as such, on the other hand. That is a reason that finally demand of consumers will removed to regular stores without increasing of demand in general. The Commission and the Council suggested sacrificing Duty Free Trade

[312] ***Ibid.***

services at shorts international ways, like between Germany and Denmark, to solve the issue of increasing of logistic expenses.

States-Members researched relations between abolishment of Transit Mode of Duty Free Trade and fluctuations in employment in the Duty Free sector. The results of this research proved that abolishment of Transit Mode of Duty Free Trade are likely to have only a specific, local nature, such as, for example, in the maritime sector; as well people voyaging for voyage, not for certain demand, most often use maritime transport, as absence of Duty Free Shops in the maritime sector will be most noticeable. Other types of transport are used by travelers who remove across the Customs Borders according to the specific purpose and to the objective demand.

The Commission and the Council considered all mentioned problems and appealed with the main counter-argument in favor of the need to end the transitional Duty Free Regime – they accounted that continuing of Duty Free Trade can cost for States-Members approximate 2 billion of EUR per year. This money could be used by States-Members for strengthening public finances in the case of abolishment of transitional Duty Free Regime. Nevertheless, taking into account all characterized above risks relating with abolishment of transitional Duty Free Regime, the Commission and the Council forecasted few forms of continuation of transitional Duty Free Regime after June 30, 1999. These forms are continuation for a limited period, continuation for a limited period and limiting by specific sectors of removing across the Customs borders (for example, ferries), and the gradual introduction of excise duties on

alcohol and tobacco and the immediate application of VAT on these goods.

At the same time, ehe Commission stressed that these forms of continuation of transitional Duty Free Regime could have temporary character only, until effectiveness mechanism of resolving of the problem of unemployment in the Duty Free Trade sector. Moreover, temporary character of forms suggested are caused by potential discrimination of another than vessels types of vehicles operating across national and Customs borders of the European Union Member States.[313]

That's it, issues of establishing, licensing and activity of Duty Free Shops in the *acquis communautaire* law system of European Union are regulated by national legislations of European Union Members.

Thus, the Ukrainian lawmaker faces a dilemma: either to leave open the question of adaptation of the national legislation governing the Customs field in the part of the activity of Duty Free Shops, since the "template" Union legal act is absent, or to try to implement the process of adaptation of the national legislation on mentioned issues to legal system of one or few European Union Members with the most relevant circumstances to Ukrainian realities? Both ways of resolving the problem are appropriate hypothetically. However, the first version of development of events forecasts that a whole block of legal rules regulating Duty Free Shops field will remain unprocessed and uncorrelated with norms of European Union. In such case, part of

[313] ***Ibid.***

requirements on integration of Ukraine into European space will not implement and the process of integration of Ukraine into European Community will back off. In the case of changing of the second version of resolving the dilemma, the urgent necessity of additional legal, economic, sociological, historical, political etc. researches of substantiation of the feasibility of electing as an example an EU Member State or a group of such states will appear. These researches would need to involve significant intellectual, financial, temporary extra resources and could have a prolonged nature. Furthermore, In the case of changing of the second way, a question about the expediency of such work could arise, whereas the full refusing of Duty Free Trade is the final aim of European Union.

THE SECOND TOPIC

CURRENT STATE OF THE NATIONAL CUSTOMS LEGISLATION IN THE PART OF DUTY FREE TRADE

Despite the above-mentioned consideration, some Ukrainian scientists are making singular attempts to find appropriate and adequate to current realities ways of adaptation of National Customs Legislation on Duty Free Trade and Duty Free Shops' activity to the norms of European Union. First of all, researchers pay their attention on comparative analysis of statements of Regulation (EU) No 952/2013 (Customs Code of European Union), some other normative and law acts

of European Union and Customs Code of Ukraine No 4495-VI of March 13, 2012[314] regarding to regulation of Duty Free Trade.

The results of this analysis testify that a row of differences between statements of Regulation (EU) No 952/2013 and Customs Code of Ukraine No 4495-VI of March 13, 2012, and between statements of additional normative and law acts of European Union and Customs Code of Ukraine on Duty Free Shops, exists. These differences the most generally are related to the following points:

1) Different understanding of the concept of "Customs Regime" in general in European Union and in Ukraine. That is a reason of substitution of concepts in the National Customs Legislation in the context of interpretation of the concept of "Duty Free Trade";

2) Differentiation of Customs Formalities for goods that are supplied and sold in the Duty Free Shops, and supplies.[315]

Let's consider the contradictions that arise within these points.

According to the Article 5 of Regulation (EU) No 952/2013, the concept of "Customs Regime" is not applied in European Union. Instead of it, the concept of "Customs Procedures" is applied, and three types of Customs Procedures are separated. They are:

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[314] Customs Code of Ukraine No. 4495-VI. Retrieved from: https://zakon.rada.gov.ua/laws/show/4495-17

[315] Melnyk, M.V. (2016). Institution of Customs Regimes in Customs Law of Ukraine. (Candidate dissertation). Retrieved from: https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

1) release for free circulation;

2) special procedures (transit, which shall comprise external and internal transit; storage, which shall comprise customs warehousing and free zones; specific use, which shall comprise temporary admission and end-use; processing, which shall comprise inward and outward processing);

3) export.[316]

The Customs Procedure is treated as a complex of methods and mechanisms of Customs Law Process. This complex consists of documental exchange between Customs Administrations and Applicants, internal management and administrative documents, and legislative and regulative acts with the help of which Customs Field is regulated.[317]

Simultaneously, the Customs Code of Ukraine includes such definition of the concept of "Customs Regime" as "…a complex of interconnected legal rules that identify Customs Procedure for the goods that are moving across the Customs Border of Ukraine, legal status of these goods, taxing conditions, and causes realizing of these goods after Customs Clearance, according to the goal of the movement

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[316] Regulation (EU) No 952/2013 of the European Parlament and of the Council of 9 October 2013 laying down the Union Customs Code. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1

[317] The Free Dictionary by Farlex. Retrieved from: https://legal-dictionary.thefreedictionary.com/procedures

of goods across the Customs Border of Ukraine".[318] The Article 70 of the Customs Code of Ukraine declares fourteen types of Customs Regimes. They are: 1) import (release for free circulation); 2) re-import; 3) export (final export); 4) re-export; 5) transit; 6) temporary import; 7) temporary export; 8) Customs Warehousing; 9) Free Customs Zone; 10) Duty Free Trade; 11) processing in the Customs Territory; 12) processing outside of the Customs Territory; 13) destruction and demolition; 14) refusal in favor of the state.[319]

We have to take into account two practically axiomatic statements in the process of comparing of two above-mentioned definitions. These axiomatic statements are:

1) The essence of Legal Customs Regime is a prediction of the system of strict rules that apply to all subjects of legal relations, but not to objects, according to the public needs;

2) The Customs Procedure is aimed to transform objective rights of declarant into subjective and to provide enforcing of these rights.[320]

Moreover, it is necessary to pay attention on particular Articles of Customs Code of Ukraine, for example Item 22 of the Article 4, Articles

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[318] Customs Code of Ukraine, No. 4495-VI. Retrieved from: https://zakon.rada.gov.ua/laws/show/4495-17

[319] *Ibid.*

[320] Tsarenko,V.I., Khoma, V.O. (2014). Customs procedures: signs and concept, *Porivnyalno-analitychne parvo, 3*, 149-153.

71, and 140-146).[321]

As a result, we can see that Customs Code of Ukraine consists of statements regarding to criteria of legal signs, aim, purpose, and algorithm of action of the subjects of legal relationships of Customs Procedure, not Customs Regime.

M. Melnyk suggests using the goal of applying of Customs Regime Institution as criteria of differentiation of Customs Procedure and Customs Regime. In the scientist's opinion, Customs Regime Institution is aimed to providing of financial interests of the state in the Customs Field, to improving of domestic industry, and to supporting of international economic relations. The researcher proves that the "…re-import, re-export, duty free trade, destruction and demolition, refusal in favor of the state are characterized as procedural operations and, as a result, they do not correlate with the main aim of Customs Regime",[322] **on the base of the criteria above and scientific method of law comparative analysis.**

This is the reason of conclusion of M. Melnyk about inappropriate inclusion of re-import, re-export, duty free trade, destruction and demolition, refusal in favor of the state into the field of the legal institute of Customs Regimes of Customs Law of Ukraine. Thus, he

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[321] Customs Code of Ukraine No. 4495-VI. Retrieved from: https://zakon.rada.gov.ua/laws/show/4495-17

[322] Melnyk, M.V. (2016). *Institution of Customs Regimes in Customs Law of Ukraine.* (Candidate dissertation). Retrieved from: https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

appoints to declare within the Article 70 Types of Customs Regimes of Customs Code of Ukraine the following list of Customs Regime: 1) import (release for free circulation); 2) export (final export); 3) transit; 4) temporary import; 5) temporary export; 6) Customs Warehousing; 7) Free Customs Zone; 8) processing in the Customs Territory; 9) processing outside of the Customs Territory.[323] These changes are aimed to facilitation and transparency of applying of Customs Regimes and Special Customs Procedures, to integration of Ukrainian Legislation into European Legal Acts in the Customs Field.

We agree in general with the point of view of Melnyk M. Nevertheless, we would like to stress on the approach to differentiation of Customs Procedure and Customs Regime by Tsarenko V. and Khoma V. They conclude that Customs Warehousing is not a type of Customs Regime as the Customs Procedure is selected in the way of declaration, not Customs Regime.[324]

THE THIRD TOPIC

HOW TO RESOLVE THE DILEMMA?

Thereby, we suggest amending Article 70 of Customs Code of Ukraine to achieve the most effective adaptation of National Customs Legislation regarding to Duty Free Trade to the European Union norms, and set out it in the following version:

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[323] ***Ibid.***

[324] **Tsarenko,V.I., Khoma, V.O. (2014). Customs procedures: signs and concept.** ***Porivnyalno-analitychne parvo, 3*****, 149-153**

"Article 70 Types of Customs Regime

1. The following Customs Regimes are introduced in the order to apply the legislation of Ukraine on the issues of State Customs Affair:

1) Import (release for free circulation);

2) Export (final export);

3) Transit;

4) Temporary import;

5) Temporary export;

6) Free Customs Zone;

7) Processing in the Customs Territory;

8) Processing outside of the Customs Territory.

2. The Customs Regimes are introduced exclusively by this Code".

Delimitation of Customs Formalities for goods that are shipped to and sold in the Duty Free Shops and for supplies is the item which is logically related to the issues of identification of Customs Regimes. The logic of this interrelation is identified by the Customs Code of Ukraine in which procedures of Customs Formalities for supplies are declared only, whereas procedures of Customs Formalities for Duty Free Trade as for one of the Customs Regimes are too comprehensive.[325]

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[325] **Melnyk, M.V. (2016).** ***Institution of Customs Regimes in Customs Law of Ukraine.*** **(Candidate dissertation). Retrieved from: https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF**

Taking into account that goods that are delivered to and sold in the Duty Free Shops, and supplies have a number of common features (for instance, the essence of the goods (the Item 48 of the Article 4), measures (Articles 224-226), conditional exemption from customs duties (the Item 1 of the Article 223)[326]), and that supplies are determined as "goods delivered to aircraft and watercraft at airports or ports and intended for on-board consumption (passengers and crew) are once on board, exempted from VAT (for offshore vessels) and excise duty (for aircraft in accordance with national legislation) and are not intended for import",[327] we agree with the suggestion to exclude from the Section V "Customs Regimes" of the Customs Code of Ukraine the Chapter 22 "Duty Free Trade" and to add the appropriate Chapter "Customs Formalities for the goods that are delivered and sold in Duty Free Shops" to the Section XV of the Customs Code of Ukraine.[328]

Herewith, the following structure of the Chapter "Customs Formalities for the goods that are delivered and sold in Duty Free Shops" is suggested:

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[326] Customs Code No. 4495-VI. Retrieved from: https://zakon.rada.gov.ua/laws/show/4495-17

[327] Annex 3 Guidelines on export and exit (Applicable from 1-1-2001). Specific Rules for Aircraft and Ship Supplies. Retrieved from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:037:0001:0011:EN:PDF

[328] Melnyk, M.V. (2016). *Institution of Customs Regimes in Customs Law of Ukraine.* (Candidate dissertation). Retrieved from: https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

Articles on general rules of moving of the goods that are delivered and sold in Duty Free Shops across the Customs Border of Ukraine;

Articles on prohibitions and restrictions on the movement (transfer) of certain types of goods into Duty Free Shops;

Articles on declaration of goods that are moving across the Customs Border of Ukraine for delivering into Duty Free Shops;

Articles on peculiarities of implementing of Customs Control of goods that are delivered into Duty Free Shops on boards of aircrafts, vessels or railway vehicles of commercial purpose that are operating international flights, for sale to passengers of these flights.

It should be noted the key features of goods that are delivered into Duty Free Shops and are sold by them across the Customs Border of Ukraine in frames of general rules of moving such goods. These features are: 1) not intended for free circulation in the customs territory of Ukraine; 2) Delivery and sale for export outside the Customs Territory of Ukraine under Customs Control at checkpoints (control points) across the state border of Ukraine are opened to international traffic, and on aircraft, water or railway commercial vehicles operating international flights; 3) exemption from customs duties; 4) measures of non-tariff regulation of foreign economic activity are not applied.

Moreover, statements on origin of goods that could be delivered and sold into Duty Free Shops, on the period of possible stay of such goods in the Duty Free Shops (equivalent to their shelf life or consumption), on the orders of applying of Customs Control to these goods, its'

moving between Duty Free Shops and applying of one of the appropriate Customs Regimes, on conditions of applying of Destruction Customs Procedure, are suggested to include into Chapter "Customs Formalities for the goods that are delivered and sold in Duty Free Shops".

The Article on prohibitions and restrictions for moving of certain types of Duty Free Trade has include statements on groups of allowed and prohibited goods to be delivered to the Duty Free Trade and, on the order of fulfillment of the duty to pay Customs duties.

The subject of declaration (holder of Duty Free Shop, declarant or the person authorized by him) of goods are moved across the Customs Border of Ukraine to be delivered into Duty Free Shops and the order of declaring these goods have to be claimed in the updated Chapter of Customs Code of Ukraine.[329]

Thereby, the field of Duty Free Trade would be excluded from the Customs Regimes Legal Fields and Customs Formalities for the goods that are delivered and sold in Duty Free Trade Shops would be agreed with the Customs Formalities for the supplies, in the case of implementation of above-mentioned suggestions into practice of Customs Affair.

At the same time as Ukrainian scientists research the most adequate and optimal way of adaptation of National Customs Legislation in the field of Duty Free Trade to the norms of European Union, the appropriate Institutions of European Union authorized at producing of

[329] ***Ibid.***

recommendations for accelerating the process of integration into the European space for the candidate countries of Eastern Europe also represent the vision of development of Duty Free Trade in noted states.

This vision could be formulated as few basic recommendations:

***1) Readiness of states striving to European Union membership to full implementation of Single Market Conception in their territories*. Adopting and adhering to the so-called initial Single Market principle is the indicator of this readiness. The initial Single Market principle provides that tax benefits for insignificant quantity of citizens can exist on the national levels until the Candidate-State is territorially neutral;**

***2) Readiness to biased lobbying campaigns and related political discussions and potential social unrest* regarding to possible consequences of abolishment of Duty Free Trade in Candidate-States. This readiness has to be aimed to formulating of the set of distinct, logical and reasonable arguments of economic character. European Union has used macroeconomic indicators and calculations as such arguments. These macroeconomic indicators and calculations proved that abolishment of Duty Free Trade within the European Union had insignificant economic influence to Gross Domestic Product, private consuming and general export, although Duty Free Trade is in close connection with these indicators. Moreover, this tendency was characteristic of both European Union and Ireland and Grate Britain, although traditionally considered that its' economies have significant economic benefits from Duty Free Trade;**

3) Candidate-States have to be ready to start adaptation and installation processes of abolishment of Duty Free Trade immediately instead of looking for an extra transition period. **As experience of European Union proves, transition period in the field of Duty Free Trade were implemented on the national levels Member-States in accordance with forecasting of Duty Free Trade Operators on the occurrence of a number of negative consequences of such decision. However, from all forecasted negative consequences of abolishment of Duty Free Trade, particularly decreasing of volumes of sales, reduction of job places etc., decreasing of volumes of sales of tobacco and alcohol products had place only. Yet, this "consequence" was leveled off by increasing of volumes of different, not tobacco and alcohol, goods in another shops and malls, by transforming of Duty Free Shops in airports and ports into comfortable malls, and by social effect, in particular improving public health. Potential loss of jobs was forecasted on the level of 140.000 persons in the case of abolishment of Duty Free Trade within the European Union. But, it was significant exaggerating, and the issue has eliminated in the way of full using of such advantages as low labor cost, high quality infrastructure, great location and creation of new goods, services and markets;**

4) Readiness to harmonize indirect taxes across the European Union. **Abolishment Duty Free Trade across the European Union means that goods represented in Duty Free Shops earlier with tax benefits are taxed in full volume at the moment. Obviously, that VAT and excise duties rates of Member-States are different. This fact could have a positive impact on "substitute" of Duty Free Shops activity as the same**

goods item can has different cost in different country in accordance with the rate of indirect tax. Eventually, it would provide increasing of volume of consumers for trade subjects that offer lower prices;

5) Termination of concentration on current advantages of Duty Free Trade by East European Candidate-States and to attempt to achieve to additional tax advantages providing by competition within the Single Market. **Today Duty Free Trade in the Candidate States provides certain purchasing opportunities, but for insignificant part of citizens who use one or other kind of vehicles to move across the Customs Border only. At the same time, existing of this type of business activity inflicts far greater economic losses for retail and social losses for society (in the way of selling of tobacco and alcohol products).[330]**

CONCLUSIONS AND SUGGESTIONS

Consequently, current state of adaptation of National Customs Legislation in the field of Duty Free Trade to norms of European Union is the following:

1) Objective impossibility to carry out a full legal comparative analysis of the regulatory of European Union and National Customs Legislation on the Duty Free Trade as European Union refused of Duty Free Trade;

2) Statements of Customs Code of Ukraine on Customs Regimes are only possible points that could be align with European legislation. In

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[330] **Andrea Gebauer, Chang Woon Nam, Rudiger Parshe (2002). Lessons of the 1999 Abollition of Intra-EU Duty Free Sales for Eastern European EU Candidates.** ***Cesifo Working Paper, Category 1: Public Finance, 828*****, 29.**

particular, these statements are the statements on Customs Regime of Duty Free Trade and regarding to harmonization of Customs Formalities for goods that are delivered and sold in Duty Free Shops and supplies.

Taking into account the above-mentioned, we suppose that the following scientific and practical research of the most appropriate and optimal ways of adaptation of National Legal System in the part of Duty Free Shops activity to norms of European Union, has to transform into permanent process.

However, taking into account the view of European Union on integration into the Single Market of the Eastern European Candidate-States, in particular, as regards the regulation of the Duty Free Trade field, national scientists and practitioners should inevitably take into account that, in addition to the above mentioned possible ways of this process – 1) to leave the issue of adaptation of the National Legislation governing the Customs field in the part of the activity of the Duty Free Shops open, or 2) to attempt to implement the process of adaptation of the domestic legislation on pointed issues to the legal system of one or more of the most relevant to the Ukrainian context of European Union Member States – there is the third: the refusal of the Duty Free Shops at all.

In the case of adopting of version proposed by European Union, the work for preparing to refusal of the Duty Free Shops has to be started immediately in Ukraine. An objective and accurate assessment of the advantages and disadvantages of the Duty Free Shops activity has to be carried out, public opinion, opinion of the Duty Free Trade Operators and of the other entrepreneurs, and view of State Authorities have to be

researched, the State Strategy of the refusal of Duty Free Shops has to be worked out, drafts of relevant regulatory acts have to be prepared in the frame of this work. Indeed, in the case of immutability of the State Strategic Course of Ukraine to European Union, the demand of adopting of the "European" version of adaptation of national legal system in the field of Duty Free Shops activity.

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RAIDING AS A THREAT TO ECONOMIC SECURITY OF UKRAINE: LEGAL FRAMEWORK OF COUNTERACTION

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Abstract.

The purpose of the paper is to analyze the state of legal framework for counteracting raiding in Ukraine and to detect the most problematic aspects in it. Research of the state of legal framework for counteracting raiding in Ukraine within the ontological frameworks of

postneoclassical science. Results of the conducted research shown that there is some inconsistency of legal regulations in the legal field of counteraction to raiding, there are some gaps in this field, dispersion of rules of law in different regulations. Discovered problems of legal field of counteraction to raiding and absence of system efforts of their overcoming are the reasons of phenomenon while raiding looks like similar to legal actions more and more. This fact makes counteraction to raiding significantly more complicated. Practical implications. Results of this research of the state of legal framework for counteracting to raiding in Ukraine.

Keywords: counteraction, economic security studies, legal framework, macrolevel, raiding, regulatory documents, threat.

INTRODUCTION

Scientific, Practical Problems.

In the world practice, raiding is commonly understood as an absolutely legal and transparent acquisition of the controlling block of shares of the acquired company, however, without any agreement on the owner's side. In Ukraine though, raiding is mostly treated as a solely negative phenomenon and is mostly understood as a range of illegal acts aimed at taking over other property under the cover of seemingly legit grounds which are often presented as falsified documents or as an illegitimate court decision. Raiders in Ukraine:

force owners sell their property rights for the price significantly lower than the market one;

manipulate with documents confirming property rights up to the level of obvious document fraud, illegitimate court decisions and state authorities' actions so that to confirm their illegitimate property right for an enterprise which is the object of raiding. This often involves non-admission of owners to the general shareholders' meeting etc.

Raiding as a social and political phenomenon is one of the key threats to the economic security of Ukraine for a range of reasons, including the following:

it worsens the country's image in the world, thus causing slowdown in foreign investments' inflow to the national economy;

enterprises, taken over by a raider, cannot fulfil their obligations, thus threatening the performance of other related enterprises which are in contractual agreements with the former. At the end, this would mean lower financial results for all the enterprises involved;

investment climate in the country worsens and its investment attractiveness is also going down due to the growing risks of a potential (seemingly legal) takeover;

some of Ukrainian entrepreneurs opt for pulling out their capital from the country due to the impossibility to protect it. Thus, capital and businesses overall are relocated to other countries in which raiding is persecuted by law;

destabilization in enterprises' functioning (noteworthy, mostly among the most successful ones) leads to the lack of willingness among

their owners to invest funds in business development due to the fears that the businesses can be taken over by a raider.[331]

In Ukraine, the difference between "white", "gray" and "black" raiders is very blurred. In recent years, "gray" raiding has become especially widely spread, and counteracting its growth is very hard. Counteraction to this type of raiding requires the involvement of experienced experts and assistance of the most highly qualified lawyers. Moreover, there should be truly working means of counteracting this phenomenon and also opportunities for effective application of these means.

The scale of raiding in Ukraine has been rather threatening for a long time already. Thus, in order to counteract illegal raiding of enterprises the Cabinet of Ministers of Ukraine, Ukrainian League of Industrialists and Entrepreneurs along with the most aware Ukrainian enterprises have come with a range of organizational and legal measures. In 2007, the Interdepartmental committee on counteraction to illegitimate acquisitions and takeovers of enterprises was founded, while the Antiraiding union of Ukrainian enterprises has been functioning since 2005 already. However, unfortunately, their functioning has not lead to any truly meaningful results: in the last seven years along Ukraine has witnessed 3242 acts of raiding which

[331] **Corporate Raiding in Ukraine. Research brief, 2013.**

took place primarily in Kyiv and the capital region (1253 takeovers), Dnipro region (200 takeovers) and Kharkiv region (191 takeovers).[332]

Such a massive scale of raiding, its long-term existence, high dynamics of raiding acts and obvious imperfections of the antiraiding legislation together have led to:

establishment of the Antiraiding Chamber in Ukraine (its very first session took place just recently – on January, 16th, 2020);

opening of the Office for counteraction to raiding (during the last three months it has investigated 1404 claims and made decisions on 1064 of them; among them, in 369 cases registrars with "tainted" reputation were blocked from accessing the register databases). According to the acting Prime Minister of Ukraine O. Honcharuk, opening of this office along with the approval of several presidential acts on the same subject matter are all elements of one common strategy aimed at eradication of raiding in Ukraine as such;[333]

daily publications of data on legal persons enlisted in the Unified State Register as well as on sole proprietors and citizen unions (NGOs);

approval of the Law of Ukraine "On introduction of changes to several legal acts of Ukraine concerning the protection of property rights" No. 159-IX.[334] These changes are all aimed at better protection

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[332] **Raiding in Ukraine: around 400 attacks are happening annually, most of them - in Kyiv, 2019.**

[333] **Cabinet of Ministers of Ukraine, 2019.**

[334] **Verkhovna Rada of Ukraine, 2019a.**

of real estate owners and also at protection of corporate rights. The changes in question are expected to be introduced in the Civil and Land Codes of Ukraine and also in the Laws of Ukraine "On state registration of property rights on immovable property and their encumbrance", "On state registration of legal persons, sole proprietors and citizen unions", "On limited liability companies and double liability companies", "On Notaries".

Growth of raiding in the agricultural sector has forced the authorities to develop and approve the Law of Ukraine No. 340-IX "On the changes to several legal acts of Ukraine concerning raiding counteraction". This law introduces a range of antiraiding measures and determines effective prevention measures in part of protecting property rights of owners and users of land plots, the key aim being to prevent illegitimate acquisitions and takeovers of enterprises.[335]

All means of protecting enterprises from raiding acts are essentially organizational and economic. However, their application would be possible only within the legal framework, and the latter is shaped by the approved legislation and other regulatory documents concerning the prevention of raiding. Thus, quality of legislation and quality of its application predetermine the resultness of raiding prevention. This very statement has actually led us to formulating the goal of this research article – to analyze the state of legal framework for counteraction to raiding in Ukraine and also to determine the problematic aspects in it.

Research Methodology and Methods.

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[335] Verkhovna Rada of Ukraine, 2019b.

The study on the state of regulatory and legal provision for counteraction to raiding in Ukraine has been performed within the frameworks of the ontology of the postneoclassical science. Methodological pluralism has predetermined active application of the immanent and contextual approaches. Joint use of these two approaches considered the efficiency of Ukrainian legislation in part of raiding counteraction. Using of monograph analysis allowed finding the internal essence of "raiding" notion from the legal point of view. Historical method became the instrument of analyzing the development of Ukrainian legislation about counteraction to raiding in time and the process of improving such legislation. Structural-functional analysis allowed finding some inconsistency of regulations, dispersion of responsibility for raiding enterprises in different regulations. With the usage of description method obtained results were transformed to form that is convenient for their further rational analysis (systematization, classification, generalization) in tables and graphs.

RESULTS AND DISCUSSION

THE FIRST TOPIC

LEGISLATION OF UKRAINE ON COUNTERACTION TO RAIDING

Means of enterprise protection from raiding takeover assume, inter alia, qualified legal support which would be necessary for:

proper legal formalization of the means to be used in counteraction to raiding;

the impossibility to rebut the protective actions taken by an enterprise in court;

the impossibility to indict the top management of an enterprise in the abuse of power or related crimes, as it can be used by a raider in the course of attacking the enterprise.

When upbuilding the system of legal and regulatory documents on raiding counteraction, we should stem from the legally defined notion of "raiding" itself. Thus, an exact and specific definition of this notion would be needed which would take into account the substantial threat it poses to national economy along with all the damaging consequences it might have.

The first attempt to define legally the notion of "raiding" was made in the draft of the Law of Ukraine "On changes and amendments to several legal acts of Ukraine in part of establishing criminal responsibility for enterprises' takeover (raiding)" (registered in the Verkhovna Rada of Ukraine, registry No. 3300). As per text of this draft, raiding stands for ordering and/or organization of an attack on

an enterprise, institution or organization with the aim to take it over, thus leading to disruption in its regular functioning. Also, raiding means an attack on an enterprise, institution or organization, carried out by an organized group with the takeover aim.

However, this draft remains to be just a draft and has never got the status of a law. On June 15, 2007 it was actually withdrawn.

"Raiding" got its official interpretation in Ukraine in the Declaration of aims and tasks of the state budget for the year 2008. This document was approved by the Decree of the Cabinet of Ministers of Ukraine, dated March 1, 2007. According to its text, raiding is alienation of state property out of the scope of privatization processes; and also, illegitimate overtaking of an enterprise.[336]

The definition provided in the text of this Decree is rather general, thus, it does not reveal the essence of the phenomenon in question fully, neither in its economic, nor in its legal aspect. Indeed, the state must fight illegitimate overtakings of enterprises, however, raiding can be actually implemented using fully legal methods. Still, consequences of such raiding would be same negative as with illegitimate takeovers.

In other regulatory acts of Ukraine, including the Criminal Code, the notion "raiding" is not used as such. Noteworthy, the Criminal Code of Ukraine does not contain a separate article for the actions which are widely known, fought by many and which lead to significant spending on the protection means.

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[336] Cabinet of Ministers of Ukraine, 2007a.

Therefore, Ukrainian legislation still lacks a comprehensive legal definition for the notion "raiding" which is supposed to differentiate it from the other, more traditional forms of crimes against property (theft, robbery, fraud etc.). This lack of an exact legal definition of "raiding" in the legislation of Ukraine complicates further determination of the scope of persons responsible for crimes against property, as there are no legally approved definitions of what is "raiding" and how is "raider".

Table 1 provides the list of the key regulatory documents of Ukraine concerning the counteraction to raiding. Data provided in this table allows us to state that the related regulatory field in Ukraine is gradually improving. There has been a long history of efforts aimed at forming a comprehensive legal basis which would really complicate the process of other property takeover and hostile acquisitions of enterprises in Ukraine.

Table 1. ***Key regulatory and legal documents of Ukraine aimed at counteraction to raiding***

Regulatory document	Description of its contents
Decree of the President of Ukraine "On the actions strengthening the protection of	**A commission issued to the Cabinet of Ministers along with the Verkhovna Rada and the General Prosecutor Office of Ukraine, aimed at guaranteeing the protection of rights and legitimate interests of shareholders while settling**

property rights" No.103/2007[337]	**corporate conflicts, to analyze the facts of raiding and according to the results of this analysis and taking the international experience in solving similar tasks into account, to offer for consideration by the Verkhovna Rada a draft of a law which would be establishing criminal responsibility for raiding. This commission also mentioned as necessary to develop and offer changes to legislation, regulating depository activities along with other relations concerning securities and corporate rights' management.**
Decree of the Cabinet of Ministers of Ukraine "On the establishment of Interdepartment al committee on investors' rights' protection and counteraction to	**Establishment of the Interdepartmental committee which is to protect the rights of investors and to counteract to illegitimate acquisitions. This committee is a consulting body affiliated to the Cabinet of Ministers of Ukraine; it does not have legal powers to change legislation and/or actively fight raiding through criminal investigations of the raiding cases. However, its presence at**

[337] **President of Ukraine, 2007.**

illegitimate acquisitions and enterprise takeovers" No. 257[338]	**least allows attracting the attention of public authorities and of Ukrainian society to the factual acts of raiding.**
The Law of Ukraine "On joint stock companies" No. 514-VI[339]	**The law contains provisions which, to some extent, allow avoiding the blocking in a joint stock company's work by means of appealing against the decisions of its top management. Such appeals are a powerful instrument which can be used against raiders and greenmailing. Vagueness and fragmentariness of the norms described in Chapter XI "Buying out a significant share of company's stocks" have decreased the effectiveness of this Law as an instrument in counteraction to raiding.**
The Law of Ukraine "On introduction of changes to several legal acts	**Strengthened responsibility for falsification of documents and illegitimate takeover of enterprise property.** **Approved:**

[338] **Cabinet of Ministers of Ukraine, 2007b.**

[339] **Verkhovna Rada of Ukraine, 2009a.**

of Ukraine concerning counteraction to illegitimate acquisitions and enterprises' takeover" No. 1720-VI[340]	a legal norm concerning the consideration of disputes between the legal body and its participants according to the place of legal body registration (cases with disputes concerning the accounting of rights for securities are considered by commercial courts in the place of emitent's residence). This norm has limited raiding opportunities which previously used to involve courts geographically unrelated to the enterprise, its owners and/or its top management; a norm about inadmissibility of merging several cases into one if they belong to different jurisdictions, unless otherwise established by the law; changes in requirements to information about the legal person which must be available in the Unified State Registry. Changes introduced to the Commercial Procedural Code of Ukraine, Civil Procedural Code of Ukraine and also to

[340] Verkhovna Rada of Ukraine, 2009b.

	the Laws of Ukraine "On state regulation of the securities market in Ukraine", "On state registration of legal persons, sole proprietors and citizen unions". **The law does not include a provision concerning criminal responsibility for forcible takeover of enterprises (the Law explains though for which actions in the course of enterprise takeover a person may become criminally responsible under other articles of the Criminal Code): forcible actions (banditism, infliction of bodily injury of various degrees, destruction or damage to third-parties' property), misconduct.**
Decree of the Cabinet of Ministers of Ukraine "On approval of the plan of actions aimed at counteraction to illegitimate acquisitions and enterprise	**The decree specifies what kinds of actions are to be taken by various public bodies to counteract and prevent raiding attempts. However, this decree is fragmentary as it covers only a part of the regulatory field concerning counteraction to raiding. At the same time, the decree mentions the means of coordinating public bodies' actions in part of raiding prevention.**

takeovers" No. 1199-p[341]	
The Law of Ukraine "On changes to several legal acts of Ukraine concerning the determination of ultimate beneficiaries among legal bodies and public persons" No. 1701-VII[342]	**Clarifying the issues of revealing significant information on ultimate beneficiaries of enterprises and sanctions for concealment of such information. This helps detecting the persons who are really controlling contracting agents of the enterprise or those who have the intention to purchase shares of this enterprise. This, to some extent, makes raiders' attempt to "stay under the radar" impossible.** **Concealment of such information is only subject to a fine. This means a raider has the opportunity to keep this sort of information unreported, at least for some time.**
The Law of Ukraine "On state registration of property	**This law has no direct relation to counteracting raiding in Ukraine. However, indirectly, it determines the order of property right recognition - on**

[341] **Cabinet of Ministers of Ukraine, 2010.**

[342] **Verkhovna Rada of Ukraine, 2014.**

rights on immovable property and their encumbrance" No. 1952-IV[343]	**the basis of state registration of property right. This provision has been actively used by raiders since early 2016.** **The law increased the opportunities for raiding takeovers in relation to property of both physical and legal persons through registration of property rights using falsified documents or on the basis of court decision which was approved on the basis of falsified documents.**
The Law of Ukraine "On introduction of changes to legal acts of Ukraine concerning the improvement in state registration of property rights for immovable property and property rights'	**Assumes additional criminal and administrative responsibility for the illegal actions related to registering rights for immovable property. Also, it introduces the monitoring of registries by the authorized public bodies and specifies the territorial affiliation in such registration. Time limit on filing a complaint with the Committee on state registration has been changed (extended). Also changed are the conditions for registration by court decision and the conditions of using the information from**

[343] **Verkhovna Rada of Ukraine, 2004.**

protection" No. 1666-VIII[344]	**public registries.**
The Law of Ukraine "On introduction of changes to several legal acts of Ukraine concerning the solution of issues with communal ownership of land and improvement of land use rules as applied to agricultural lands, raiding prevention and stimulation of irrigation in Ukraine" No. 2498-VIII[345]	**The law regulates separate issues related to the use of land plots and to the prevention of illegitimate takeovers of such land plots (including the exchange of land plots in state and communal property, located in agricultural areas, with the lands plots of equal value in private property in the same agricultural areas; transfer of land plots in collective property of the liquidated agricultural enterprises to communal property etc.).**

[344] **Verkhovna Rada of Ukraine, 2016.**

[345] **Verkhovna Rada of Ukraine, 2018.**

The Law of Ukraine "On introduction of changes to several legal acts of Ukraine concerning the protection of property rights" No. 159-IX[346]	**Introduces the principle of simultaneous notarial actions and state registration actions.** **Excludes accredited subjects from the list of state registration subjects.** **Introduces the mandatory notarial form for the power of attorney documents for the cases of state registration on someone's behalf. Makes mandatory the checks of the attorney power documents' validity through the State register of attorney power documents.** **Introduces specific forms for notarial documents: notarial confirmation of signature authenticity on the decision documents of legal persons (protocols of general meetings; decisions of LLC owners); acts of acceptance and transfer of the share in statutory capital; acts on transfer of immovable property to and from the statutory capital of legal persons; transfer acts; separation balance sheets and other documents established**

[346] **Verkhovna Rada of Ukraine, 2019a.**

	by the law. **Introduces multifactor authentication in state register access to State Registry.** **Includes provisions concerning information exchange between the State register of rights and the Unified State Registry of Legal Persons. These provisions, inter alia, describe automated direct access of state registers to registries, other automated information systems and also to state property holders (owner, administrator, arbiter).** **Introduces symmetrical changes in a range of provisions in the Law of Ukraine "On state registration of legal persons, sole proprietors and citizen unions" as well as to the Law of Ukraine "On state registration of property rights on immovable property and their encumbrance".**
The Law of Ukraine "On introduction of changes to several legal acts	**Novelty here is the requirement of notarial verification for the agreement on alienation of corporate rights which is supposed to be uploaded to the corresponding electronic register. This**

of Ukraine concerning counteraction to raiding" No. 340-IX[347]	**notarial verification strengthens the protection of business owner rights in the course of corporate rights' alienation. However, this requirement can be cancelled by the owner themselves at any time (for example, when there is no potential risks or no necessity for such procedures).** **Updates norms under several laws and codes that are regulating relations about immovable property (introducing changes to the Land Code, to the Laws of Ukraine "On notariat", "On land utilization", "On land rent", "On State Land Cadaster", "On state registration of legal persons, sole proprietors and citizen unions".** **Significant changes were also introduced to the Law of Ukraine "On state registration of property rights on immovable property and their encumbrance" as of 01.07.2004, No. 1952-IV (in particular, time terms of registration actions and information**

[347] **Verkhovna Rada of Ukraine, 2019b.**

	provision from the State register of rights have been extended - from two to five business days since the day of registering the corresponding claim).

Source: Authors, based on the analysis of the official web-portal of the Verkhovna Rada of Ukraine

Despite gradual improvement of the legal framework, norms of which can be applied in counteraction to raiding in Ukraine, a significant share of issues remain to be unresolved, and some of the regulatory acts are still pending to be approved. For example, back on May 20, 2011, in its first reading, the Law of Ukraine "On introduction of changes to several legal acts of Ukraine concerning the counteraction to illegitimate acquisitions and takeovers of enterprises" has been approved (No. 6434). However, this approved draft still did not become an acting law: it was approved in the first reading, but somehow was never submitted for the second reading at the Verkhovna Rada of Ukraine.

THE SECOND TOPIC

PROBLEMATIC ASPECTS IN UKRAINE'S LEGISLATION ON COUNTERACTION TO RAIDING

Despite some positive changes in the legislation of Ukraine, there are still quite many problematic areas: some of the regulatory acts have gaps, some of the laws contradict each other in their separate articles etc. These gaps and contradictions in Ukrainian legislation are often

used by the raiders, as they allow the latter take over enterprises on seemingly legitimate grounds.

Analysis of the legal documents presented in Table 1 allows us state that recently there have been some attempts made to solve this problem of balancing in state regulation of the immovable property registration process on the side of owners and other usufructuaries (or as described by I. Bernatska in,[348] the "carriers of legal rights"). Current lack of such a balance provides all grounds for raiding in its multiple manifestations (highjacking of corporate or other rights (property rights, intellectual property rights, the right to use natural resources, the right for a land plot), and also appropriation of equipment and/or yields, illegitimate diversion of property from the statutory capital, forcible insolvency etc.). Provision of more balance in state regulation over the registration of immovable property and business rights on the side of owners and other usufructuaries has been the primary aim while introducing new norms as per the Laws of Ukraine "On introduction of changes to several legal acts of Ukraine concerning property rights' protection" No. 159-IX and "On introduction of changes to several legal acts of Ukraine concerning the counteraction to raiding", dated December 5, 2019 No. 340-IX (acting law since 16.01.2020).

Unfortunately, raiding in Ukraine has already become a systemic and well organized activity. Thus, much more radical revisions in the related legislation would be needed. Changes should not only cover the order of state registration, as it has been in the most recent changes.

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[348] **Bernatska, I., 2020.**

More problematic aspects in the acting legislation of Ukraine concerning counteraction to raiding takeovers are outlined in Table 2.

One of the most problematic aspects, among those mentioned in Table 2, is annulment of the general shareholders' meetings' decisions on a claim of a shareholder, especially when this shareholder is a minority one.

Till now, Ukrainian legislation practice has no exact and conclusive procedure on how to solve the issues related to annulment of general meetings' decision when only one shareholder has a claim against it.

Court practices of other countries in this regard have two contradicting ways to solve this:

courts in some countries are considering such claims from shareholders, even from minority ones. Actions taken as per such courts' decisions are often blocking the functioning of these joint stock companies as such;

alternative practice in other countries is as follows: before deciding on any further actions on a claim, the court has to settle whether the claimant had an opportunity to influence the decision, which was made without their participation and/or with violation of their rights. And only then, stemming from the information obtained, the court decides on further actions to be taken.[349]

Table 2. ***Problematic aspects in the legislation of Ukraine that made raiding takeovers of enterprises easy***

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[349] Bocharova, O., 2009.

Problematic aspect	Consequences from this problematic aspect
Absence of an exact legal definition of what is "raiding" as a separate type of offence with a separate type of responsibility for it.	**This complicates the determination of what is a raiding attack and how the attackers can be made responsible. Actions directly related to raiding are mentioned in several articles of the Criminal Code of Ukraine, however, there is no normative definition for "raiding" itself. This complicates the reaction on the side of state authorities in such cases.**
In both Ukraine's legislation and court practice annulment of general meetings' decisions on a claim of a separate shareholder is still a rather confusing matter.	**There are no means to balance the interests of stock companies, their minority shareholders and their owners: providing more rights to minority shareholders in debating the decisions of the general meetings is exactly that gap which is frequently used by raiders. At the same time, limitation of the minority shareholders' rights violates their legitimate interests.**
Not full disclosure of all the necessary information on the emitent and shareholders.	**In Ukraine, all property is heavily concentrated, and majority of joint stock companies have only one controlling shareholder. Without proper regulation of how joint stock companies can be bought**

	and merged, Ukraine large businesses cannot expect much interest on the side of private or institutional investors, foreign ones especially.

Source: Authors, based on the analysis of the official web-portal of the Verkhovna Rada of Ukraine

For many years there existed a rather controversial practice in Ukraine: court decisions were made using either the first, or the second approach above. And even the Law of Ukraine "On joint stock companies" did not bring in clarity on this issue.[350] Thus, according to this Law, a shareholder may file a claim only in the cases, when the approved decision of a general meeting of shareholder has actually violated his/her rights. This norm was expected to decrease the number of such claims to courts in Ukraine, since many shareholders are filing claims against the general meetings' decisions which are absolutely unrelated to their rights and legitimate interests. At the same time, this norm about the necessity to prove the violation of rights and the related losses makes the right to file a claim against general meeting often impossible as such.

In these attempts to regulate the rights of minority shareholders to question the decisions of general meetings there are two extremes, both being damaging for the economy:

If both legislation and court practice would mostly support minority shareholders in their rights, this may create more formal grounds for

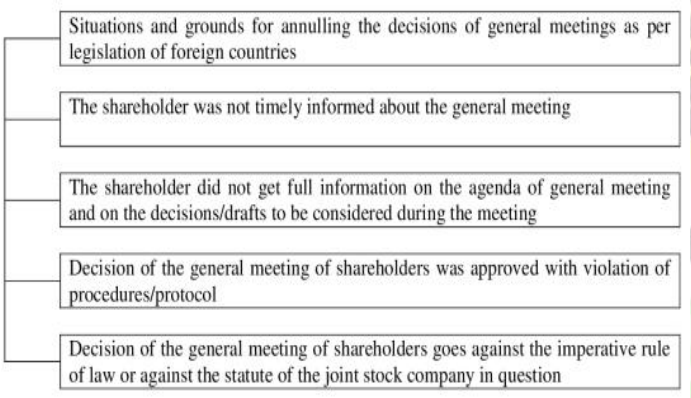
[350] Verkhovna Rada of Ukraine, 2009a.

more raiding attacks because this makes the misuse of minority shareholders' right really easy (in such a case, even one minority shareholder would be able to annul the decision approved by the majority, thus blocking the very functioning of joint stock companies, including large and economically successful ones);

At the same time, ignoring the rights of minority shareholders violates the principle of equality which is supposed to be applicable to all economic subjects. Indirectly, this might also have its negative impact on the investment climate in Ukraine.

Unlike in Ukraine, legislation of many foreign countries provides exact determination of the cases when decisions of general meetings of shareholders would be treated as annulled (see Figure 1).[351,352]

Figure 1. **Situations when decisions of the general meetings of shareholders will be annulled, as per legislation of foreign countries**



Source: Authors

[351] **Zerkalov, D.V., 2011.**

[352] **Sokolov, M.N., 2008.**

Such exactness and relative ease of use, on the one hand, provides shareholders in other countries with the tools to protect their interests most effectively. This also keeps the top management of joint stock companies and larger shareholders from the attempts to misuse the frequency of general meetings or the voting procedures during these meetings. On the other hand, exact definition of the reasons to annul the decisions of general meetings means there will be less ungrounded attempts to file claims against such decisions. Therefore, less funds will be spent on organization of additional general meetings and there will also be less opportunities for blackmailing by unscrupulous shareholders.[353]

Gaps and drawbacks in the acting legislation of Ukraine, which create favorable conditions for raiding in the country, are described in Table 3.

Table 3. ***Drawbacks in the acting legislation of Ukraine which are used by raiders***

Drawbacks	Consequences
Corporate legislation	
Absence of legal norms that would encharge state registration authorities to inform	There is a loophole here to transfer the right for enterprise ownership from one person to another without any knowledge on the legitimate owners' side

[353] Kasaraba, Yu. Ya. & Balina, S.N., 2011.

legitimate owners of enterprises about the planned registration actions	
Absence of norms enforcing special means of protection (watermarks, the use of special paper etc.) for statutory documents and protocols of the general meetings of shareholders	**Raiders thus get extra opportunities for documents' falsification**
Procedural legislation	
There are no exact time terms for claims' consideration in court. Thus, responsibility for time terms' violation is not specified in legislation either	**There is an opportunity to deliberately impede the consideration of a case and eventually obtain an approval, needed by raiders**
Criminal legislation	
Norms of the	**There is no responsibility of courts for the**

Criminal Code that are setting the responsibility of courts for facilitation to raiding are rather vague	**approval of illegitimate decisions in favor of raiders, even in cases when the illegitimate nature of such decisions has been proven**
The Criminal Code does not contain norms on criminal responsibility for raiding	**There is no legal responsibility for the acts of raiding. However, raiders can be brought to justice as per other articles of the Criminal Code**

Source: Authors, based on the analysis of the official web-portal of the Verkhovna Rada of Ukraine

Therefore, current legislation of Ukraine contains the norms that are aimed to complicate raiding attacks on enterprises which are legally organized and functioning as joint stock companies, including, inter alia, those attacks that are based on obtaining extra shares. However, raiding attacks, including those on joint stock companies, are usually oriented on the property of the attacked enterprises, and to a far lesser extent - on their shares. In this regard, the regulatory field in Ukraine remains to be rather undeveloped and does not fully protect enterprises that are trying to work absolutely legally.

Raiding as such may have (depending on specific circumstances of a particular case of raiding) the features of offences that are mentioned in several articles of the Criminal Code of Ukraine. When counteracting a

raiding attack, enterprise owners, its top management and its experts in economic security, including lawyers, must know what are the ways to make raiders accountable.

Articles of Criminal Code of Ukraine,[354] which can be used in legal processing against raiders, are presented in Table 4.

Table 4. ***Articles of the Criminal Code of Ukraine which can be used against raiders***

Articles	Their application
Article 186 "Open theft of other property (robbery)"	**In cases when the raiders or other persons assisting the latter are openly taking other people property while attacking the enterprise. This usually happens in relation to liquid assets which can be easily transported and also in relation to the property the ownership of which would be hard to prove later (for example, grains, oil etc.)**
Article 187 "Attack with the aim of acquisition by conquest, combined with violence, threatening life or health of the attacked	**In cases when the raider or other persons attacking them demonstrate violence in the course of acquisition by conquest in relation to enterprise employees, its top management,**

[354] **Criminal Code of Ukraine No. 2341-III.**

person, or threatening to use violence (robbery)"	**owners, or are threatening to use violence**
Article 189 "Extortion of other property transfer or property rights' transfer, taking other actions in relation to other property which are accompanied by the threats of violence in relation to the victim, their close relatives; limiting rights, freedoms or legitimate interests of these persons; damaging or destroying their property or the property in their use or under their protection; public disclosure of information which the victim or their close relatives were wishing to keep confidential"	**In cases when the raider is exercising pressure on the owners of enterprise property or their close relatives, on top management of the enterprise, with the aim to force the legitimate owners of property or shares to transfer them into raider's use or to other persons affiliated with the raider**
Article 190 "Fraud, or extortion of other property, or obtaining property rights through false pretence or	**In cases when the raider is actively interacting with owners and/or top management of the enterprise, and on the basis of the obtained information**

abuse of trust"	**is then deceiving them with the aim of enterprise property takeover**
Article 192 "Causing significant property damage through false pretence of abuse of trust in the absence of fraud"	**In cases when the raider is deceiving top management of the enterprise, supplying them false information, however, when these actions cannot be treated as fraud**
Article 194 "Deliberate destruction or damage of property"	**In cases of forced takover of the enterprise by the raider or when there was an attempt of such a takeover, accompanied by the deliberate damage caused to enterprise property, especially if this property was unique or when the damaged property is critically necessary for stable functioning of the enterprise in question**
Article 205 "Falsification of documents that are presented for state registration of a legal person or of a sole proprietor"	**In cases when documents provided for state registration of property rights have been falsified**
Article 206 "Impediment to legitimate economic	**In cases when enterprise functioning is being artificially complicated in the**

activity", in particular, Part 1 "Impediment to legitimate economic activity as illegitimate demand to stop or limit economic activity, combined with the threat of violence in relation to the victim or their close persons; damage or destruction of their property, or complete takeover of their property, or part of it; illegitimate suspension or limitation of activities on these objects; limiting access to property objects, in the absence of blackmailing"	**course of imposing pressure on owners/managers to comply with the raider's demand**
Article 343 "Intrusion into the activities of law enforcement officers, court experts, officers of public enforcement service or private court bailiffs"	**In cases when the raider is seeking "assistance" from law enforcement bodies or is trying to guarantee their nonintervention in the matter**
Article 356 "Unsanctioned actions, that is,	**In cases when the raider takes certain actions in relation to enterprise**

unauthorized actions which go against the acting laws and which can be challenged in court by a physical person or an enterprise, in cases when such actions cause significant damage to the interests of a citizen, the owner, the state or the society"	**property or in the course of its takeover, without having sufficient legal grounds for such actions**
Article 357 "Stealing, appropriation or extortion of documents, stamps or seals through fraud or abuse of power; damaging documents, stamps or seals"	**In cases when the raider falsifies documents using completely legal stamps, seals and particulars**
Article 358 Part 1 "Forging ID or other formal document, issued and verified by the enterprise, institution, organization, sole proprietor, notary, state registrar, other registration agent, public enforcement office, private	**In cases when the raider produces falsified documents**

court bailiff, auditor or other person eligible to issue and verify such documents"	
Article 358 Part 2 "Providing or issuing by an employee of legal bodies of any property form, private entrepreneur, auditor, invited expert, evaluator, lawyer, notary, state registrar, other subject of state registration, other person eligible to perform state functions in registration of the intentionally forged formal documents which are verifying certain facts and have legal meaning, or which are granting certain rights or discharge from liabilities; forging documents with the aims of their further use or sale of IDs, other formal	**In cases when the raider involves a representative of public authorities or another person with the right to provide assessments or take certain actions (a notary, lawyer, evaluator, state registrar) in order to give a veneer of legality to own actions**

documents; forging of official seals, stamps and blanks with the aim of their further sale; sales of seals, stamps and of the intentionally forged formal documents, including IDs"	
Article 365 Part 1 "Abuse of power or office malpractice which assumes taking actions that are out of scope of own rights and liabilities, in cases when these actions are seriously damaging the legally protected rights and interests of separate citizens, those of legal bodies, of the state or social interests"	**In cases when the raider seeks "assistance" from a representative of law enforcement bodies in the course of a raiding attack or forced takeover of the enterprise property**
Article 365 "Abuse of own powers by auditor, notary, evaluator, authorized agent or employee of the Deposit Insurance Fund, by other person that is not a public	**In cases when the raider involves a state registrar, a court bailiff or a public enforcement officer to perform the actions needed to the raider**

officer but is professionally involved in public services' provision, in cases when significant damage has been done to the legally protected rights and interests of separate citizens, state or social interests, or interests of legal persons"	
Article 366 "Official forgery, or preparation and issuance of the intentionally inveracious official documents, amending official documents with the intentionally incorrect data, other acts of official documents' forgery"	**In cases when the raider involves public officers or enterprise managers to produce and/or issue inveracious official documents or documents with incorrect information in them**
Article 368 "Accepting the proposition, promising or obtaining improper benefits by a public officer, requesting to obtain such benefits for oneself or for a third party in exchange for acting or non-acting in the	**In cases when the raider involves representatives of public authorities, law enforcement or judiciary for "assistance" purposes**

interests of a person offering, promising or granting the improper benefit, or in the interests of a third party, using the available powers or own position of authority"	
Article 368 "Tampering with an office holder or with a legal person of any organizational and legal form"	**In cases when the raider involves "on a paying basis" the office holder(s) from the enterprise under attack**

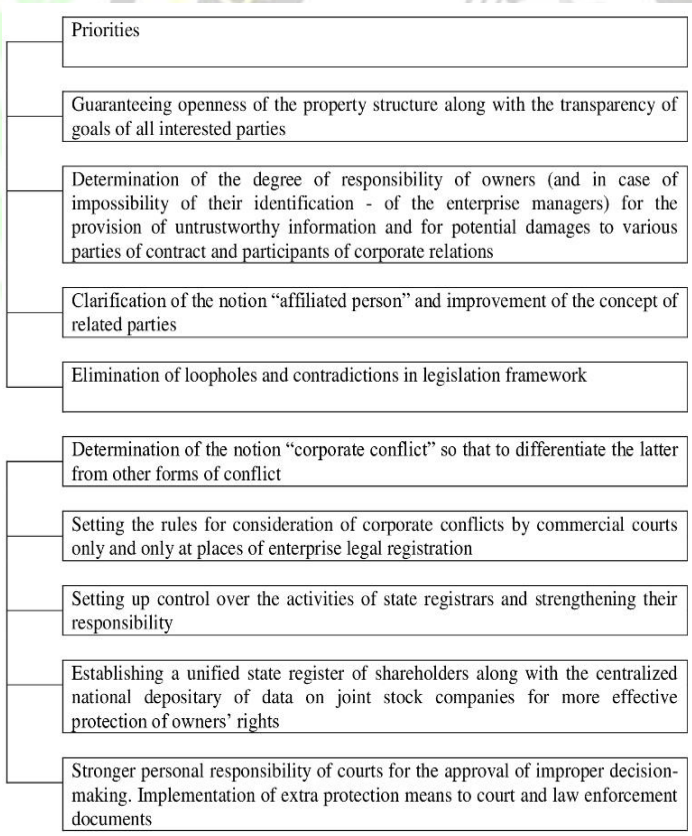
Source: Authors, based on the analysis of the official web-portal of the Verkhovna Rada of Ukraine

Data provided in Table 4 proves that the Criminal Code of Ukraine has quite a number of articles, using which the raider can be indicted. However, due to incoherence of actions and criminal responsibility, the raider cannot be indicted for a raiding takeover as a whole or for takeover preparation, but only for separate actions. In several cases the targeted enterprise was so attractive for the raider (or the order to take over the enterprise was very important for the professional raider), that the raider was ready to bear responsibility for separate actions and did not abandon the idea to take over the targeted enterprise. In such cases a raider might only slightly correct own actions.

At the same time, for the targeted enterprise, criminal prosecution of a raider under the mentioned above articles of the Criminal Code of Ukraine may have positive outcomes: this may give the enterprise some time, postpone the raider's attack or even make it impossible.

Improvement of legislation concerning counteraction to raiding acts must be systemic, thus, abiding to the priorities (see Figure 2) would be necessary.

Figure 2. ***Priorities in improvement of legislation on counteraction to raiding actions***



Source: Authors.

Therefore, the currently available legal framework for counteraction to raiding in Ukraine forms certain grounds for active and even sometimes effective application of the means to protect enterprises from the acts of raiding (effectiveness of using such means depends primarily from the qualification level of the involved lawyers, their reputation and brand name). In any case, top managers and owners of enterprises, especially those that might become the target of raiding attacks, should be aware of the key regulatory and legal documents, the norms of which can be used when counteracting to raiding takeovers.

CONCLUSIONS

Raiding is a serious threat to economic security in Ukraine. Counteracting to it must be carried out within a legal framework which is supposed to be regulating economic-legal arrangements between various subjects with the aim to "cover" the most well known and widely used (and seemingly legitimate) forms of raiding takeovers.

This legal framework which is supposed to complicate illegitimate and quasi-legal raiding takeovers of enterprises in Ukraine is gradually being improved. Still, its current state cannot be called satisfactory. For example, even the notions of "raiding" and "raider" still have no legal interpretation, and this fact complicates the determination of persons, responsible for such offences against property. There is a range of regulatory documents that have been considered and discussed, yet they were never fully approved. Other regulatory and legislative documents in Ukraine have loopholes, their norms contradict each other.

To some extent, imperfection of legal framework in counteraction to raiding in Ukraine can be explained by the insufficient understanding of raiding as a phenomenon, and also by the problems related to endemic corruption in the country. Finding the ways to solve all these problems and their active use would improve the quality of legal framework in counteraction to raiding in Ukraine.

Vague character of the legal framework in counteraction to raiding in Ukraine is also partially predetermined by the incoherence and contradictions between the separate regulatory and legal documents and also by the dispersed responsibility for enterprise takeovers according to various legal documents. Presence of all these drawbacks and loopholes are making raiding attacks in Ukraine increasingly quasi-legal, and this complicates counteraction to raiding in Ukraine even further.

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