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EUROPEAN INSTITUTE OF FURTHER EDUCATION

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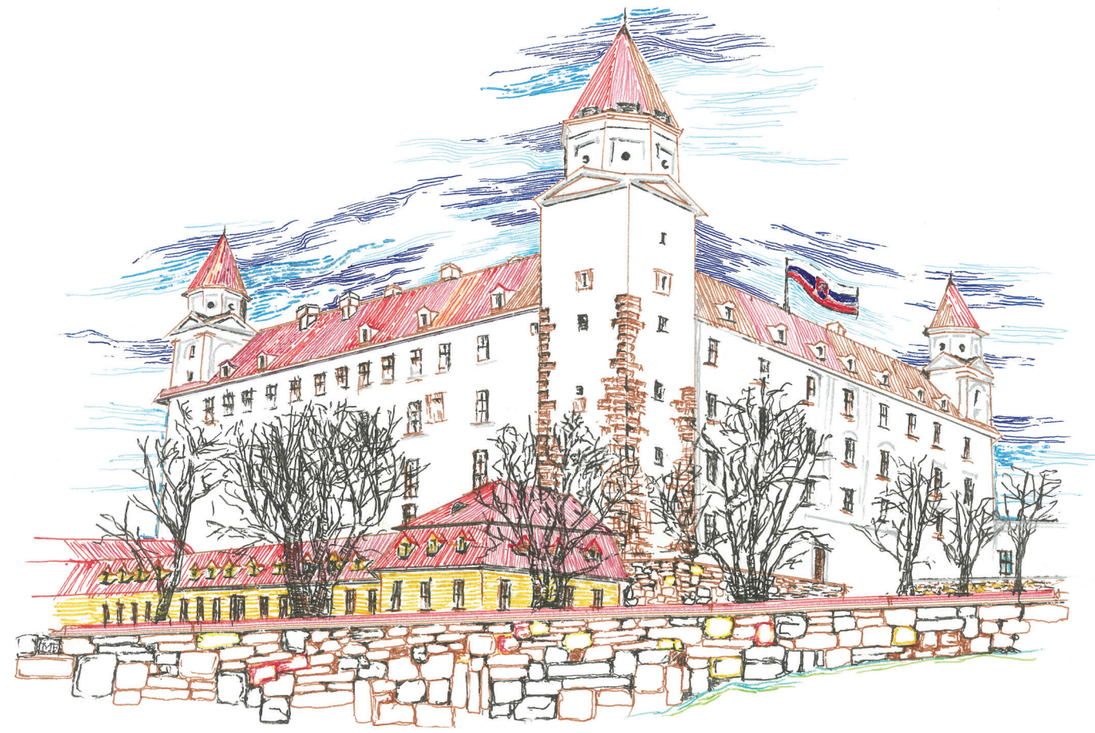

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EURÓPSKY INŠTITÚT ĎALŠIEHO VZDELÁVANIA
EUROPEAN INSTITUTE OF FURTHER EDUCATION

Content

INTRODUCTORY WORD OF THE EDITOR IN CHIEF

Angelė Lileikienė, Prof., dr.
Lithuania Business College, Klaipėda, Lithuania

Dear Colleagues,

The journal „European Science" is dedicated to the publication of new scientific ideas, focused on presenting the results of theoretical-methodological and applied research not only in a European context but also in a broader context. The consistency of the journal, published 4 times a year, allows researchers to present their research results in a dynamic way, as well as to compare scientific conceptualization in the context of research conducted by researchers from other countries.

„European Science" is a wide-ranging research journal because it covers a broad range of scientific disciplines. Research interests: management, history, law, medicine, political science, economics, pedagogy, cybernetics, public administration, etc.

I invite researchers from EU universities and other scientific institutions to actively publish scientific articles in the journal „European Science".

INTRODUCTORY WORD OF A MEMBER OF THE EDITORIAL COUNCIL

Larysa Yankovska
Professor, Doctor of Economics Sciences,
Honored Worker of Education of Ukraine,
Chancellor of Lviv University of Business and Law

Dear scientific society,
authors and readers of the journal!

We are glad to be able to communicate with you from the pages of this magazine. Lviv University of Business and Law is a co-founder and makes every effort to maintain and promote the scientific journal „Europska Veda". Together with the founder, the European Institute of Further Education and the constant leader Dr.h.c., mult. JUDr., PhD., LL.M, Zat'ko Jozef, MBA, Honor., Prof., mult. we carry out numerous scientific and practical events that arouse general interest and publicity in scientific circles. Furthermore, Lviv University of Business and Law professors and lecturers are active authors of the „Europska Veda".

Today, the scientific journal „Europska Veda" is widely known in the Slovak Republic, Ukraine and worldwide. It is one of the leading interdisciplinary journals, which unites theorists and practitioners in economic, legal and social disciplines. Moreover, the journal provides quality review and open access to publications, which is extremely important for the free dissemination of knowledge. We hope to reach new scientific heights thanks to further efficiency work. Good luck!

Best regards.

INTRODUCTORY WORD OF THE EDITION FOUNDER

EURÓPSKY INŠTITÚT DALŠIEHO VZDELÁVANIA
EUROPEAN INSTITUTE OF FURTHER EDUCATION

Jozef Zaťko
Dr.h.c. mult., JUDr., Ph.D., LL.M, MBA,
Honor. Prof. Mult.
President EIDV, Podhajska, Slovak Republic

Dear Colleagues!

European Science journal is a peer-reviewed international scientific publication established by the European Institute of Further Education (Slovak Republic).

This year has brought us many challenges, but we continue to work productively and adapt to the new normal, both in our daily lives and professional activities of the EIDV. The Editorial Board of the European Science journal selects manuscripts for publication, and the Reviewing Editors work on specific recommendations for quality improvement of the scientific papers selected for publication upon peer reviews and subsequent amendments by authors. With this we ensure the scientific rigor of our publications.

As scientific knowledge increases and the boundaries of science moved forward with increasingly ambitious and complex goals; the development of big science projects need the involvement of hundreds if not thousands of scientists from different countries and institutions. To facilitate future scientific works, the construction of large scientific facilities is becoming more and more essential for the achievement of the scientific goals, bringing minds together, discovering and disseminating knowledge, as well as improving society's well-being.

However, no project would be feasible and sustainable without the understanding and support of the international public opinion, fully aware of the importance of its purpose both from a scientific point of view and from that of the technological, economic and social implications. Close collaboration between scientists and science communicators is therefore more relevant than ever to ensure that information on those issues are accurately and thoroughly presented to the scientific community and to the public.

We are delighted to remind our readers and our scientific community that the European Science journal accepts the articles of scientific importance that contribute to resolving topical challenges and contributes to knowledge generation and dissemination, which would continue to progress knowledge and feed our community, society and nations with critical thinking and unbiased information. To this we ensure utmost transparency and integrity in accepting and processing manuscripts submitted for publication with the European Science.

We uphold the principles of scientific integrity in research practices, results achievement and maintenance of balance between the interests of the authors, readers, editorial board, reviewing editors and institutions where the research was conducted. We hope and believe you will continue to enjoy reading and benefitting from this journal, and we take this opportunity to encourage you to reach out to us for opportunities to publish your own thought-provoking ideas in future issues. We are glad to work together with you to bring your thoughts and ideas to benefit our community of readers.

We sincerely extend our respect and gratitude to you for your continuous support and cooperation.

Best regards,

ASSOCIATE AND MANAGING EDITOR

Robert Jeyakumar Nathan, Assoc. Prof., Dr., Ph.D., M.Phil.,
Deputy Director,
Academic Innovation and Product Intelligence, Centre for Lifelong Education and Learning Innovation (LEARN),
Faculty of BusinessMultimedia University, Melaka, Malaysia

Biography

Dr Robert Jeyakumar Nathan received his Bachelors in Business Administration (Honours) in Marketing with Multimedia; and Masters of Philosophy (Management) from Multimedia University, Malaysia. He conducted his postgraduate research attachment on leadership with Swinburne University of Technology, Melbourne (Hawthorn Campus) under the Asia Pacific Leadership Project (APEL Australian Government Grant) in Australia. He obtained his PhD (International Marketing) from Universiti Malaysia Sabah, Borneo Malaysia. Robert is a certified trainer with Pembangunan Sumber Manusia Berhad (PSMB) under the Malaysian Ministry of Human Resources. He also holds certified Stanford University Train the Trainer (TTT) for Design Thinking, and has obtained Distinction in IPA Foundation Certificate from the Institute of Practitioners in Advertising (IPA) UK.

Prior to joining the academia, he worked as Systems Analyst for Siemens Semiconductor AG (now Infineon Technologies AG), a semiconductor company based in Munich, Germany. Robert specializes in Manufacturing Statistics and Big Data Analytics and has conducted statistical, data mining, and enterprise knowledge and project management workshops in the Asia Pacific, Japan, Europe and North America. He received Covey's 7 Habits training and mentorship in Siemens as well as IPMA (EU International Project Management Association) Project Management experience, managing Class D, C, B and large scaled A projects in the global operation of the company. He is active in the company Occupational Safety and Health committee and employee safe work initiatives. This includes conducting trainings on Behaviour-Based Safety and Ergonomics at workplace. His training involves bringing together engineers and managers from multiple cultural backgrounds and to unify diverse work teams to perform in unity towards achieving excellence.

Robert is currently attached to Multimedia University in Malaysia as Senior Lecturer with the Faculty of Business and the Head of Department for Marketing Degree Program. He does corporate trainings for executives on Design Thinking and Innovation, Leadership, Service Marketing, Digital Entrepreneurship, Fintech and Digital Banking Solutions, Workplace Communications, Job safety analysis and Ergonomics, and Emotional Intelligence. He participates in academic research projects in Malaysia, Singapore, Europe, Australia and in the Middle East. His research interests include Marketing and Internet of Things; Electronic Commerce & Industrial Revolution 4.0; Empathetic Leadership; Usability and Ergonomics; and Occupational Safety & Health.

Active in research and mentoring, he has published over 80 refereed academic journal papers, book chapters and conference proceedings; most of which are in Web of Science

and Scopus indexed. He believes is quality and depth in academic research and publishing, and has often called on to the university to be conscience of the society, and for academics to be a lighthouse to the community. He has penned his thoughts and published two notable works with the Australian Universities' Review calling for academic integrity and honesty in teaching and research. In 2013 he published an article entitled **"Universities at the Crossroad: Industry or Society Driven?"** with the *Australian Universities' Review*, Vol. 55, issue number 2. In year 2019, he wrote **"Publications, Citations and Impact Factor: Myth and Reality."** *Australian Universities' Review*, Vol. 61, Issue number 1. Both works iterates the importance for academics not to engage in dishonest academic practices, instead focus on improving society through high quality teaching and research with integrity.

Robert serves in the Malaysian Academic Movement (MOVE) as the Assistant Secretary General, affiliated to Education International, Brussels. He promotes quality education and accessibility of education to all in line with the United Nation's Sustainable Development Goal Number 4. He is among the 50 Global Advocate for SDG#4. He also represents Education International as Panel for Education and Research with the United Nation's Agency - World Intellectual Property Organization (WIPO) in Geneva, where the Standing Committee for Copyright and Related Rights meet twice yearly. Robert has been Visiting Scholar with Szent Istvan University, Hungary in year 2019, The University of Newcastle Australia and University of Wollongong Australia in Singapore, and sits in the Academic and Exam Board of Academies Australasia College in Singapore.

WE ARE INTRODUCING A MEMBER OF EDITORIAL COUNCIL

Yurii Boshytskyi
professor, Rector of the Kyiv University of Law of the National Academy of Sciences of Ukraine, Honored Lawyer of Ukraine, Kyiv, Ukraine

In 1985, graduated from the Faculty of Law of Kyiv University named after T.G. Shevchenko, worked in the Ministry of Justice of the USSR as a consultant, chief consultant. Since 1986, he worked his way at the V. M. Koretsky Institute of State and Law of National Academy of Sciences of Ukraine from Junior Researcher to the Head of the International Center for Legal Issues of Intellectual Property at the Institute (since 2001).

In 1989, he defended a candidate thesis for the degree in legal sciences. From 2002 to 2006 headed the Educational and Advisory Center of the Kyiv University of Law of the National Academy of Sciences of Ukraine in Uzhhorod (part-time). Since 2006, he has been the rector of the Kyiv University of Law of the National Academy of Sciences of Ukraine.

The scientific contribution consists of more than 419 scientific works: articles on intellectual property rights of the 6-volume Legal Encyclopedia, the Great Encyclopedic Legal dictionary, Encyclopedia of Civil Law, Small Encyclopedia of intellectual law property, etc. Participated in the working group on the development of the Fourth Book of the New Civil Code of Ukraine. He's one of the authors of the draft Law of Ukraine „On scientific opening", a member of the working group of the Ministry of Education and Sciences of Ukraine on the preparation of the draft Law of Ukraine „On Amendments to the Law of Ukraine „On Higher Education".

Key research areas related to the study of the theoretical foundations of intellectual property law, problems of copyright and industrial property rights. The subject of research is the legal protection of commercial designations in Ukraine and harmonization of domestic legislation in the field of intellectual property with international legislation.

Yu. L. Boshytskyi actively contributes to the creation of a domestic school of intellectual law property. Under his leadership 17 postgraduate students defended their PhD theses, 8 applicants are investigating aspects of intellectual property law currently.

Fluent in Ukrainian, Hungarian and English.

Awarded:

- Decree of the President of Ukraine awarded the title "Honored Lawyer of Ukraine" (2009);
- Award of the National Academy of Sciences of Ukraine "FOR THE PREPARATION OF SCIENTIFIC CHANGE" (2009);
- The title of "Lawyer-Scientist" of the Union of Lawyers of Ukraine of the All-Ukrainian competition "Lawyer of the year" (2013);
- Award of the National Academy of Sciences of Ukraine "For professional achievements" (2014);
- Breastplate of the Ministry of Education and Sciences of Ukraine "For scientific and educational achievements" (2014);
- Decree of the President of Ukraine awarded the Order of Merit III degree (2015);
- The Order "Knight's Cross of Hungary" „For long-term work in strengthening, expanding and deepening of scientific and educational relations between Ukraine and Hungary"

by President of Hungary (2016);
- Decree of the President of Ukraine awarded the Order of Merit II degree (2018);

Title «DOCTOR HONORIS CAUSA»:
- Transcarpathian State University, Ukraine (Uzhhorod)
- European University of Moldova (Kyshenau)
- Batumi Shota Rustaveli State University (Batumi);

as well as numerous Certificates of Honour and Acknowledgement from higher state bodies, scientific and educational institutions of Ukraine and many foreign countries.

HOW TO BECOME A SUCCESSFUL AUTHOR OF A PAPER TO BE PUBLISHED IN A WORLD-CLASS SCHOLARLY JOURNAL?

Mirosław J. Skibniewski
Prof., Ph.D
University of Maryland, College Park, USA

An invited Guest Editorial

JUDr. Jozef Zat'ko, Publisher of Europska Veda, has asked me to prepare and convey a set of guidelines for authors who wish to be successful in preparing and submitting scholarly papers for consideration for publication in world-class, globally scoped academic journals, such as those indexed in Elsevier's **Scopus™** and ScienceDirect™ and/or in Clarivate Analytics' **Web of Science™ databases**. My guidelines provided below are intended for relatively junior authors, with limited prior experience in publishing, who are preparing their manuscripts in the realm of applied sciences. Some of the issues being raised herein are universal and as such they are equally applicable in other scholarly domains as well. I have based these guidelines on my 25+ years of experience as an editor-in-chief of a high-ranking international research journal in my own academic discipline. The journal has been included for a number of years both in Scopus™ and in the Web of Science™, earning their relatively high CiteScore™ and Impact Factor™ designations.

Academics work in an increasingly competitive environment. With many narrowly defined scientific disciplines, the race to the top has become relentless. There are currently over two thousand academic journal publishers worldwide, publishing over twenty thousand journals. The total number of refereed journal papers now exceeds 1.6 million annually and it is still growing rapidly. The largest numbers of such papers originate from the U.S.A., with China closely behind. A growing, and still largely unregulated, market for open-access publications further complicates the publishing environment. Over 90 percent of academic journal papers ever published will have been published in our professional lifetime. Ethical issues in academic publishing abound.

A successful article should contain the following major components, preferably but not necessarily presented in the stated order.

1. The title:
   The title of an article should be as short as possible, but it should reflect the main issue addressed in the paper as well as the paper content. In most cases, the title of the article is decided after the entire content of the article has been completed. The wording of the title should avoid uncommon acronyms or descriptors confining the contents of the paper only to one country or one geographic region.

2. The abstract:
   The abstract is an advertisement of your paper. It should be written in clear, short sentences which are easy to understand and should accurately reflect the contents of the paper and its main contribution to the global body of knowledge. One must avoid unnecessary

sentences that belong to the introduction section of the paper. An good abstract should contain only 6 short sentences as follows: 1) The scientific domain and the problem within the domain which is the subject matter of the paper, 2) The research question to be answered in the paper, 3) The means and methods (scientific tools) used to obtain the answer to the stated research question, 4) The answer to the research question, 5) The meaning and importance of the answer and the results obtained, 6) The future research directions based on the results of the completed research reported in this paper. The entire abstract should not exceed one-half of a printed page.

3. The keywords:
   Keywords are the labels of your manuscript used in scientific databases containing many thousands of papers. A correct use of keywords will determine if your article is noticed by potential readers, or if it is only glanced over before the reader decides to move on the next article in the database without reading yours. Keywords that are generic in nature are always ineffective.

4. The introduction:
   This section should set the stage for what is presented in the article. One must provide a clear description of the problem to be addressed along with detailed explanation of the importance of the problem. One should also define the group of stakeholders – the larger the better – for whom the stated problem is important. This is followed by the definition and detailed description of the specific research question to be addressed. A detailed justification of the importance of the question stated is also essential, along with a description of other related questions which are not being addressed in your paper. A clear definition of the future beneficiaries of the answer to be obtained must also be provided.

5. The literature review:
   One must provide a critical, very brief and comprehensive summary of the most relevant prior research by the author(s) of this paper as well as by other writers worldwide attempting to address the same research question or other closely related questions. Such questions may have been addressed within the same subject domain, but also in different domains - sometimes in scholarly fields unrelated to one's own. All cited publications should be critically reviewed; do not cite publications that you have not fully absorbed and have not explained their relevance to the subject matter presented in your paper. Avoid an excessive number of self-citations or citations of publications from the same country or from the same geographic region.

6. The research methodology (your own selection of means and methods/tools employed to answer the stated research question):
   This section contains the detailed description of your approach to obtain the answer to your research question. Provide a clear justification of your selection of this approach and briefly discuss any alternate approaches which were also initially considered but ultimately discarded, along with justification of such a decision. Do not regurgitate a detailed description of established, well-known analytical tools, procedures or testing methods – it should suffice to cite relevant sources. Your description should be complete, i.e. it should be possible for a reader to reproduce the results of your research with the use of the stated means and methods used to obtain your research answer. Describe in detail your data formatting and other requirements related to the performance of statistical tests and analyses. Avoid procedural shortcuts which may render your methodology description useless to interested readers.

7. The research results:
   Provide a clear, detailed description of your results obtained by you with the use of the research methodology described in item 6 above. Concentrate on the main points and avoid digressing to only loosely related or unrelated topics. Your description should be aided by well-formatted and fully readable tables and figures emphasizing the main points being made. Avoid the inclusion of lettering and labels in a language other than English, as these will be useless for an audience unable to read in that language. Provide clear

evidence and description of the validation of the obtained results by other researchers or in professional practice related to your academic field. Normally, validation attempts with the use of computer simulation only based on arbitrarily constructed models will be considered insufficient by reviewers assigned to evaluate your paper, as such reviewers often prefer the evidence of real-life implementation of your results.

8. The discussion of research results (discussion of the importance of the answer to the stated research question):
   This may be the most important section from which the potential reviewers will begin their examination of your paper. Describe what your results mean and why they are important for the audience/readers/stakeholders targeted by this paper. Elaborate in detail on the contribution of your results to the body of new knowledge in your own scientific discipline and beyond.

9. Conclusions and directions for future research:
   This section provides a brief summary of the most important findings produced by the presented research. Describe in detail why this finding may be important to a global audience, not merely to your national or regional stakeholders. One must also describe the limitations of the results obtained and suggestions on how these limitations may be overcome with follow-up research. Additionally, one should provide a detailed description of how the results presented will inspire future generations of researchers worldwide aspiring to make contributions in the same or related fields of academic and professional endeavor.

10. The references:
    Make sure that all cited items contain complete bibliographic data. Avoid citing an excessive number of references which may be redundant and references in languages other than English. If one feels compelled to cite a non-English language reference, make sure to provide an English translation of the title (in parentheses next to the title in the language of the publication). There is a growing trend to provide an digital object identifier (DOI) for each journal paper or conference proceedings article being cited that has such an identifier, an ISBN for each book reference, and a web address with the date of last access for all other resources. There is also a diminishing emphasis on a particular format of references (as long as the cited items are listed in a consistent manner), as the article typesetting processes at the publishers are currently automated and conversions from one referencing format to another are straightforward.

Most high-ranking journal publishers have been quietly removing strict limitations on the number of pages or words a paper is allowed to contain due to the fact that most paid subscriptions are currently electronic. This removes the burden of the authors to conform to the volume limitations of their articles, allowing for a complete presentation of relevant research results. Additionally, datasets used in the conduct of the research being presented may be stored in cloud-based repositories accessible by all concerned.

Owing to the limitations of space, this guest editorial does not touch upon numerous contemporary issues related to the publication of papers in scholarly journals. However, I often conduct hands-on, full-day workshops in academic settings worldwide for aspiring and active academics interested in sharpening their writing skills and in becoming successful in publishing their papers in top-ranking international scholarly journals. There are ample opportunities to address individual interests and answer specific questions during such workshops. I hope to see many of the readers of this editorial in a workshop to be conducted in the future in a location near you.

Mirosław J. Skibniewski
10 February 2019
University of Maryland, College Park, USA
https://pm.umd.edu
http://e-construction.umd.edu

WE ARE INTRODUCING A MEMBER OF EDITORIAL COUNCIL

Viktor Beschastnyy

Doctor of Law, Doctor of Public Administration, Professor, Honoured Lawyer of Ukraine.
National Awards of Ukraine: award of the President of Ukraine "For Participation in the Anti-Terrorist Operation", Order of Merit (III degree), Order of Merit (II degree).

Date of Birth: November 9, 1959.

Education: higher education, graduated from Kharkiv Law Institute (now –Yaroslav Mudryi National Law University) majoring in Jurisprudence, and Donetsk State University of Management majoring in Finance. In 2005, he defended his thesis for the degree of candidate of sciences in public administration on "The Mechanism of State Management of Professional Training of Employees of Internal Affairs Bodies." In 2010, he defended his thesis for the degree of Doctor of Public Administration on "The Mechanism of State Management of the Development of Higher Education of Institutions of the Ministry of Internal Affairs of Ukraine." In 2018, he defended his thesis for the degree of Doctor of Law, specialty 12.00.08 "Criminal law and criminology; criminal enforcement law" on: "The Theory and Practice of Criminological Support for Countering Crime in Ukraine".

The author of 22 monographs, including 4 individual: "The Mechanisms of State Management of the Development of Higher Education Institutions of the System of the Ministry of Internal Affairs of Ukraine: Theory, Methodology and Practice" (2009), "Legal Regulation of Service in Internal Affairs Bodies" (2009), "State Management in the Field of Road Traffic Safety" (2011), "Criminological Support for Combating Crime in Ukraine" (2017); 60 textbooks and scientific and practical handbooks and recommendations; more than 120 articles in Ukrainian and international professional editions.

President of the Council of rectors of displaced higher education establishments (2018–2020). Honorary professor of the European Continuing Education Institute. Member of the Board of Directors of the European Public Law Organization. Member of the specialised academic council for awarding the scientific degree of Doctor of Sciences D 41.884.04 of the Odesa State University of Internal Affairs.

Since 1981, he served in the internal affairs bodies. 1983–2003 – service in the Department of Internal Affairs of the Donetsk region. Since 2003 – rector of the Donetsk Institute of Internal Affairs (since 2004 – Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine, since 2021 – Donetsk State University of Internal Affairs).

Since 2020, Viktor Beschastnyi has been the Head of the Secretariat of the Constitutional Court of Ukraine. While Viktor Beschastnyi on this position, various scientific and scientific-practical events have been organised and held by the Constitutional Court of Ukraine or with its participation, in particular, on the occasion of the 25th anniversary of the establishment of the Constitutional Court of Ukraine in 2021, the Constitutional Court of Ukraine and its Secretariat, together with the OSCE Project Co-ordinator in Ukraine, organised the 1st Mariupol Constitutional Forum "Human Dignity and Ensuring Human Rights in the Conditions of Social Transformations", and a collection of reports of its participants was published. The Constitutional Court of Ukraine and its Secretariat are actively participating in the Summer School "Rule of Law and Constitutionalism", held by the OSCE Project Co-ordinator in Ukraine for more than 10 years in the west of Ukraine.

WE ARE INTRODUCING A MEMBER OF EDITORIAL COUNCIL

Kostytsky Vasyl
DrSc., Professor,
Academician of the National Academy of Legal Sciences of Ukraine, Honored Lawyer of Ukraine, Kyiv, Ukraine

Dear colleagues! Dear readers!

We would like to take this opportunity to wish you heartily a merry Christmas and Happy New Year!.

The beginning of the New Year is marked by high hopes for the end of the world's COVID-19 coronavirus pandemic, which has proved to be not the only but the most dangerous and brutal challenge of modern globalized life for our civilization. Together with the obvious changes in climate and the exacerbation of inter-ethnic and inter-religious tensions, the pandemic threatens the well-established principles of social and individual life by the spread of poverty and the existence of military conflicts, the possibility of a negative impact of global warming and unrestrained ethnic relocations to Western Europe, the verification by political crises of the achievements of liberal democracy and indignation against remnants of dictatorial regimes, the growth of the legal mass – the number of laws and regulations – and the restriction of human and civil rights and freedoms...

There is a lot of big and small problems. Remarkably, many elites, Governments and officials are showing confusion or slow progress in finding and implementing optimal solutions. This is particularly regrettable given that we are entering an era of postliberalism in which ideas of humanity, the primacy of human rights and freedoms before individual selfishness and human rights have had to give way to sociocentric ideas in order to save peoples and civilizations. Indeed, the great Ukrainian writer I. Kotliarevskyi wrote in «Eneida» as about today: «where the common good is in decline, forget the father, forget the mother ang fly to do your duty». As a universal instrument and regulator, as a social phenomenon and an enduring social value, the law is called upon to address these challenges.

Well, today we have to implement the of T. Jefferson's credo: try to do your duty at all times, and history will justify you, even if you fail. It is also a great test for legal science, which is called upon to find theoretical and methodological justifications for solving the basic problem and assigning right as a measure of good and justice (Ulpian), a means of balancing personal interest and the common good (V. Soloviov). The duty of scientists is clear. We will try to implement it using our main weapon – a word, including in the pages of important scientific journals.

May God help us!
Best regards, Prof. Vasyl Kostytsky.

KYIV UNIVERSITY OF LAW OF THE NATIONAL ACADEMY OF SCIENCES OF UKRAINE

Yurii Boshytskyi

Rector of the Kyiv University of Law of the National Academy of Sciences of Ukraine, Professor, Honored Lawyer of Ukraine, Excellence in Education, Ambassador for peace,Kyiv, Ukraine

rector@kul.kiev.ua

Kyiv University of Law of the National Academy of Sciences of Ukraine is the successor of the Higher School of Law at the V. Koretskyi Institute of State and Law of NAS of Ukraine. The concept of its activity is based on the integration of legal education and basic theoretical research in law.

The teachers of the university are the leading scientists of the National Academy of Sciences of Ukraine including one academician, four corresponding members of the National Academy of Sciences of Ukraine, 20 doctors of sciences, more than 60 candidates of sciences, associate professors.

Having extensive experience in teaching, scientists strive to transfer their knowledge to the younger generation. This is the way to put into practice the idea of creating a higher legal education institution where there is a real opportunity to gain knowledge and experience in a new form of education on the basis of the optimal combination of basic science and education.

Rector of the Kyiv University of Law of the National Academy of Sciences of Ukraine – Yurii Boshytskyi, Candidate of Law Sciences, professor, Honored Lawyer of Ukraine.

The Honorary Rector of the Kyiv University of Law of the National Academy of Sciences of Ukraine and the Academy of Legal Sciences of Ukraine is Yurii Shemshuchenko. He is a well-known scientist and organizer of legal science in Ukraine.

Training of specialists on education and professional programs 081 “Law” and 293 “International Law” at Kyiv University of Law of the National Academy of Sciences of Ukraine provide three departments:

- Department of general theoretical legal and social-humanitarian disciplines;
- Department of International Law and Branch Law Disciplines;
- Department of Criminal Law and Procedure,

led by leading scientists, doctors and PhDs. The University has a military department of training applicants for the program of reserve officers on the basis of the faculty of postgraduate education of the T. Shevchenko National University.

The Institute in Rivne provides both first and second higher legal education.

Kyiv University of Law of the National Academy of Sciences of Ukraine trains highly qualified lawyers for state and law enforcement agencies, market economy and scientific sphere. The fourth level of accreditation allows to obtain a state standard diploma.

Education process

The education process at the Kyiv University of Law of the National Academy of Sciences of Ukraine is organized taking into account the possibilities of modern information technology training and it is oriented towards the formation of an educated, harmoniously developed personality able to constantly update professional knowledge and quickly adapt to the changes and development of professional relations in a market economy.

The education process at the university is provided by scientific pedagogical staff – highly qualified professors, associate professors, teachers, as well as practitioners in law - lawyers, statesmen, judicial and law enforcement officials.

Scientific pedagogical staff ensure continuity and multiplication of traditions of scientific schools of authoritative predecessors taking into account dynamics of development of legal science and legal systems in Ukraine and foreign countries.

The staff of the University directs its work to the effective implementation of the concept of legal education of the Kyiv University of Law of the National Academy of Sciences of Ukraine which integrates training, research and education of applicants in accordance with European standards and levels.

The university trains specialists with higher education of education qualification levels (EQL) bachelor, master.

The training of applicants at the university is carried out in the following forms:

- full-time;
- part-time, remote.

The duration of training in the appropriate forms is determined by the possibilities of carrying out an education and vocational training programme (VTP) of specialists of a certain education and qualification level.

The statutory period for the preparation of the first (bachelor) level of higher education in full-time and part-time education is 3 years and 10 months.

The programs of training of a specialist of education and qualification level of the second (master) level are designed for:

- 1 year 4 months - specialty 081 “Law”;
- 1 year 10 months - specialty 293 “International Law”.

Student years are a special period of human life, a unique time for the formation and development of personality. The implementation of democratic principles in the organization of education processes contributes to the development of student self-government, a considerable experience of which has been accumulated over many years at the Kyiv University of Law of the National Academy of Sciences of Ukraine.

Applicants of the University actively participate in national, local and district events, in the development of volunteer movement among applicants, in scientific and scientific-practical conferences, cultural and sports activities, participation in international scientific and student events.

Especially active applicants take part in creative university projects.

During the scientific project “Dialogues of world personalities with students” the university is attended by outstanding Ukrainian and foreign scientists from the USA, Germany, Italy, Hungary, Poland, Israel, Korea, Japan, Georgia, Azerbaijan and other countries. Well-known world personalities hold master classes for the university applicants, and the applicants of KUL NAS of Ukraine take part in the annual scientific competition on the protection of personal data in Budapest, visit the office of the World Intellectual Property Organization in Geneva and participate in WIPO scientific events.

The project “The future of Ukraine in the hands of talented youth” is created for future lawyers who are looking for creative self-realization in science and want to develop intellectual abilities through participation in scientific and practical conferences, brain-rings, quizzes and other scientific and education events held at the university. Talented artists interested in artistic creation and willing to prove themselves in music, choreography, singing, painting, photography, theatrical art and reveal their creative potential, actively participate in various cultural activities of the university - from “Debut of the first-year student” to solemn concerts dedicated to significant events of KUL NAS of Ukraine.

The project “Steps to Beauty” is the base of the formation of artistic taste of applicants-lawyers through attraction to events that increase the culture of applicants, carry an atmosphere of aesthetic harmony and beauty. Applicants can attend theatrical performances, philharmonic concerts, art exhibitions and other cultural events of the Ukrainian capital at the expense of the university, expanding the world view, self-improvement, gaining new knowledge and impressions to unlock their creative potential.

In order to form knowledge of culture among legal miners, the University for many years organized a series of CDs with classical music called “Masterpieces of classical music from KUL NAS of Ukraine”.

The project “Intellectual Property of Ukraine: Pearls of Art for Student Youth” was founded to organize exhibitions of paintings by Ukrainian artists which are constantly held at the university and have a positive impact on applicants for higher education due to the atmosphere of harmony and beauty created at the university.

One of the priorities of KUP NAS of Ukraine is physical education. The project “Today with sport – tomorrow with the future” develops modern sports at the university and helps applicants of higher education to lead a healthy lifestyle. This is facilitated by the modern sports complex of the university: a pitch for mini-football, tennis court, court for badminton, sports halls.

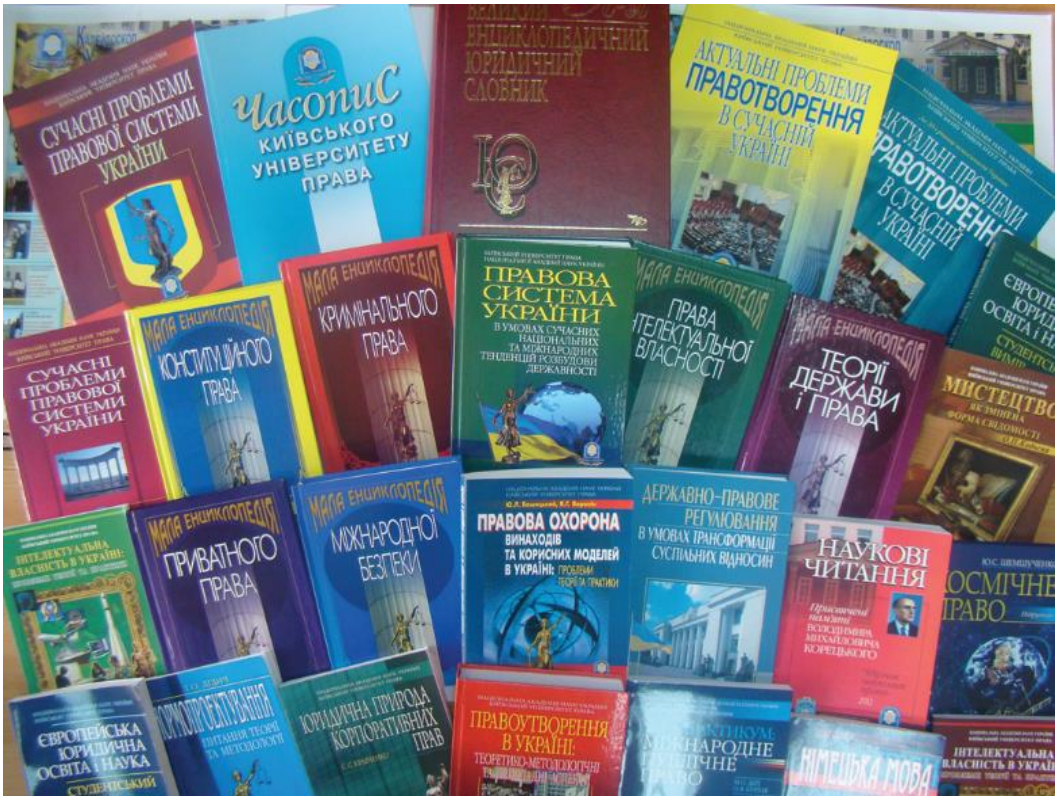
Scientific library of the Kyiv University of Law of NAS of Ukraine

The Scientific Library of the Kyiv University of Law of the National Academy of Sciences of Ukraine is an important information and scientific structural department of the University which contains a unique modern collection of books on law, international law and humanitarian disciplines. The library has 150,000 copies of the fund, including 3,500 digital documents in the Electronic Student Law Library, 50,000 bibliographic records in the electronic catalog.

A rich fund of scientific, education, reference literature and periodicals providing education, scientific and academic mission of the university has been formed. The library provides opportunities for applicants of KUL NAS of Ukraine to use textbooks, teaching aids, methodological materials in paper and digital formats, which became very important during the full-scale war and distance learning at the university. A fund of modern monographs and theses on legal sciences and branches of international law has been created for in-depth study of academic disciplines, writing of scientific articles, course and qualification works.

Readers of the Scientific Library have the opportunity to use a foreign collection of legal literature in fifteen languages – English, German, Italian, Polish, Hungarian, Czech, Slovak, Bulgarian, Georgian, Romanian – which is of considerable scientific value. It has about 3 thousand volumes and dozens of issues of foreign law journals donated by world-renowned scholars-lawyers, foreign universities, other foreign partners of KUL NAS of Ukraine. The library provides free access to this unique collection of foreign legal literature to all who have scientific interests in the study of comparative law and branches of rights of countries of Europe, America and Asia.

Scientific publications containing the publications of teachers and researchers of KUL NAS of Ukraine, make up a significant part of the library fund and contribute to the in-depth study of legal disciplines by applicants, postgraduate students of the Kyiv University of Law of the National Academy of Sciences of Ukraine. A special place among them was holded by “Small encyclopedias” from different fields of law, materials of international scientific and practical conferences, textbooks, teaching aids and courses of lectures, collective monographs of the university, as well as joint scientific publications with Polish, Hungarian, Georgian universities, World Intellectual Property Organization .



The University Library is actively introducing new information technologies: computers in a reading room with free Internet access, free WI-FI, possibility for readers to use modern gadgets and active use of search capabilities of electronic catalogues and electronic library of the applicant-lawyer, filled with digital versions, which are available on the web KUL NAS of Ukraine website and education platform Moodle.

Depository Library of the World Intellectual Property Organization (Geneva), established within the WIPO Publication Depository Library Program, promotes the acquaintance of applicants and specialists with the activities of the World Intellectual Property Organization, issues of protection of intellectual property, modernization of the institute of intellectual property law. The Depository Library of the World Intellectual Property Organization, the first in Ukraine, receives literature directly from WIPO (Geneva), facilitating in-depth study of applicants, postgraduate students, university scientists on intellectual property protection, activities of the World Intellectual Property Organization.

Among the priorities of the library is the formation of a fully developed harmonious personality with a broad outlook for which university creative projects «Intellectual property: Pearls of painting for student youth» are used, «Intellectual property: pearls of fiction for students». Within the framework of these projects, the library is systematically replenished with new bright books and albums on painting, music, art, modern and classical fiction.

Postgraduate studies

Postgraduate studies are the main source of training of scientific and pedagogical personnel of higher qualification at the Kyiv University of Law of the National Academy of Sciences of Ukraine.

Scientific activity is an integral component of education activity, the main purpose of which is to obtain new scientific knowledge by conducting scientific research to provide training of specialists of innovative type.

The postgraduate course of the Kyiv University of Law of the National Academy of Sciences of Ukraine is a structural department which is the main form of preparation of PhD candidates at the third (education scientific) level of higher education.

Postgraduate studies provide postgraduate doctoral studies in full-time or part-time studies:

Education and scientific program 081 “Law”, specialization:

12.00.03 – Civil law and civil procedure; Family law; Private international law;

12.00.04 – Economic law; Economic procedural law;

12.00.05 – Labour law; Social security law;

12.00.07 – Administrative law and process; Financial law; Information law;

12.00.08 – Criminal law and criminology; Penal enforcement law.

Education and scientific program 293 “International law”, specialization:

12.00.11 – International law.

Postgraduate studies offer new education opportunities for applicants:

- scientific internship of postgraduate students in foreign institutions of higher education;
- master classes with the participation of leading domestic and international scientists;
- use of modern material and technical base for scientific research;
- the possibility of publishing in collective monographs and the Journal of KUL as well as in publications included in the Web of Science, Scopus.

During the years of postgraduate studies many famous scientists and researchers were trained. Training of personnel of the highest professional level in postgraduate studies is one of the priority directions of the university's scientific and education policy.

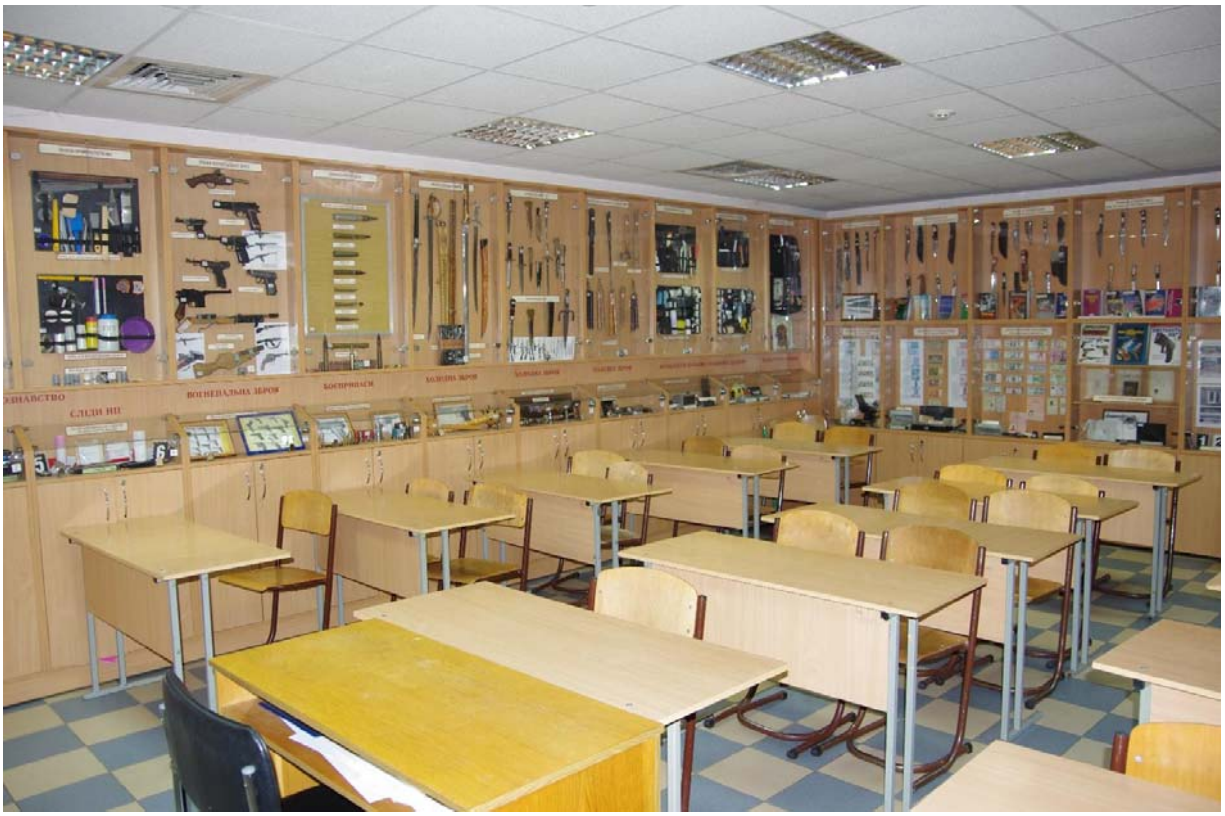
Priority directions is maximal promotion of a wide range of postgraduate students-lawyers. All conditions have been created at the University which give postgraduate students the opportunity to participate in various scientific conferences, olympiads, scientific and practical seminars not only in Ukraine, but also abroad. The university supports every graduate student striving for self-realization, self-improvement, development and success.

During the studying at the Kyiv University of Law you will receive quality additional education, in-depth knowledge of the chosen specialty and new opportunities for professional development and self-realization.

University museums

Hans Gross Museum of Forensics

The Hans Gross Museum of Forensics of KUL NAS of Ukraine (hereinafter – the Museum of Forensics) operates in the structure of the university since 2010. The Museum of Forensic is a scientific and education, methodical, research, cultural and education institution designed to conduct scientific, education work, study, storage and use of objects, material evidence and objects of expert research, unusual instrument of crime, other things of education, scientific and practical interest, involvement of students of other education institutions and experts of practitioners for scientific research, organization and realization of excursion work among students, students and citizens wishing to get acquainted with achievements, forensics assets and promising areas of expertise. The museum exhibits are used by students as models for practical comparative research during training.



In the structure of the Museum of Forensic were created and operate: Cabinet “Trasology and Fingerprinting” which contains various devices and exhibits for detecting visible and invisible traces of crime, samples of means of fluorescent and luminous marking, a set of heavy lead paints and other crime detection devices.

The Research Center and Laboratory of Grid Technologies, Cyber Security, Cyberforensics and Nuclear Forensics where the best students conduct forensic research under the guidance of teachers. On the basis of the Forensic Laboratory the ballistic studies, exhibits various phototechnical devices, and special stands illuminate signs of firearms and knives are conducted.

Museum of forgeries and piracy

In 2016 the Museum of forgeries was created in KUL NAS of Ukraine together with the launch of the Ukrainian Alliance against Forgery and Piracy (UAAF) and the patent law firm “Paharenko and Partners” under the slogan of the perpetual education campaign “Days against Forgery and Piracy” which was started all over Ukraine in 2012. After launching this campaign Ukrainians joined the International Education Campaign World Counterfeiting Day which was launched by the World Anti-Fraud Group (GACG Network) in 1998. Numerous events that take place in Ukraine, throughout Europe and the United States, note the international aspects of intellectual property rights infringement and emphasize the growing need of the world community for a strengthened joint fight against forgery. Special attention is paid to those forgeries that threaten the health and safety of people. The manufacture and sale of counterfeit goods is a global problem involving multi-billion-dollar trafficking with serious economic, social and environmental consequences for States and consumers.

According to the UN the circulation of counterfeit goods in the world is estimated at $250 billion annually. Almost all consumer goods are moonlighted, and counterfeits are sold in almost all countries of the world. This illegal business has already become part of a huge criminal industry, comparable only with the trade in drugs and arms and the money obtained from the production and sale of counterfeits, sent, among other things and the financing of organized criminal and terrorist groups.

It is especially important to understand the damage from forgeries not only for an individual consumer but also for Ukraine as a whole given the annual shortfall in the budget of billions of hryvnia of potential tax revenues, reduced direct investment as a result of the country’s loss of investment attractiveness, increased corruption and crime, lack of fair competition in the market,

reduced number of jobs and the outflow of professionals abroad as part of the campaign “Days of Fight against Forgery and Piracy in Ukraine” in the Museum of Forgery regular events are held for representatives of state bodies and business, students, schoolchildren, journalists. The museum is also used for classes with students of the Kyiv University of Law of the National Academy of Sciences of Ukraine in various disciplines, namely: “Intellectual Property Rights”, “Copyright”, “Criminalistics”, “Criminology” and others.

V. Koretskyi Cabinet-Museum of International Law

V. Koretskyi Cabinet-Museum of International Law of the Kyiv University of Law of the National Academy of Sciences of Ukraine was created in honor of an outstanding lawyer, specialist in international public law, the only lawyer in the USSR – hero of socialist labor, academician, the first director of the Institute of State and Law of the National Academy of Sciences of Ukraine, now named after him. Volodymyr Koretskyi was an outstanding scholar whose talent was demonstrated by his study of public international law which acquired a qualitatively new character for Ukraine as one of the founders of the United Nations after World War II.

The USSR developed issues of codification of international law. V. Koretskyi was the first scholar who began the study of problems of international law which acquired global importance in the post-war period and international law of the sea and continental shelf issues in particular. V. Koretskyi was engaged not only in the theory of international law, he participated in the conclusion of peace treaties of the states of the anti-Hitler coalition, the Paris Peace Conference. He was an adviser to the representative of the USSR in the UN Security Council, member and vice-president of the International Court of Justice in The Hague, one of the authors of the draft “General Declaration of Human Rights”, the first deputy chairman of the UN Commission on Human Rights. Bright pages of professional and personal life, scientific heritage of the outstanding international lawyer are reflected in the exhibits of the V. Koretskyi Cabinet of International Law. His service at home, high

professionalism, scientific talent is a benchmark for modern legal education and an example for student youth.

M. Vasylenko Cabinet-Museum of the History of Ukrainian Law

M. Vasylenko Cabinet-Museum of the History of Ukrainian Law contains original expositions of photo documents about the life path, socio-political and scientific activity of academician Mykola Vasylenko, didactic materials and education and scientific literature on the history of Ukrainian law. The range of scientific interests of Vasylenko M. covered a wide range of European and Ukrainian law and organizational abilities of the scientist, his ability to rally like-minded people around him allowed the acting Chairman of the Council of Ministers of the Hetman Pavlo Skoropadskyi Ukrainian State, Minister of Foreign Affairs of Ukraine, Minister of Education. As Minister of Education M. Vasylenko made many efforts to establish the Ukrainian Academy of Sciences (UAS), Ukrainian universities in Kyiv and Kamianets-Podilskyi, many schools and national art and cultural institutions, taught at the universities of Kyiv and the Ukrainian Academy of Sciences, edited “Notes of the Socio-Economic Department of UAS”, headed the society of legal scholars of Ukraine.

In 1924 Mykola Vasylenko was sentenced to 10 years in prison for the fabricated case by PSIA “Kyiv Regional Action Center”. He was revised only under the influence of the public the sentence, and the scientist was admitted to teaching at the Kyiv University and scientific activities. Mykola Vasylenko left behind a large scientific heritage, part of which is represented in the M. Vasylenko cabinet-museum of the history of Ukrainian law of Kyiv University of Law of the National Academy of Sciences of Ukraine.

Historical and Ethnographic Cabinet-Museum

One of the key priorities of the Kyiv University of Law of the National Academy of Sciences of Ukraine is the education of patriotism and preservation of national values and traditions. The historical and ethnographic museum was created in 2009 as part of the general university project “The rushnyk Fate of my land”. The goal of the project is to help students to truly know the national and spiritual culture of the Ukrainian region, to motivate them to respect the traditions of the Ukrainian people.

The exhibition of the historical and ethnographic museum was formed by students and graduates of the university who donated rushnyks to their Alma mother embroidered by their mothers and grandmothers with the patterns inherent in their small homeland. Probably in all decorative and applied art there is no other work concentrating in itself not only the beauty of the native land, but also a deep symbolic meaning.

The Ukrainian embroidered towel (rushnyk) is one of the elements of the material and spiritual culture of the Ukrainian people, most of the motives for the ornament which was given by Mother Nature herself. The exposition presents towels with different interpretations of patterns that contain some elements with a wide semantic load – geometric (Podillia, Poltava, Gutsulshchyna), vegetable (Bukovina, Volyn, Podillia, Pobuzhzhia) ornaments. Embroidered rushnyk is the mother's most expensive gift for her son's journey, it is the memory of her parents' home, a wish for happiness in a new life, so these gifts of our students are extremely valuable for the university community. The unity of students and professors of the university through the symbols of the Ukrainian people is a manifestation of patriotic mood and desire to preserve the values of the nation.

V. Semchyk Cabinet-Museum of Land and Agrarian Law

V. Semchik Cabinet-Museum of Land and Agrarian Law is devoted to the Vitaly Semchyk, professor of the Kyiv University of Law of the National Academy of Sciences of Ukraine, researcher of the V. Koretskyi Institute of State and Law of the National Academy of Sciences of Ukraine, corresponding member of NAS of Ukraine named after him. All the milestones of the scientist's life path were reflected in the exposition of the Cabinet of Land and Agrarian Law: scientific works of the scientist – monographs, articles, works of students, his photographs at various stages of his life – from war years to work at the KUL NAS of Ukraine, the scholar's awards that he has got throughout his life.

The whole life of the scientist was devoted to jurisprudence – first as a practice and later his experience and knowledge passed to students and postgraduated students. He became one of the founders of scientific ideas and views in the land and agrarian law within the walls of KUL NAS of Ukraine. On the basis of monographs, textbooks, scientific commentaries of the legislation prepared by him, several generations of future lawyers were brought up.

V. Glushkov Museum of computer technology and forensic equipment

In 2016 the Kyiv University of Law of the National Academy of Sciences of Ukraine together with the Institute of Cybernetics of the National Academy of Ukraine created the first museum of computer technology and forensic equipment in Ukraine named after academician Viktor Glushkov, founder of domestic cybernetics author of fundamental works in the cybernetics, informatics.

V. Glushkov is the founder and organizer of the implementation of research programs for the creation of problem-oriented software and technical complexes for the informatization of the economic and defense activity of the country. Achievements proposed by V. Glushkov in the informatization and computerization began to be successfully used in law enforcement and in the fight against crime. The exposition of the museum covers the use of computer technology for full and comprehensive crime prevention.

It should be noted separately that the academic activity of the Kyiv University of Law of the National Academy of Sciences of Ukraine has a fairly wide geography. Branches or training and advisory centers have been established in several cities of Ukraine which will be discussed further.

RIVNE INSTITUTE OF THE KYIV UNIVERSITY OF LAW OF THE NATIONAL ACADEMY OF SCIENCES OF UKRAINE

Ivan Vietrov

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The Rivne Institute of the Kyiv University of Law of the National Academy of Sciences of Ukraine began its activities in 1997. Now this state higher education institution is a dynamic scientific and education complex in Rivne region which has managed to properly transform its best achievements into a modern legal space. The Institute trains highly qualified lawyers for law enforcement agencies, executive and judicial authorities, procuratorial authorities, notaries, lawyers, the State customs and tax service, consulting activities, consumer protection, copyright, market of information resources, business, etc. in the specialty “Law” on the basis of complete general education and education qualification level “junior specialist”, as well as “specialist” (non-specialist specialties).

The concept of the Institute is based on the growth of the scientific potential of Ukraine and convergence of legal education and fundamental theoretical research in law, the latest ideas of national education management.

The main tasks of the Rivne Institute are:

- implementation of the education process aimed at the organization of education and methodological, scientific, education and cultural activities for the training of specialists of the bachelor's degree and meeting the standards of higher education;
- orientation of education process on national interests, basic European values;
- professional training in legal practice;
- creation of conditions for social and professional formation, spiritual development, formation of a national-conscious, socially active person ready at any moment to become for the protection of the sovereign homeland;
- ensuring the needs of enterprises, institutions and various forms of ownership in specialists of economic and legal, civil and administrative directions in the conditions of market and partner relationships.

In the structure of the Institute successfully operate two departments: the department of general theoretical legal and humanitarian disciplines and the department of special legal disciplines.

The main vector of activity of the departments is determined by the general direction of the Ukrainian higher education to enter the European and world education space and modernization of higher education which requires the application of high-quality innovative approaches taking into account the requirements and needs of the information society.

The departments annually hold two all-Ukrainian scientific and practical conferences ("Actual problems of law creation in modern Ukraine" and "Modern problems of humanistics: world outlook searches, communication and pedagogical strategies"). In particular on April 27, 2023, the XIII All-Ukrainian scientific and practical conference "Actual problems of law creation in modern Ukraine" was held. It became a landmark for Ukraine scientific event which showed that even in the crisis of military tests law-making remains one of the most important areas of activity of the state and a form of its regulatory activity. Attention is focused on new challenges to the creation of law both in Ukraine and for international law and on the failures of international institutions, the normative acts of which during the occupation by russia proved to be negligible.

The high authority of the Institute in the Rivne region provides innovative forms and technologies of training which contribute to the adaptation of the education process to modern requirements and social demands of the labour market. Among the most tested should be named: personally oriented, integration, training, professional-business and gaming technologies. Their development and implementation into the education process is the conceptual task of the departments' work.

Holding of the annual Law Week numerous meetings with representatives of the regional department of the Ministry of Justice in the Rivne region, prosecutors, judges, representatives of the professional elite of Rivne and Ukraine – far from a complete list of events, which conduct departments of legal disciplines.

The Institute has become a good tradition to hold festive events on the Day of Ukrainian Writing and Language, the International Day of Native Language, Shevchenko Days, book, art and photo

exhibitions, etc. Creative meetings with representatives of the pedagogical community to create a common communication platform for the exchange of experience and deepening of cooperation are a separate page of the department's activities.

An important component of the Rivne Institute of Kyiv University of Law of NAS of Ukraine is the work of the Legal Clinic "Ad honores". Its legal activities unite the efforts of teachers, students and legal specialists to accumulate, process and use legal information to protect the rights and freedoms of low-income citizens in need of legal protection. The main types of legal assistance provided by the Legal Clinic "Ad honores" are legal advice; drafting legal documents; negotiating; representing citizens' interests in courts and other bodies. Legal Clinic "Ad honores" is created to solve a number of very important tasks, namely to combine theoretical training with practice; to form professional skills of student-lawyer; to contribute to the solution of social problems of the Rivne region; to form students active public position and legal consciousness.

The education, scientific, informational, cultural and education structure of the Institute library which has more than 15 thousand copies of literature sources. Of these 70% are the latest legal literature, the rest are socio-political, psychological-pedagogical, economic, linguistic and from other branches of knowledge. The share of education literature is 60% of the total. The library conducts thematic bibliographic surveys, excursions during career orientation events and open days at the institute. Students and employees of specialized classes of general schools of the city and region are served free of charge. Provided uninterrupted access to the consolidated electronic catalogue of library information resources of the Kyiv University of Law NAS of Ukraine and the Rivne Institute.

The Institute pays considerable attention to the spiritual, cultural and aesthetic growth of students. As part of the University-wide project "Intellectual Property of Ukraine: Pearls of Painting for Student Youth" the Institute systematically exhibits works of art by Ukrainian artists, sculptors, photographers, blacksmiths, etc.

Support of student self-government is one of the ways of development of civil society in Ukraine. Therefore the Institute's management supports the activities of the Student Parliament in every way. An important part of the work of the Parliament became scientific activity. Participation in international and national scientific forums, testing of their own scientific projects, meetings with representatives of the legal elite – all this reflects the everyday life of students, giving it creative flashes and creative anxiety. Together with representatives of Rivne charitable organizations,

students are engaged in volunteer activities. The Parliament annually organizes participation in the megamarch dedicated to the World Embroidery Day. On their initiative the audience named after the Heroes of the Heavenly Hundred. Within the project “Intellectual Property of Ukraine: Pearls of Modern Art for Student Youth” students become participants of many art forums, participate in the organization of photo exhibitions. The students show great interest in the knowledge of historical monuments of the country.

Academic mobility implemented within the framework of cooperation agreements between the Kyiv University of Law of the National Academy of Sciences of Ukraine and foreign partner organizations contributes to deepening integration into the Ukrainian and international education space. But now the russian-Ukrainian war has suspended cooperation with foreign universities.

The Ukrainian people and the Ukrainian state are fighting for European values. For this gives the most precious – the life of the best sons and daughters – and therefore we are sure that victory will be ours and Ukraine will take its rightful place in European society.

INTERNATIONAL CENTER OF LEGAL AND ECONOMIC-SOCIAL RESEARCH OF CENTRAL-EASTERN EUROPEAN COUNTRIES OF KUL NAS OF UKRAINE IN UZHGOROD

Ivan Vashchynets
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The International Center of Legal and Economic-Social Research of the Central-Eastern European Countries of the Kiev University of Law of the National Academy of Sciences of Ukraine in Uzhgorod is a separate structural department of the University which functions in a single complex of education, scientific and research activities of higher education.

The main tasks of the Center are the comprehensive study of topical issues related to the development and deepening of cooperation with the countries of Central-Eastern Europe in the legal, economic, education, scientific, cultural and other sides of social sphere. The Center also focuses on the research of cross-border cooperation possibilities, various problems of legal regulation in particular intellectual property rights, studies and analyzes migration processes, the social and human development of the countries of Central-Eastern Europe as a whole.

The purpose of the above-mentioned main activities of the Center is to study and analyze the positive experience of the countries of Central-Eastern Europe in the main social sectors drawing up on this basis scientifically based proposals for amendments and additions to Ukrainian legislation that would help to harmonize it with the European legal framework.

The activities of the International Center of Legal and Economic-Social Research of the Central-Eastern European Countries of Kyiv University of Law of the National Academy of Sciences of Ukraine plays an important role in the promoting and disseminating legal knowledge among the population of the region conducting education, socio-cultural and vocational orientation activities aimed primarily at the young generation of citizens of Zakarpattia region. These important public initiatives are facilitated by close cooperation with local authorities and local governments. The results of this mutually beneficial activity is the conclusion of cooperation agreements between the Kyiv University of Law of the National Academy of Sciences of Ukraine and education institutions of the region whose students in turn are involved in a joint event on material and technical base of the Center of various scientific and cultural events (conferences, meetings, seminars, training, etc.) both online and offline, involving representatives of scientific and cultural circles of Hungary, Slovakia, Poland, Czech Republic, Austria and other countries.

Within the framework of the concluded cooperation agreements the Kyiv University of Law of the National Academy of Sciences of Ukraine provides updating of the library fund of schools in the region with legal literature, including scientific literature, the authors of which are teaching staff of the University and the National Academy of Sciences of Ukraine.

Close cooperation between the Kyiv University of Law and education institutions in Zakarpattia region contributes to the dissemination of information among young people on opportunities and prospects for higher education at that university.

VINNYTSIA SCIENTIFIC AND ADVISORY CENTER OF THE KYIV UNIVERSITY OF LAW OF THE NATIONAL ACADEMY OF SCIENCES OF UKRAINE

Yurii Kovalchuk
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Vinnytsia Scientific and Advisory Center is a structural department of the Kyiv University of Law of the National Academy of Sciences of Ukraine (hereinafter KUL NAS of Ukraine) carrying out its activities in a single complex of education, scientific and research activities of the university. The Center of KUL NAS of Ukraine was founded in 2011-2012 in order to train highly qualified specialists in the jurisprudence for the needs of the Vinnitsa region and neighboring regions. The first course for correspondence studies in the specialty «Jurisprudence» was 48 students and after two years the number of students increased to 209. In general over the period 2011-2022 the center trained more than 700 highly qualified lawyers.

The purpose of the scientific and advisory center is the organization of activity on introduction, joint scientific and production activity and provision of education, scientific and advisory services to the population, local communities of the region, local self-government bodies, public organizations, other legal and natural persons in the direction of the center. The Scientific and Advisory Center in Vinnitsa operates exclusively under the patronage of the Kyiv University of Law NAS of Ukraine.

Specifying the purpose of the center is implemented in tasks among which the priority is:

- organization of training of higher legal education applicants in the region;

- provision of scientific advisory, education and other services that may be provided by education institutions;
- using the capabilities of the center to improve the level of practical training of students;
- improving the training of specialists in the jurisprudence;
- promotion of legal knowledge among different segments of the population.

The education process is carried out by the scientific and advisory center and the teaching staff of the KUL NAS of Ukraine.

The decision on the organization of the education process and the whole activity of the center is entrusted to the head of the unit of the candidate of legal sciences, associate professor Yu. Kovalchuk.

An important aspect of the activity of the center's employees in Vinnitsa is advisory work with students on their training, course and test work, semester tests and exams.

As part of the education work as well as in order to get acquainted with the work of the highest bodies of state power of Ukraine, the leadership of the KUL NAS of Ukraine and the head of the scientific and advisory center, students' trips to the Verkhovna Rada of Ukraine, the Cabinet of Ministers, the Constitutional Court are organized every year.

During the period of education activity of the center KUL NAS of Ukraine in Vinnytsia region established partnerships with many education institutions and signed a memorandum of cooperation with Vinnytsia City Council, Vinnitsa and Khmelnitsky district administrations and other state structures. This cooperation allows students to spend internship on their basis, and in the future to find employment in government bodies, local self-government bodies, law enforcement and judicial bodies.

Vinnytsia Scientific and Advisory Center of KUL NAS of Ukraine has close ties with education institutions in Zhytomyr and Khmelnytskyi graduates of which continue to receive higher legal education and the base of the center. This is a clear example of how the regional policy of KUL NAS of Ukraine allows students to study as close as possible to their place of residence and work.

An important aspect of the activity at the center is the development of the creative potential of students as individuals. In accordance with these requirements education must be imbued with universal values. For this purpose the Center of KUL NAS of Ukraine is doing everything necessary to ensure that students develop harmonious thinking based on a combination of internal personal freedom and social responsibility and tolerance.

The scientific and teaching staff of the structural subdivision of KUL NAS of Ukraine in Vinnitsa in its daily activities, living hard wartime, time of trying to form a sense of national dignity, patriotism, decency, justice and the constant pursuit of new knowledge.

This determines the content and nature of the education process at the Kyiv University of Law of the National Academy of Sciences of Ukraine and its structural department in Vinnitsa.

INTERNATIONAL CENTER OF LEGAL AND HISTORICAL AND POLITICAL STUDIES OF CENTRAL-EASTERN EUROPEAN COUNTRIES KUL NAS OF UKRAINE (LVIV).

The International Center of Legal and Historical and Political Research of the Central-Eastern European Countries (KUL NAS of Ukraine in Lviv) is a separate scientific department of the Kiev University of Law of the National Academy of Sciences of Ukraine performing its activity in a single complex of education, scientific and research activities of the university. The Center of KUL NAS of Ukraine was established on February 02, 2015 in accordance with the Order of the Rector of the Kyiv University of Law of the National Academy of Sciences of Ukraine on January 29, 2015 and is guided by the Regulations «About the International Center of Legal and Historical and Political Studies of the Central-Eastern European Countries of KUL NAS of Ukraine».

The objectives of the Center are promotion of the harmonization of Ukrainian legislation with the European legal field in the socio-political, economic, cultural and education, educational and scientific and other spheres of public life; formation of national-scientific lifepatriotic world view among the general public and national elite of both Lviv and Ukraine in general; implementation of public initiatives through interaction with central and local authorities.

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IMPROVEMENT OF LEGAL PROTECTION OF INTELLECTUAL PROPERTY IN MODERN UKRAINE: PROBLEMS AND PROPOSALS

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Abstract. The article analyzes the legislation and practice of its application concerning the need to improve the culture of social relations in the field of intellectual property, taking into account the need to improve the legal protection of intellectual property in Ukraine. This will foster optimizing the conditions for creative intellectual activities of engineers, inventors, scientists, for the development of a civilized market for the results of their activities, for the commercialization of a wide range of objects of intellectual property, for effective and honest business operations and so forth. The issue of the need to codify the current regulatory framework, which affects the regulation of relations in intellectual property law, is analyzed.

The article focuses on the high level of piracy and large-scale infringements of intellectual property rights in Ukraine. The lack of citizens' readiness to respect intellectual property law, the contempt for the protection of the results of intellectual work, and the weakness of the mechanisms of protection and defense of the results of intellectual creativity are emphasized. The reason for violations in the field of intellectual property is defined as the low level of general culture of the citizens of Ukraine and the low level of education in the field of intellectual property. The need to overcome the contradictions existing today in the process of training future lawyers is substantiated, as well as the search for a systematic basis for creating and implementing the model of training students for future professional activities is proposed.

The article proposes to develop and implement a structured program for the implementation of intellectual property management strategy in Ukraine. Given that there are different techniques for managing such projects, and they all include common features, the relevant government agencies and institutions in the field of intellectual property should choose and implement the methodology that best suits the real situation and is the most effective.

Key words: *legal protection of intellectual property, legal culture, commercialization of objects of intellectual property, training lawyers in the field of intellectual property, intellectual property management strategy, project management.*

Introduction

Strengthening the legal protection of intellectual property is extremely important and relevant from the point of view that intellectual activity as the experience of countries with developed economies shows already determines the strategy and tactics of socio-economic development of civilized countries of the world. In these countries the priority is not production but science, culture and technology. In Ukraine there are many problematic issues of legal regulation of this sphere. It is possible to identify the main vectors. These include society's unwillingness to respect intellectual property rights, neglect of intellectual protection, and the absence of effective mechanisms to protect the results of intellectual creativity.

Today we are witnessing high levels of piracy and large-scale violations of intellectual property rights. With regard to the regulation of the subject matter of intellectual property rights it is imperfect. But the most serious problem in this area is both the low level of the general culture of Ukrainian citizens and the low level of education in intellectual property. This is one of the reasons for the inadequate training of judges, employees of the Ministry of Internal Affairs, SSU, customs and tax services and other professionals involved in intellectual property relations.

With regard to the problems of improving legislation in intellectual activities it is worth mentioning the aspects of improving the quality of the regulatory framework, strengthening the

scientific basis and democratization of law-making and law enforcement. In the context of market relations legal regulation in intellectual and creative activities of the human being changes the boundaries of legal influence. The completeness of legal regulation implies the creation of legal guarantees that can ensure the development and implementation of various forms of ownership both in scientific and technological creation and in general. Therefore modern legislation in this area should be complete, systematic and reasonable. This means that all types and forms of relations arising in the process of inventive search are regulated by law. However the completeness of legislation should not be reduced to an increase in the number of regulations. Unification of legislation is necessary on the basis of integration increase of level of systematization and validity of legal regulation.

Analysis of recent studies and publications. The issues of the studied problem of intellectual property protection and the level of legal culture were considered in the works of such domestic scientists as G. Androshchuk, M. Galiantych, A. Kodynets, O. Kokhanovska, V. Kryzhna, O. Kharytonova, V. Pylypchuk, V. Pankevych, S. Bondarenko, S. Gordiienko, S. Dovgyi, N. Myronenko, O. Yuldasheva, etc.

Purpose of the article. The purpose of this article is to analyze the social preconditions that the organizational and legal aspects of improving the legal protection of intellectual property in modern Ukraine are an important factor in improving the economy of the country, promoting scientific and technical progress, creation of new inventions and highly effective intellectual property objects necessary for Ukraine as well as improving their legal protection.

The creation of appropriate legal protection of intellectual property in Ukraine in the context of the globalization of scientific achievements, the latest technologies, the Internet, etc., can no longer be considered only as an internal affair of Ukraine. The development of national intellectual property legislation therefore reflects the transformation that is taking place in society. This is a logical and understandable response to the changes in the economic life of the State and an attempt to create conditions for the realization of the rights of citizens to creative activities provided for in the Constitution of Ukraine. At the same time it is an attempt to create a reliable mechanism for the protection of intellectual property rights. To this end national legislation implements the rules and regulations adopted by the international community. The need for such harmonization is an objective requirement of the times which cannot be ignored.

It is clear that legislation in any sphere of social relations cannot be perfect. This has always been, and will continue to be, prevented by circumstances related to the development of society. Humanity is moving towards new achievements, absorbing all that is fit for purpose and rejecting all that hinders this objective process. Therefore while addressing gaps, shortcomings, contradictory provisions in existing national legislation, inconsistencies with international standards in intellectual property we note that these issues need to be addressed in a comprehensive manner, thoughtful, given the feasibility immediately.

Strengthening the legal protection of intellectual property at the current stage of development of Ukraine is necessary also because intellectual activity, as the experience of countries with a developed economy, will determine the strategy and tactics of social andeconomic development of our state. It is not production but science, culture and technology, that will be the defining priority. The concept of **"culture"** should be understood in its broad sense. It is education, culture of behavior, scientific and technical level of production, literature, art and many other components that determine the level of civilization of a society.

The level of culture demonstrates the worldview, attitude, moral principles and other human values as a society as a whole and each individual. That is, it is culture in the broad sense of this concept predetermines, forms the spiritual world of society and each individual.

Consideration should also be given to the fact that intellectual property law is not a well-established (stable) homogeneous part of law but rather that it is constantly in the process of change, including: harmonization of national legislation with international law.

The development of a national system for the protection of intellectual property in the context of Ukraine's integration into the European Community is an integral part of the

international system for its protection. The National Strategy for the Development of the Intellectual Property in Ukraine for the period up to 2020 defines the general provisions of priorities and prospects for the development of the National Intellectual Property System in particular the goal, strategic directions and main tasks, the use of which should be directed to the implementation of public policy in intellectual property. However, today there are many unresolved problems in its predecessor – the Concept of Development of the State System of Legal Protection of Intellectual Property on 2009-2014 which was approved by the decision of the Board of the State Department of Intellectual Property (Protocol of March 11, 2009. No. 11) in order to determine ways to further develop and improve the state system of legal protection of intellectual property, the priorities of which are the most complete, timely, high-quality provision to individuals and legal entities of the acquisition and protection of intellectual property rights in accordance with international norms and standards. Among them, ensuring reliable guarantees of legal protection of intellectual property is an integral attribute of statehood of any civilized country. For this there is a sufficient legal basis: the provisions of the Constitution of Ukraine (art. 41, 54), the norms of the Civil Code of Ukraine (Issue IV "Intellectual Property Rights"), Economic, Criminal, Customs Codes of Ukraine, Ukrainian Code of Administrative Offences. In Ukraine there are special laws in intellectual property: "On protection of rights on inventions and useful models", "On protection of rights on industrial samples", "On protection of rights on marks for goods and services", "On protection of rights on plant varieties", "On protection of rights on indication of origin of goods", "On protection of rights on topography of integrated circuits", "On copyright and related rights», «On protection of economic competition", "On distribution of audio-visual copies of works and phonograms", "On peculiarities of state regulation of activity of economic entities, connected with production, export, import of discs for laser reading systems". There are a number of secondary legislation.

In Ukraine, the organizational structure of the bodies providing activities in intellectual property protection has been formed. It has been created and operates and there is also a strong legal and regulatory framework that generally meets international norms and standards, appropriate infrastructure has been built and mechanisms for implementing legal norms have been introduced.

However, as evidenced by practice and massive violations of intellectual property rights, the system is vulnerable. They are well known to professionals and reminding them will not move until compliance with the well-written norms of existing legislation becomes the norm for owners of property rights, their users and government officials. The shortage of such in Ukraine is obvious. It has intensified with changes of political elites and their attempt to form management teams not on such professional grounds as education, work experience, achievement, but on belonging to this political force.

Issues of codification of intellectual property law on objective values common to all objects of intellectual property remain topical. Existing problems in gaps in legislation as well as intellectual property include the lack of legislative development regarding the contractual transfer of know-how as defined in the Law of Ukraine "On the state regulation of activities in technology transfer".

The protection of intellectual property rights in the global computer network of the Internet also awaits the legislative regulation. International obligations require an effective system of intellectual property protection. It is therefore important to bring national legislation into line with the requirements of the European Union Directives and European national legislation, the World Intellectual Property Organization Copyright Treaties, on the performance and phonograms and recommendations of this organization for the protection of the most advanced information technology facilities.

With regard to other problems in intellectual property it should be noted that there is no clear legislative regulation of the object of industrial property, the commercial (brand) name. In the current conditions of development of the market economy and as a consequence of the growth of the competitive struggle of various economic entities the identification of participants in economic turnover acquires special importance. They are interested in forming a positive attitude towards themselves, gaining recognition in the market, and this is possible only when

consumers and other producers can correctly identify the subject and his activities. One of the criteria for identification is the brand name. The legal regulation of relations according to brand names is carried out by different legal acts. But these acts cannot provide answers to many questions related to the emergence, use and termination of the right to a brand name.

The absence of a separate law containing the definition of a brand name, settled the controversial issues arising in this sphere, established adequate protection of the right to the firm, made it more difficult for the subjects of civil circulation to exercise their rights, these social relations. The adoption of the relevant law will contribute to the improvement of the state regulation of the competitive environment and the development of market relations.

We believe that the improvement of the current legislation on commercial (brand) names can be realized by the adoption of the Law of Ukraine "On the protection of rights to trademarks, geographical indications and commercial names". Such a law should establish a legal regime for three objects of intellectual property: trademark, geographical indication and commercial name. With regard to the latter, the concept of a commercial name should be defined, the requirements for its formation and the features of legal protection should be established.

In line with world practice a list of the conditions under which a name cannot be recognized as commercial should be provided. First of all these are designations that do not correspond to their definition or are contrary to public policy, the principles of humanity and morality or containing abbreviated or complete names of international intergovernmental organizations without the permission of the competent organ of those organizations or their owners, official names of States and major cities, complete or abbreviated names of state bodies, authorities, local authorities and derivatives of these names.

Attention should also be given to the content of commercial name rights. Commercial naming rights are proprietary rights to use a commercial name, to prevent other persons from abusing a commercial name including prohibiting such introduction and other legally established property rights. And with regard to the question of termination of rights to a commercial (brand) name, a list should be provided of the grounds on which the right to a commercial name ceases, namely: in the event of liquidation of a legal person, termination of the entrepreneurial activity of a natural person or by a court decision.

Also the solution of conflicts of rights to commercial names and trademarks, commercial names and domain names, the fate of a commercial name need a legislative definition in the case of reorganization of a legal entity and there is no definition of the concept of consolidation of commercial names, etc.

As the case law shows today the conflict between trademark and commercial name is more frequent in the application of Article 6 of the Law of Ukraine "On Protection of Marks for Goods and Services", paragraph 3 of which establishes: "can not be registered as signs, identical or similar so that they can be confused with the brand names known in Ukraine and belong to other persons who have obtained the right to them before the date of submission of the application for homogeneous goods and services". The concept of information of a commercial name used in this article is not defined either in legislation or in legal literature. In this regard the courts are faced with a number of contentious issues including the determination of criteria for establishing the fact of the collection of commercial names on the territory of Ukraine; questions of determining the territory on which such a list will be distributed; questions of defining criteria for which evidence of the identity of the brand should be considered generally accepted, etc. The definition of the form of the commercial name may be of great practical importance in resolving disputes over the use and protection of well-known marks.

Also common categories of violations of commercial name rights are its unlawful or conflicting use in domain names, trademarks or commercial names in which rights belong to other persons.

Thus the urgent need today to improve the legal regulation of commercial names both for the functioning of individual enterprises and for the development of fair competitive relations in our country and in the international market. In the light of current legal and economic processes such improvements should be made by bringing the

relevant legislation into line with the norms of the Civil and Economic Codes of Ukraine, harmonization with relevant EU legislation, improvement of the legislation on commercial names to take into account international and national experience in its application in practice.

Bearing in mind all the above let us emphasize the need to further improve the legislation aimed at ensuring the constitutional rights of citizens to the protection of intellectual property, ensuring favourable conditions for the creation of new, modern objects of intellectual property, development of civilized market of these objects. State assistance to the protection of intellectual property requires the introduction of organizational legal measures, the pooling of efforts of various government bodies, non-governmental institutions and public organizations, ɯdentification of further ways of development of the national system of legal protection of intellectual property.

In the context of market relations, legal regulation in intellectual and creative human activities presupposes a change in the boundaries of legal influence. The completeness of legal regulation leads to the creation of legal guarantees that can ensure the development and implementation of various forms of ownership, both in the sphere of scientific and technological creativity and in general. Therefore modern legislation in this area should be complete, systematic and reasonable. This means that all types and forms of relations arising in the process of inventive search are regulated by law. However the completeness of the legislation should not be reduced to an increase in the number of normative acts. Unification of legislation is necessary on the basis of integration, increase of level of systematization and validity of legal regulation.

Improving the national system for the protection of intellectual property in the context of Ukraine's integration into the European Community is an integral part of the international system for its protection. The National Strategy for the Development of the Intellectual Property in Ukraine for the period up to 2020 has been approved, defining the general provisions of the priorities and prospects for the development of the National Intellectual Property System in particular the objective, strategic directions and main objectives to be used in the implementation of public policy in intellectual property.

The strategy of innovative development of Ukrainian society today is the development of the latest scientific ideas and technologies, including grid technologies. In this context the development of the intellectual sphere in Ukraine requires both the improvement of the regulatory framework and the improvement of mechanisms for State management of intellectual property and the development of the institutional framework. Improving mechanisms for acquiring legal protection of intellectual property, improving incentives in intellectual property and creating effective mechanisms for the protection of intellectual property rights are also topical issues. It is necessary to develop effective methods of preventing, counteracting, investigating intellectual property crimes, raising awareness and developing a high culture of the general public in the field of intellectual property. Achieving this requires raising the level of education in intellectual property, expanding international partnership, cooperation in intellectual property. Another equally important task is to ensure a high level of intellectual security, address the issues of recycling of products in which intellectual property objects, as well as financial and materialtechnical provision of introduction of innovative model of development of Ukrainian society. A separate issue is the implementation of national monitoring and evaluation of the implementation of the latest ideas, developments but tools and grid technologies. When developing a strategy for the innovative development of the Ukrainian State it is also necessary to take into account the problems of the development of globalization which needs a theoretical understanding of trends in the evolution of the legal system, cybernetic, psychological and economic science and especially the science of intellectual property law.

The most relevant issues in the above context are: the establishment of an effective and efficient legal and institutional system for the protection of intellectual property rights in Ukraine; the expediency of implementing the best practices of the countries of Central and Eastern Europe in intellectual property in national legislation as well as harmonization with European and world standards.

Many aspects of the current intellectual property strategy (hereinafter referred to as

IP) are determined to a large extent by international and regional rules that may impose obligations on the countries concerned. It cannot be completely imposed or introduced from outside. Only the country itself could develop a detailed strategy suited to its specific conditions, allocate the necessary resources to achieve real results and then take practical steps to implement the strategy. The State must direct its efforts not only to the development of the strategy but also to its application.

It was necessary to have a clear picture of the situation in parallel with a realistic assessment of what could be achieved. IP activities should be analysed in the light of general information on the economic situation. The picture that emerges from this information will help to identify a solid basis on which to build a strategy. It is also necessary to develop a detailed action plan indicating **what, to whom and how** to do. The plan should include mechanisms to verify that the needs of the parties to the project have changed, to ensure that they remain committed to the project, and to assess the achievement of the objectives. The strategy should include short-, medium- and long-term objectives linked together. The clustering of objectives implies that resources are generally insufficient to implement all changes simultaneously. It is important that stakeholders understand this and look at change realistically.

The effective start of the project and the steps towards its successful completion should be encouraged. All States have an interest in improving their economic performance, developing entrepreneurship and industry, controlling illegal activities that impede domestic investment, improving international relations and improving the well-being of their citizens. However many if not most of people are not sufficiently aware of the positive role that IP plays in achieving such objectives.

The first steps are most often taken by the IP department. This is the moment when WIPO can support. The organization of meetings between the expert and the relevant officials and ministers on the strategy and its objectives helps the IP department to obtain approval and continue its work in this area. Such activities provide a platform for gathering and discussing information otherwise it may be difficult to identify problem areas. They can also help to determine how the strategy should be promoted at the political level such as the body that can authorize the strategy and how it is agreed (through Parliament, President, Prime Minister) as well as the procedure to be followed. The Government should be involved in the above-mentioned ministries but it is usually the national IP agency that plays the determining role and it should direct and facilitate the program. At the same stage the issue of performance reporting and monitoring mechanisms should be addressed. It is very important to identify a strategic partner or partners to provide expertise when needed. WIPO has a number of programs to maximize opportunities and access to professional resources. International organizations such as the World Bank and the US Agency for International Development, regional organizations and national IP offices can also provide such cooperation.

The strategy should be country-specific. This means taking into account the history and political institutions of the country, the level of population, GDP, the size of foreign investments. Moreover, the country's relations with international organizations such as the European Union, the European Patent Organization (hereinafter EPO) will also influence the content and key positions of the strategy. An analysis of the activities of the national IP authority on all types of IP is needed. In doing so it is necessary to study the trends, national and foreign applicants, management of the IP agency including its financial condition that is profits, expenses and ways of financing.

In order to collect the necessary information it is necessary to carry out research, collect statistics, conduct a survey, ideally by means of a questionnaire to keep the discussion within the given topic. The questionnaire should contain the following questions: First, what is the current understanding of IP? Secondly, how is IP used in an organization? Thirdly, what are the difficulties in using the IP system? Fourthly, what are the needs for improvement? Fifthly, what are the priorities of the organization?

At the same time the real state of the economy should be understood, taking into account GDP, its growth, trends in industry, services, the creative sector, agriculture and tourism, as these factors will influence the setting of priorities for development or change. It is also necessary to determine the

extent of distribution and IT infrastructure of telecommunication and IT infrastructure as these factors will influence the methods and possibilities of implementation of the strategy. The volume and nature of RDW as well as the use of technology licensing in industry are significant factors in decision-making. The activity of the creative sector which produces books, music, computer programs and films in marketing and advertising indicates the extent of the use of copyright.

The intellectual property strategy should be integrated into the overall development strategy and be aligned with existing economic, scientific and cultural development policies. This includes ensuring that partners are aware of the strategy and involved in its objectives where it's possible. This work gives great impetus to the strategy and helps to avoid the necessary work on assessment and planning of capacities, management and role of the national agency with IP in granting rights, policy development with IP and so on, how much help and advice they have for business.

The issue of technology transfer is extremely relevant. If a national policy on technology transfer exists the IP strategy should take it into account. If not it should be established. Such policies should ensure the availability of professionals and authorities competent in technology transfer as difficulties arise given the very different expectations of research institutions and entrepreneurs. In a broad sense the best result is to create an environment in which intellectual property enables innovators and authors to benefit economically from their work and strengthen the economic achievements of the country for the benefit of business, scientists, authors and society at large, and improve economic competitiveness.

The strategies and accompanying action plan can become a "manifesto" of the strategy and be used to explain the general public. Achieving many of the goals is an important objective and prioritization and progressive implementation are likely to increase success and yield results in the short to medium term. For an IP strategy to be meaningful and contribute to a country's well-being, the participation of a wide range of stakeholders is necessary. Given this the strategy can only be developed in a structured and focused manner and should ensure intensive cooperation between the parties. Yes, government structures cannot by themselves create and implement strategies that meet the needs of society, business and the commercial sector as well as scientists, technologists and creative industries. The working group should perhaps be composed of officials to maintain the momentum of the initiative but there is a strong case for establishing a program board to oversee the work of the creativa group and to decide on priorities and resource allocation.

With regard to the creation of new technologies and innovation through innovation the situation is as follows. The improvement of the socio-economic development of countries depends to a large extent on the effective use of various intellectual property objects. These objects are created by a person's intelligence, knowledge and experience and are usually highly valued and expensive. Ukraine has "pioneer" inventions and the latest developments in electric welding, materials science, laser, cryogenic, aerospace engineering, shipbuilding, communications and telecommunications, software products. Many new areas of intellectual activity have emerged that require legal protection and regulation. Thus there was a need to protect biological achievements, including breeding as well as intellectual results, resulting from the emergence of new technologies. With the invention of electronic-computing machines, the latest groups of technical achievements were created. They were materialized, and the need for software and databases appeared. The appearance of audio and video recording equipment raised the issue of the protection of recording rights of performing artists, the rights of organizations performing such recordings and the dissemination of radio and television raised questions about the rights they broadcast to studios. The list of such new spheres is rapidly spreading. In particular the provision of protection of achievements of genetics, new varieties of computer programs, for example, Internet sites, scientific discoveries, etc. Growing importance of such object of intellectual property law as undisclosed information including production secrets. It is not only knowledge and experience of an industrial and technical nature but also a variety of non-technical information namely data on the organization and economics of production, marketing, business knowledge, sources of finance,

business plans and other information.

Today the development of intellectual property in Ukraine can be influenced through the state support of invention, the appropriate level of its financing, popularization of this direction, strengthening international cooperation in all areas of intellectual activity. The creation and implementation of an appropriate educational program, the improvement of the regulatory framework, the decentralization of the powers of the central authority in intellectual property, the transfer of technology will also have an important impact.

But in addition you can offer several innovative methods, common among the countries of the world. These include business incubators. Business incubators are organizations that provide, under certain conditions and for a time specially equipped premises and other property to small and medium-sized business entities that start their activities to help them become financially self-sufficient. The most important functions of business incubators are to provide premises for offices or workshops on a rental basis, at below market prices and with flexible conditions for obtaining additional space on demand. This includes administrative and technical services, consulting/business planning for beginners and potential entrepreneurs. A wide range of other consulting services, technology transfer, seminar and training offers are also possible. Innovative business incubators could act as intermediaries between small and medium-sized businesses based on inventions and useful models and future investors and the state. As a result this would accelerate the development of small enterprises, create new jobs, increase government revenues, etc.

Another equally effective form of stimulation of invention could be the so-called professor's privilege according to which the right to patent inventions made by teachers or researchers in the execution of research at the expense of the budget, belonged to these teachers or scientists. Consulting engineering can be an important incentive to increase inventive activity. Despite the fact that this is a fairly new phenomenon for the domestic entrepreneur in the world practice. This type of engineering is widely used, given the development of new technologies and innovative solutions. Engineering is a discreet in an independent sphere of activity complex of commercial nature services for preparation and provision of production process, maintenance of construction and operation of industrial facilities. Engineering can be defined as a set of services provided on a commercial basis by feasibility study of creation of new enterprises, design and operation of production and non-production facilities, production of new types of products, improve enterprise management.

The provision of a full range of services and supplies based on an engineering contract includes four distinct types of engineering services, each of which may be the subject of a separate contract. Thus, consulting engineering is mainly concerned with intelligent services for the purpose of project design, development of construction plans and supervision of works. Technological engineering allows to provide the customer with technologies necessary for construction of industrial facility and its operation.

Consulting engineering includes conducting preliminary feasibility studies and studies related to general design; planning and preparation of drawings and cost estimates; preparation of preliminary sketches, design documents, detailed drawings and specifications; planning and preparation of the financing program; preparation of technical conditions for participation in tenders and issuance of recommendations; evaluation of proposals for the construction of facilities; supervision of construction, manufacture of equipment, installation, adjustment and start-up of the equipment, its operation; issuance of certificates on the quality of work, etc.

At every stage of engineering there is always intelligent engineering because it is impossible to develop and implement modern technologies and innovations without drawings and plans. Consulting engineering can be considered separately from the whole complex of engineering services when the organization assigns different stages of technology implementation to different suppliers.

The Law of Ukraine «On scientific and scientific-technical activity» (2016) adopted by the Verkhovna Rada of Ukraine should contribute to innovative prospects of our country in the sphere of intellectual property.

Conclusions

Taking into account all the above and summing up the main points on improving the legal protection of intellectual property in Ukraine it is necessary to pay attention to the following. First, increasing the culture of public relations in intellectual property will contribute to optimizing the necessary conditions for creative intellectual activity of engineers, inventors, scientists, for the development of a civilized market of the results of their activities, commercialization of a wide range of various intellectual property objects, conducting effective and fair business. Secondly, the existing legal framework that influences the regulation of intellectual property law should be codified. Thirdly, it is necessary to overcome the contradictions that exist today in the process of training legal specialists, to seek on a systematic basis the creation and introduction into the practice of higher school the integration of legal education and science, cultural model of preparation of students of law higher education institution for future professional activity. This model should be aimed at training legal professionals capable of discerning the right as a force for protecting the rights and freedoms of citizens, meeting the requirements of human morality, equality and justice in society: law as a social phenomenon which forms the ideals and limits of this freedom together with other social factors. Fourthly, a structured program should be developed and implemented to implement an intellectual property management strategy in the country. Bearing in mind that there are various techniques of project management, all of which include widely common features, relevant government bodies and institutions in intellectual property should choose and implement that methodology which is the most appropriate to the real situation and is the most effective.

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EVOLUTION OF INTERNATIONAL FINANCIAL LAW IN THE CONTEXT OF GLOBAL FINANCIAL AND ECONOMIC CRISIS

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Abstract. The article deals with the historical roots of the oldest institutions of international financial law, which began to take shape during the Latin Monetary Union and the Paris Monetary Conference in the XIX century. The article studies thee mechanisms of formation of some international legal institutions aimed at regulating individual parties to the international financial system, as well as identifies industries affected by the global financial and economic crisis of 2008-2010, and the corresponding gaps in international financial law. The most important sources of international financial law at the universal and regional levels are analyzed. It studies not only the normative but also the institutional component of the international financial order.

Keywords: *international financial law, monetary and financial system, international legal norms, monetary and financial relations, balance of payments, currency zones, international banking system, financial instruments.*

Introduction

In today's world there is a whole and complex phenomenon – the global monetary and financial system. On the one hand it is only part of the broad sphere of relations – the entire international economic space and the world order that emerged towards the end of the twentieth century. On the other hand the global monetary and financial system is an autonomous sphere of the States' society, of human civilization; this system is not only a reflection of what is happening in the world in the production, trade and other economic spheres, but it itself actively influences the international economy and the international economic order.

Real inter-State monetary and financial relations were within the scope of the set of international legal norms united in a certain normative system – international financial law.

The global financial and economic crisis that erupted in the world in 2008 revealed the imperfections of both the system of inter-State monetary and financial relations and the system of international financial law. The incoherence of these areas of relations among themselves. They are inconsistent with the more general principles of international relations. The crisis had shown that much needed to be changed in the global monetary and financial system including in institutional and regulatory mechanisms which inevitably led to a significant evolution in international financial law.

The purpose of research is to identify gaps in international financial law, international legal regulation, patterns and prospects based on an analysis of the current state of international financial law, under the influence of global monetary and financial crisis that began in 2008.

Analysis of recent research and publications. Depending on the direction of research and the nature of the crisis the analysis of the world financial crises as a negative socio-economic phenomenon focused on the works of scientists such as: O. Baranovskyi (2009), V. Geyts (2009), K. Kindleberger (2011), P. Krugman (2008), J. Soros (2012), D. Saks (2000), M. Tugan-Baranovskyi (1997), A. Schwartz (2008), M. Fridman (2007), M. Andenas, J.J. Norton, J. Gold & R. Gold (2003), R.P. Buckley (2009),

O. Hieronymi & A. Vautravers (2009), D. Tarullo (2008) et all.

Main research results. Given the magnitude and impact of the 2008 global financial and economic crisis (still ongoing) the science of international law faces a number of questions, namely: which international legal challenges have been highlighted by the crisis; what gaps have emerged in the system of international legal regulation of inter-State monetary relations; by what means and methods is (or should) this system of international legal regulation being improved; the place and role of Ukraine in the global monetary and financial system and in the effectiveness of measures aimed at strengthening the international economic order (and its component – the international financial order) and its consistency with the principle of fairness.

The relevance of the research is due to a number of circumstances.

First there is increased competition, an increase in the clash of interests of States in the monetary and financial sphere which most often disrupts the international monetary and financial system, reduces the effectiveness of measures taken by States and violates the international legal order.

Secondly Ukraine still occupies a relatively modest place both in the system of monetary and financial relations and in the system of international legal regulation of these relations. Such a role for Ukraine does not correspond to its potential and objectives of involving the country in the international economic system while preserving its economic sovereignty and ensuring its long-term interests.

Thirdly the established institutions of international financial law have many gaps. They do not fully support the functioning of the monetary and financial system and require targeted development for which it is necessary to consider the directions and mechanisms of such development.

At present the global monetary and financial system established by international law serves to a greater extent the State interests of a group of States beyond the control of the law. The imbalance of interests between established groups of States should be redressed and an international legal instrument could be an effective means of doing so.

Fourthly the global financial and economic crisis of 2008 has not only exposed the problems of ensuring international legal cooperation among States in the financial and monetary sphere. But it also pushes them to a solution. It is important that the initiative to address the problems, the choice of means and mechanisms for this does not remain in the hands of the developed States of the West. Otherwise all adjustments to the existing international financial order will continue to favour the interests of a narrow group of developed countries.

Fifthly Ukraine must adapt domestic law to the requirements of international financial law taking into account the lessons learned from the 2008 global financial and economic crisis. In addition Ukraine should initiate appropriate harmonization of the domestic legislation of the country and the Eurasian Economic Community with a view to more effective interaction in the monetary and financial sphere of relations. For this work it is necessary to own the laws of development of the global monetary and financial system and international monetary law.

The legal foundations of today's international monetary and financial system are rooted in the Paris Conferences of the second half of the 19th century. At that time legal mechanisms were found to deal multilaterally with two main problems: a) determination of exchange rates between the national currencies of the interacting States; b) balance-of-payments equilibrium. During this period the extent of the sovereign legal personality of countries in the international financial sphere was clarified and consolidated through international treaty and customary international law (coinage, paper money issue, etc.).

The decision of the Genoa Conference contributed to the formation of an international legal custom according to which the US dollar became world – supranational – money. The creation of currency zones that compete with each other begins (pound sterling zone, US dollar zone, etc.). "Unfair financial practice" has spread. It was expressed in the competitive devaluation of national currencies by unilateral acts of States in order to gain advantages. New types of financial instruments (bills of exchange, securities) began to penetrate into international financial relations and two approaches to regulation of the international

financial system proved to be opposing: for strengthening the role of the state, inter-state agreements and against "excess" State intervention in this area. The global crisis pushed for strengthening the role of the state. It strengthened the status of the dollar as a world currency internationalized the problem of the international banking system (the Bank for International Settlements – International Organization of Central Banks was created).

The international legal formalization of the status of the US dollar as a world currency took place using both normative and institutional possibilities through both contractual and legal instruments. The institutional framework for dollar expansion has been the International Monetary Fund (IMF), whose activities are controlled by the United States under the IMF's statute and internal rules.

Under the impact of the financial crisis that erupted in the relationship between European countries and the US the text of the IMF Constitution was amended including the introduction of an artificial collective – supranational – unit into the world payment relations: "Special Drawing Rights" (SDR). The institution of SDRs' has emerged in international financial law, but the potential of SDRs has not yet been realized.

Analyzing the history of the creation of the international banking system maturing of preconditions for internationalization of problems of functioning of national banks the attention should be paid to the status of the Bank for International Settlements and its activities, to various interbank associations and systems, and to the Bank Supervision Committee under the auspices of the Bank for International Settlements.

Within the framework of this direction of development of the international monetary system a new supranational currency unit the euro is emerging and the euro zone is being formed. Along with the most "old" types of securities (bills and cheques) in the international financial system there is a huge number of new types of financial instruments – securities and their derivatives. Their volume is rapidly and uncontrollably increasing. This was one of the reasons for the financial and economic crisis of 2008-2010.

The global financial and economic crisis of 2008-2010 directly raised the question of the role of the dollar as a "world currency" and exacerbated the problem of the international legal formation of alternative national currencies of other states or artificial, collective, supranational payment units of account in inter-State monetary and financial relations. The crisis has also shown that the IMF mechanism needs to be adjusted again.

The global financial and economic crisis of 2008 revealed significant deficiencies in the design and functioning of the international financial system and its legal enforcement. A crisis of this magnitude has become possible because of insufficient control by States and inter-State organizations over the flow of portfolio investment, the global credit sphere. The crisis quickly spread to a large number of countries deepening into all areas of the world economy as international financial law lacks regulatory and institutional mechanisms to prevent crises and their development.

The crisis raised the question of the adjustment of the established international financial order revealed the need for new changes in the organization of work and the IMF Constitution. It gave impetus to the formation of new institutions of international financial law. With the advent of the Bank for International Settlements (hereinafter referred to as BIS) in the institutional system of monetary and financial relations the formation of international norms began aimed at strengthening state control over national banking systems. This normative body is growing, the content of the rules is being clarified and their impact on States is becoming more and more imperative.

The IMF Agreement is the normative core of modern international monetary law. The global financial and economic crisis has raised the issue of the insufficiency of this Agreement for the effective and stable regulation of international financial relations as well as the inadequacy of some of its rules to the real needs and interests of the international community of States as a whole.

In particular the Agreement does not solve the problem of combating "unfair financial practices" (similar to "unfair trade practices" in the international trading system). There are practically no rules to combat "unfair financial practices" or very little and not enough. The global crisis has given rise to the creation and development of such an institution.

The current system of international financial organizations (intergovernmental and non-governmental) requires some adjustment in particular the competence of some of

them,as well as the decision-making mechanisms within them. In order to ensure stable and crisis-free future development of the entire global monetary and financial system a number of new organizations should be established at the regional and/or universal levels. Such organizations would take important directions of relations under state/inter-State (or supra-State) supervision in this area.

Some patterns in the development of a regional international financial system within the EU could provide a useful example and model for the creation of a single currency area. The internationalization of exchange rate and common currency issues has led to the internationalization of banking issues which has led to the establishment of a joint European Central Bank under the Maastricht EU Agreement and subsequently to issues related to the budgets of EU member states. International monetary law at the regional level has been supplemented by international banking law and international budgetary law. The institutions are structured on the basis of international legal norms (norms of international agreements) and norms contained in EU acts (directives, etc.). The EU pays attention to both substantive and international procedural law. All this requests the transfer of a significant part of functions and capabilities, i.e. a certain coordinated and conditional self-restraint of national sovereignty on these issues.

Global financial and economic crisis 2008-2010 has had a negative impact on the international financial system not only at the universal but also at the regional level, in integration associations, in particular within the EU. On the one hand it can be stated that an independent branch of EU law has been formed – "European financial law". This branch is systemically and substantively different from international monetary law as a subsector of international law. European financial law consists of many institutions: European budget law, European currency law, European banking law, European exchange law, etc. On the other hand global financial and economic crisis revealed deficiencies in the regulatory content, institutional system, gaps in European financial law. It gave impetus to the further development of all European financial law institutions and the European financial law industry as a whole.

The crisis is leading to significant shifts in the European financial order towards a more supranational regulatory approach and in international legal awareness both in Europe and in the international community of States; the further internationalization of new financial issues and the transfer of new functions from the public authorities of the participating countries to the EU bodies.

The global financial and economic crisis of 2008-2010 creates certain favorable conditions for Ukraine to become an international financial center, promotion of the Ukrainian hryvnia as a reserve currency or creation of an artificial supranational currency of payment and clearing within the framework of the Eurasian Economic Community. Taking into account the legal and international legal experience of the EU including the crisis Ukraine should initiate the creation of a regulatory complex with the conditional name "regional financial law" laying in it a supranational method of regulation.

Conclusions

The modern international financial order reflects the peculiarities of different legal families, groups of countries of different civilizational types and Western-type states. International custom played an important role in shaping international financial law. At the same time there is still much room in the international system for unilateral action by States. The rules of soft law and the activities of international financial institutions (the Paris Club of Creditors? etc.) have a significant impact on the international financial order. Methods of supranational and transnational regulation have been incorporated into the legal provision of international financial relations.

One of the main results of the global financial and economic crisis of 2008-2010 at the universal level was the creation of the "G20" – the international economic "paraorganization" consisting of countries of different civilizational types, representing all continents and regional integration groupings. The "G20" will monitor the world economy and the global monetary and financial system to prevent crises like the current crisis. The international financial order is closely linked to the implementation of the international legal framework for cooperation, equality, mutual benefit and justice. It should be noted that the current financial order does not fully comply with these

principles. The financial and economic crisis is adjusting the international financial order to move closer to these international legal principles and it is leading to changes in international legal consciousness and increasing the impact of legal awareness on the international financial order and the world order as a whole.

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UNDERSTANDING OF THE LEGAL NATURE OF A LAWSUIT IN A PROCEDURAL LAW

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Abstract. The article is deals with the problems of determination of legal nature of a lawsuit rooted in the issue of the ratio of the substantive and procedural law because depending on the scientific interpretation of the substantive and procedural scientific view of the integral or heterogeneous (double) nature of the lawsuit is formed. From the point of view of modern Ukrainian legal doctrine action is determined by a universal specialized procedural form of trials in which all cases are present. There is a dispute about the law, each of these proceedings has its own procedural structure the commencement of which is linked to the lawsuit.

Keywords: *lawsuit, procedural and legal regulation, court proceedings, exercise of the right to judicial protection, legal mechanism, method of protection.*

Introduction

Ukrainian legislation prolawsuits and guarantees the judicial form of protection of subjective rights and freedoms. According to Art. 55 of the Constitution of Ukraine and human and civil rights and freedoms are protected by the courts. The right to judicial protection is enshrined in the of Civil Procedural Code of Ukraine (hereinafter referred to as the CPCU) and other codes governing judicial proceedings. Under procedural law everyone has the right to apply to the courts for protection of his or her violated, unrecognized or disputed rights, freedoms or interests. These rights are exercised in the course of legal proceedings by means of a legal action. The content of such a right is, on the one hand, a wide range of procedural guarantees that ensure this right and, on the other hand, a number of separate procedural forms within which protection is exercised. In modern legal doctrine

lawsuits are determined by a universal specialized procedural form of litigation within which all cases in which there is a dispute of law are considered. Each of these proceedings has its own procedural structure the commencement of which is linked to the lawsuit. The problems of the lawsuit and the lawsuit form of protection of rights constantly attract attention of both scholars and practitioners (Yasynok, Kurylo, Kiriiak, Karmaza, Zapara & others, 2016, p. 82). First of all these problems relate to the legal nature of the lawsuit which is rooted in the ratio of substantive law and procedural law. Since, depending on the scientific interpretation of the substantive law and procedural lawa scientific view of the integral or heterogeneous (double) nature of the lawsuit is formed. At the same time, the research of the legal nature of a lawsuit in civil proceedings is necessary not only for theoretical interpretations but for practical activities in the judicial process also. The analysis of the legal nature of the lawsuit contributes to the effective enforcement and correct interpretation of the legal rules of procedural legislation which create opportunities for homogeneous jurisprudence and legal certainty together. In addition, the use of the term «statement of lawsuit» in administrative, economic, criminal and civil proceedings requires the development of unified approaches to the application of this category in the procedural sphere of legal relations.

The article is aimed at systematization of theoretical approaches in the understandings of the legal nature of a lawsuit in procedural law and complex analysis of the concept of a lawsuit in the science of civil procedural law.

The purpose of the research led to the need to set and solve the following tasks:

- analyze the historical way of formation of theoretical and legal approaches to the legal nature of the lawsuit in procedural law;
- to determine the prevailing approach in the modern procedural law of Ukraine to the scientific interpretation of the legal nature of the lawsuit;
- to develop the definition of the concepts of «subject of lawsuit» and «lawsuit» on the basis of the analysis of legislative changes.

Literature review.

The concept, types, elements, attributes, object, grounds and content of the lawsuit were the subject of research by such scientists as Y. Belousov, R. Gukasian, M. Gurych, A. Dobrovskyi, V. Drishliuk, P. Yeliseikin, N. Zeider, S. Ivanova, A. Kleynman, V. Komarov, O. Ivanenko, D. Luspenik, O. Isaienkova, G. Osokina, A. Paskar, Ye. Pushkar, V. Riazanovskyi, N. Tkachova, V. Tertyshchnikov, S. Fursa, M. Shtefanov, O. Shtefan, M. Yasenok, etc.

Among modern Ukrainian studies attention is drawn to the publication of A. Bratel in which he analyzed the term "lawsuit" in terms of belonging to civil procedural and substantive legal facts (Bratel, 2016, pp. 3-10); scientific and practical developments are devoted to the conceptual foundations, legal nature and principles of formation of mass (group) and derivative lawsuits, their types and procedural and legal status of the collective as a plaintiff in civil proceedings (Yasynok, Zapara, and others (2019); publication by D. Luchenko devoted to the study of the legal nature of the lawsuit in administrative proceedings (Luchenko, 2019, pp. 148-158); article O. Gankevich devoted to the study of the legal nature of the lawsuit for recognition of paternity, maternity in it the legal nature of a lawsuit is considered through the prism of classification of lawsuits on the criterion of the way of protection of civil rights and interests (Hankevych, 2017, pp. 86-88). The absence of comprehensive studies of the legal nature of the lawsuit in civil procedural law makes this research and prospects for further theoretical developments relevant.

Research methodology.

The research applied a dialectical method that allowed the definition of the lawsuit and the subject of the lawsuit. The historical and legal method gave an opportunity to analyze the historical way of formation of theoretical and legal approaches to the legal nature of the lawsuit in procedural law. From the standpoint of synergy an analysis of the links of such categories as law dispute, lawsuit, legal regulation was conducted. It allowed to identify the dynamics of the legal nature of the lawsuit. The system and structural method was used to identify the features of the lawsuit as a holistic procedural and legal institution.

Research results.

It is impossible to establish the legal nature and nature of the lawsuit without reference to theoretical legal approaches regarding the notion of a lawsuit in the science of civil procedural law.

According to the theory of legal process established in the 1960s the lawsuit was

considered a purely procedural category. It was justified by the impossibility of limiting the functions of procedural law to the regulation of coercion or the authorization of civil law and that legal disputes and that the substantive branches of law also contain numerous rules and institutions on the basis of which the implementation of substantive rules is carried out (Kaliuzhnyi, Atamanchuk, 2015, p. 39). The proponents of these scientific positions considered the lawsuit solely as a means of violating the activities of the judicial body. Considering that the formation of the theory of legal process took place against the background of the separation of the first procedural branches as independent, the appearance of such views on the legal nature of the lawsuit was promising for the development of the science of civil procedural law. It should be considered that these views in some way reflected the socio-economic State system and had to conform to the prevailing socialist one.

Together with purely procedural views on the legal nature of the lawsuit there were other views on the content of the legal nature of the lawsuit (the so-called "dualist theory" (Bezliudko, Bychkova, Bobryk, 2006, p. 177) according to which the lawsuit was considered as a legal category inherent in the separate substantive and procedural law. This theory was based on the work of M. Gurvych "The right to lawsuit" which was published in 1949 in the content of which he noted that he was considering "the right to lawsuit exclusively in a procedural context, guided by actual jurisprudence and the material content of the lawsuit is completely separate from it" (Gurvych, 1949, p. 45). In the final provisions of that work the scientist substantiated the new meaning of the concept of "right to lawsuit" in accordance with the Soviet ideology. It is the procedural aspects of the judicial process and the need to distinguish the right of action from the substantive content and the content of the legitimization of the caseю He believed that "mixing these concepts entails distortion of the Soviet law, its violation" (Gurvych, 1949, p.211) From the modern point of view such approaches are not considered to be able. Since over time theoretical and legal research has progressed significantly against the background of fundamental changes in legislation but it may pay attention to the context of the retrospective analysis of the legal institution of the lawsuit as well as the theory of legal process in general within which such views were formed.

Most modern scholars consider the lawsuit as a unified concept for the substantive and procedural law which corresponds to monistic theory (Bezliudko, Bychkova, Bobryk, 2006, p. 176) according to which the lawsuit has two parties – substantive and procedural-legal. As a supporter of this view M. Shtefan believes that "the essence of the lawsuit can be determined correctly only taking into account its substantive and procedural-legal sides which relate to each other as the above mentioned areas of law, the rules of which these sides to the lawsuit are settled" (Shtefan, 2001, p. 325). Sharing this theoretical approach we consider the lawsuit to be a whole procedural-legal institution containing the substantive content and when applying to the court the relations acquire a civil-procedural character. From a practical point of view, the action is a civil procedural form ensuring the implementation of the rules of substantive law, specially authorized by the State judicial body. The plaintiff applies to the court for the purpose of legal proceedings. He formulates his lawsuit in a statement of lawsuit on the basis of such an application begins procedural activity which can be considered as the essence of the procedural-legal side of the lawsuit. At the same time, as noted by I. Bezliudko, S. Bychkova, V. Bobryk, etc. "the primary trigger for a person to apply for judicial protection is the fact of violation, non-recognition or challenge of his rights and legitimate interests which are in the plane of substantive legal regulation. The lawsuit arises and is realized within the law enforcement relations which are essentially substantive. With an appeal to the court they become the subject of procedural activity but do not change their material content. Thus the content of the lawsuit is affected by the essence of the subjective substantive law on which the dispute arises" (Bezliudko, Bychkova, Bobryk, 2006, p. 178). The criterion of personal interest is the violation of his rights and legitimate interests, the presence of legal conflict on the principle of "no violation of interest – no lawsuit" as S. Vasiliev notes (Vasyliev, 2015, p. 165]. At the same time another group of the researchers as for category of "lawsuit production" in modern procedural doctrine and practice comes to the conclusion that "lawsuit

– is an appeal of a person to the court for the purpose of notifying the state about the violated right, freedom or interest with a request for legal protection" (Yasynok, Kurylo, & others, 2016, p. 83), the authors believe that "lawsuit proceeding can be called protective or restorative production". At the same time, the authors remark that "historically it happened that the appeal to the court got the name "lawsuit" from the word "to sue", that is, to make lawsuits, to make a lawsuit (lat. actio)". They highlight the objective side of the suit like the legal regulator of contentious public relations between natural and legal persons, between these persons and the State in matters of protection of rights, freedoms and interests. There is the obligation of the State, determined by the Constitution, on the consideration of the lawsuit under a special procedure which is called a court session and the subjective side of the lawsuit as a substantive lawsuit of the plaintiff to the defendant (Yasynok, Kurylo, & others, 2016, p. 83). A. Bratel's viewing the lawsuit as a "civil procedural and substantive legal fact, he attributes the lawsuit to procedural phenomena which inextricably combines procedural and substantive legal components thus being in the plane of legal facts". He considers the completed legal facts of the substantive content as preconditions for the case seeing the completeness of the legal facts in that the disputed relationship at the time of the application to the court was not resolved peacefully. At the same time, bringing a lawsuit in court A. Bratel considers as a "process-building legal fact which determines the emergence of civil procedural legal relations" (Bratel, 2016, p. 9). Thus, in modern legal theories the legal nature of the lawsuit is mainly examined as a double requirement – for the court and the defendant; but there is a view of the lawsuit as a communication of the State in the person of the authorized body for the administration of justice – the court, a violation of a right, freedom or interest to seek a remedy. In addition, the lawsuit is treated as a procedural and substantive legal fact. Thus, while there is disagreement as to the nature of the lawsuit all the studies cited agree that the lawsuit is an integral procedural and legal institution with different views on the relationship of the structural characteristics of the institution.

Taking into account the scientific discussion on understanding the legal nature of the lawsuit various definitions of the concept of lawsuit have been formed in the science of procedural law: thus, the lawsuit is defined as "application to the court for the protection of the violated or disputed right which was caused by the actions or omissions of a specific person to whom the demands for the termination of the offence are made" (Yasynok, Kurylo, Kiriiak, Karmaza, Zapara & others, 2016, c. 389). V. Tertyshnikov defines the lawsuit as a "substantive lawsuit addressed to the defendant by the court for renewal of the violated or disputed right" (Tertyshnik, 2002, p. 128). There is also a definition of lawsuit as «the lawsuits of the interested person based on the disputed substantive legal relationships on the protection of his or her legal interest or that of another person subject to consideration and decision in the manner established by law» (Rezvorovych, Yunin, Yunina & others, 2020, p. 100). From these definitions, there is a homogeneous approach to the understanding of the lawsuit as the content of the lawsuit or recourse to the court while the lawsuit is treated as a procedural form of such treatment. Art. 175 of the CPCU does not contain a general definition of the lawsuit but it has found a fix to the detailed settlement of issues of its content, such as the paragraph 4.2 of Section 2 of Art.175 CPCU defines the content of lawsuits: as a way (means) of protection of rights or interests, provided by law or contract or other way (means) of protection of rights and interests, not contradicting the law which the plaintiff requests the court to define in the decision; if the lawsuit is filed against several defendants - the content of the lawsuit for each of them. Previous version of the paragraph 3 of Section 2, of Art. 199 of the CPCU contained only an indication that the statement of lawsuit should indicate the content of the lawsuit, the identical wording was contained in Section 3 of Art. 137 of the CPCU adopted in 1963 (Civil Procedure Code of Ukraine. Approved by the Law dated 18.07.1963 of the Government of Ukraine).

Changes in the legislative regulation entail changes in scientific and theoretical approaches. Since 2017 significant changes have been made to the judicial system in terms of its structural and functional characteristics and the modification of

individual proceedings and procedures. These changes were embodied in the Laws of Ukraine "On Amendments to the Constitution of Ukraine (Regarding Justice)" dated 02.06.2016 No. 1401, "On Judicial Organization and Status of Judges" dated 02.06.2016 No. 1402, "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts". They significantly expanded the procedural tools and theoretical categories of lawsuit proceedings. Among the most significant publication of D. Luspenik highlights "diversification of lawsuit production on the simplified and general order increasing the importance of preparatory proceedings in the structure of lawsuit production, etc." (Luspenyk, 2018).

In our view, the changes that have taken place in Ukrainian legislation fully correspond to the best practices in the civil, economic and administrative justice in the European region. These changes are designed to ensure compliance of domestic mechanisms of protection violated, unrecognized and disputed rights, freedoms and interests international standards of fair trial.

Conclusions

Modern legislative regulation of the content of the statement of lawsuit has been clarified and expanded in the latest version of the Civil Procedural Code of Ukraine compared with the previous legislative regulation, the list of requirements to the content of the lawsuit in particular because the lawsuitant must determine the manner (means) of protection of rights or interests provided by law or contract or other means (method of solution). From the content of Art. 175 of the Civil Procedural Code of Ukraine undoubtedly sees the relevance of the theoretical approach which considers the lawsuit as two substantively combined requirements – substantive and procedural. This position is confirmed by the case law, for example in court decisions (Decision on case No. 755/6927/18 dated June 4, 2020) and can be seen in the treatment of the lawsuit in civil proceedings as a written and addressed written lawsuit to the court, a procedural requirement of a substantive nature (to protect an unrecognized, contested or violated right). That is why we propose to consider the subject of the action as a complex substantive and procedural requirement, the material content of which is disclosed through the substantive lawsuit of the plaintiff against the defendant in respect of which the plaintiff requests the court decision. This material content of the plaintiff's lawsuit manifests itself in the substantive interest – to receive a certain material benefit. The procedural requirement relates to the realization of a person's right to judicial protection which must take place in the form of an application to the court in accordance with the procedure established by the procedural legislation respecting the requirements regarding the form and content of the lawsuit and attached documents. We believe that the lawsiut should be considered as an integral procedural and legal institution containing the substantive content and when applying to the court the relations acquire a procedural character.

The given approach to understanding the legal nature of the lawsuit in procedural law leaves the way for further scientific research into the impact of the processes of legal convergence on the principles of the institution of lawsuit, suit proceedings in civil proceedings, theoretical and legal understandings of the prerequisites of the right of action, etc.

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GENESIS OF JUDICIAL PRACTICE IN THE MATTER OF PROCEDURAL REGISTRATION AUTHORIZED PROSECUTOR AND INVESTIGATOR IN CRIMINAL PROCEEDINGS

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Abstract. The Article deals with the one of the evidentiary problems formulated at the practical level during the judicial interpretation of the provisions of the criminal procedural law on documenting the powers of the investigator and prosecutor in criminal proceedings. The relevance of this question stems from its correlation with the evaluation of the evidence, namely its admissibility taking into account whether it is collected by an authorized person. The research found that the primary question of the judicial community's interpretation of the provisions of Articles 36, 37 and 110 of the CPCU of Ukraine was set out in a decision of the Joint Chamber of the Cassation Criminal Court of the Supreme Court whose legal conclusion is binding on all national courts taking into account the way in which the law establishes the unity of judicial practice. It was noted that the proposed way of harmonizing the jurisprudence on this matter could not be achieved since subsequent examples of the jurisprudence of the same court have drawn conflicting legal conclusions as well as attempts to depart from the suggested vector of understanding the proper discharge of powers of the prosecutor and investigator in criminal proceedings by decree. Also in the Article the author notes that the outlined local legal problem is evidence of the need for conceptual rethinking of the conservative understanding of the procedural form of the reformed domestic criminal process.

Keywords: *prosecutor, investigator, decree, assignment, judicial practice, authority, evaluation of evidence, admissibility of evidence.*

Introduction

Prooving is the main type of procedural activity of subjects in criminal proceedings. Its content consists of three main functions: collection, verification and evaluation of evidence. It is on the basis of the evidence that the question of guilt or innocence of a person is decided in the future criminal proceedings, and therefore they are the substance of the right to a fair trial. It is clear that each of these three stages of evidence is a State activity and is therefore clearly and unambiguously regulated by procedural legislation. The mandatory method of regulating criminal procedural legal relations is questionable, but has proved to be effective and to achieve maximum results in balancing and streamlining legal relations in the field of criminal procedure.

Pursuant to art. 92 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPCU) imposes the burden of proof on the investigator, the procurator and the victim in the cases established by this Code. Consequently, in the course of criminal proceedings the investigator and the prosecutor collect data which subject to their qualitative characteristics – membership and admissibility, acquire the status of evidence and are grounds for establishing the existence or absence of legally significant facts. In turn, the affiliation of the evidence determines their ability to confirm or refute circumstances relevant to the case whereas the admissibility of the evidence is their characterization in terms of obtaining data in accordance with the procedure established by the CPCU. The procedure established by the CPCU for obtaining evidence provides that data will be given the status of evidence when they are collected, namely: by a person authorized to do so by the source provided by law and in the manner prescribed by criminal procedural law.

The question of authorized subjects for the collection of evidence has always been of interest to doctrinal and practical research. The adoption of the CPCU in 2012 fundamentally transformed the initial stage of criminal proceedings. In accordance with preliminary procedural regulations, the reformed modern criminal procedure initiation of criminal proceedings has been modified to entering information on the commission of a criminal offence in the URPTI (hereinafter referred to as URPTI). Article 214 of the CPCU provides that an investigator namely a person conducting an initial inquiry or a procurator shall, notify him of the commission of a criminal offence without delay, but not later than 24 hours after the submission of an application or after he has himself identified the circumstances from any source; persons who may testify that a criminal offence has been committed must enter the relevant information in the URPTI, initiate an investigation and provide the applicant with an extract from the URPTI within 24 hours of the entry of such information. The investigator conducting the pre-trial investigation is determined by the head of the pre-trial investigation body and the investigator is determined by the head of the body conducting the initial inquiry in the absence of a unit of inquiry by the head of the pre-trial investigation body. With regard to the designation of a prosecutor exercising the powers of a prosecutor in a specific criminal proceeding under Article it is determined by the head of the relevant procuratorial body after the commencement of pre-trial investigations.

This shows that the pre-trial investigation begins when the relevant information is entered into the URPTI but the evidence may be collected during the investigation (and in practical terms it happens in the vast majority of proceedings) by the prosecutor and the investigator. This process is entrusted to the heads of the respective structures. In such circumstances the question of documenting the determination of the powers of a prosecutor and investigator in criminal proceedings entrusted with the conduct of a pre-trial investigation is relevant. In fact, the CPCU in force binds it to a legally significant fact – the entry of information into the URPTI as evidenced by the extract from this register. There is no regulation on the execution of other procedural documents. Thus, the question of the competence of the particular prosecutor and the investigator who collects the evidence is correlated with the subsequent determination of the admissibility of the evidence from the point of view of the relevant evidentiary subject.

Analysis of recent studies and publications. Of course, in 2012 the updating of the criminal procedure legislation has stimulated a scientific and practical search for the vast majority of institutions, categories and concepts of criminal procedure as they all need a fundamental rethinking in view of the significant changes in the regulation of criminal proceedings in particular the new paradigm of the criminal procedural law. Many procedural specialists in their analytical studies have turned to the powers of the procurator and investigator in criminal proceedings when such activities are regulated by the new CPCU.

So, V. Popeliushko (Popeliushko, 2013, p. 4), Yu. Spuskaniuk (Spuskaniuk, 2012, pp. 89-92), M. Chornousko (Chornousko, 2016), O. Popovych (Popovych, 2015), M. Pohoretskyi (Pohoretskyi, pp. 86-95) devoted their work to questions of procedural powers of the prosecutor in modern criminal proceedings.

As an analyst with practical experience O. Babikov addressed problematic issues in determining the powers of the prosecutor in supervising the observance of the law during the pre-trial investigation (Babikov, 2015).

Scientist I. Hloviuk dedicated her monographic work "Criminal procedural functions: theory, methodology and practice of implementation on the basis of the provisions of the Criminal Procedure Code of Ukraine 2012" to these problems which included the implementation of the prosecutor's functions in the exercise of the powers of evidence (Hloviuk, 2015).

At the level of the thesis study I. Rohatiuk discussed the problem of the theoretical, legal and practical nature of the criminal procedural activity of the prosecutor in pre-trial investigation (Rohatiuk, 2018).

A. Tumaniants, V. Kolodchyn in a general monograph analyzed the issues of the prosecutor's powers in the court of first instance (Kolodchyn, Tumaniants, 2016).

Despite this question about the procedural formality of the investigator's and prosecutor's powers in criminal proceedings in order to collect admissible evidence court practice has

shown. This therefore requires scientific reflection and doctrinal formulation of the legal problem in this respect.

Methodology of the research. In the course of this study to generalize and analyze information, arguments and statements, as well as to form conclusions two methods were used, namely: formal-logical (dogmatic) – to establish the scope and content of concepts "prosecutor", "investigator", "evidence", "admissibility of evidence", "decree", "order" and other definitions within the scope of the research subject; system-structural – during the considering the procedural status of the prosecutor and investigator in criminal proceedings.

The empirical basis of the study was the decisions of the Cassation Criminal Court of the Supreme Court (hereinafter – the CCCtSC); the practice of this court, as well as the author's own experience during the period of practical work in the apparatus and scientific advisor to the Supreme Court.

Presentation of the main research material. For the first time the question of the procedural formalization of the powers of the prosecutor and the investigator in criminal proceedings in judicial practice was initiated by the judicial board of the CCCtSC in the ruling of the judicial board of 17 June 2020 on the transfer of criminal proceedings No 754/7061/15 to review of the United Chamber of CCCtSC (Decision on June 17, 2020; No 754/7061/15). Reference was made to the need for unity of jurisprudence on this issue as there were different legal positions on the issue of vesting powers in the prosecutor (a group of prosecutors) in a particular criminal proceeding. In particular, by a decision of the judicial board of the Second Judicial Chamber of the CCCtSC of 19 April 2018, it was noted that based on the provisions of the Criminal Procedure Law the decision on the appointment of a prosecutor is given to a specific prosecutor (group of prosecutors) powers provided for in art. 36 of the CPCU, in criminal proceedings, is mandatory as is the signature of the person who issued it (Judgment on 19, 2018; No 754/7062/15-k).

At the same time, in a decision of 19 May 2020, the judicial board of the First Chamber of the CCCtSC came to a different legal position on the application of the provisions of art. 36 of the CPCU (Judgment on May, 19, 2020; No 490/10025/17). Specifically, the judicial board did not accept that the absence of a determination of the investigator or prosecutor in itself meant that the investigator or prosecutor did not have the appropriate powers. The judicial board concluded that the CPCU does not require that every decision taken in connection with the investigation of a criminal case be in the form of a ruling.

As a result of the consideration of this issue by the Joint Chamber of the CCCtSC formulated a legal opinion in a decision dated 22 February 2021 according to which the content of Articles 36, 37, 110 of the CPCU the decision on appointment (determination) of the prosecutor who will exercise the powers of the prosecutor in criminal proceedings and, if necessary, the teams of prosecutors who will exercise the powers of the prosecutors in a specific criminal proceeding must necessarily take the form of a ruling which should be included in the pre-trial investigation file to confirm the existence of authority. Such a decision must meet the requirements of the CPCU for a procedural decision in the form of a decision including the signature of the official who issued it. The absence of the said decision in the pre-trial investigation file or its failure to be signed by the head of the relevant prosecutor's office makes inadmissible the evidence gathered during the pre-trial investigation as assembled under the supervision and procedural guidance of the prosecutor (prosecutors) who had no legal authority to do so (Decree on February 22, 2021, 754/7061/15).

This is evidence that the said judicial decision has established a basis and a vector for further development of the question of the admissibility of evidence, taking into account the proper procedural discharge of the powers of the procurator and investigator in criminal proceedings.

Furthermore, in view of the following jurisprudence of the Joint Chamber of the CCCtSC it was reasonable to assert the continuity and permanence of jurisprudence in this field. Thus, on 24 May 2021 the criminal proceeding No 640/5023/19 formulated the legal conclusion on the observance of the rules of competence and the influence of their violations during the pre-trial investigation on the admissibility of evidence. In that judgement on a case-by-case basis the court found that the Prosecutor General, the Head of the Regional Prosecutor's Office, their first deputies and deputies had exercised the powers provided for in art. 36, Section 5. of

the CPCU, the existence of grounds must be substantiated in a corresponding procedural decision - a decision by the Prosecutor General and the head of the regional Prosecutor's office; their first deputies and deputies to assign to the pre-trial investigation of a criminal offence another body of pre-trial investigation, which must meet the requirements of art. 110 of the CCCtSC (Judgment on May, 24, 2021; No 640/5023/19).

Further, there have been attempts in the judicial practice to derogate from the opinion set out in the decision of the Joint Chamber of the CCCtSC on February 22, 2021, and expressing the idea that an authorized investigator could be identified on the basis of an assignment from the Chief of Investigations. At the same time the similarity of legal relations in these criminal proceedings was substantiated despite the different procedural subjects (prosecutor and investigator) claiming that the legislative technique of regulating the powers of the investigator and the prosecutor are identical. In particular, criminal proceeding No 663/267/19 was referred to the Joint Chamber of the CCCtSC on May, 12, 2021 which provides arguments for the opposite interpretation of the relevant provisions of the Criminal Procedure Law on the procedural confirmation of the powers of the prosecutor and the investigator to carry out the pre-trial investigation (Decision on May 12, 2021; No 663/267/19). Specifically, it was alleged that in order for the head of the pre-trial investigation body to determine a specific investigator (investigators) in the form of a letter of instruction containing the same details as the order, in particular: the position of the head of the pre-trial investigation body, the time and place of drawing up the order, the reasons for its issuance (Articles 39 and 214 of the CPCU), the number of the criminal proceedings entered in the URPTI, preliminary legal qualification, and instructions on conducting quality, an effective and expeditious pre-trial investigation (as in this case) is sufficient to empower such an investigator to conduct pre-trial investigation in a specific criminal proceeding. So that is the written form of decision (not in the form of an order) does not show that the pre-trial investigation was carried out by an unauthorized person and that the evidence obtained during such an investigation is inadmissible on these grounds.

The Joint Chamber of the CCCtSC returned criminal proceedings to the judicial board by decision of 10 June 2021. They having found unconvincing the arguments of the judicial board in the decision to transfer criminal proceedings for consideration by the Joint Chamber on the similarity of the rules governing the determination of the prosecutor and the investigator. Whereas the use of the same legal technique in the text of the law is only a way of establishing regulations governing different legal relationships. Therefore, the way of legal regulation is not evidence of uniformity of procedural statuses and powers (Decision on June 10, 2021; No 663/267/19).

The final decision in this criminal proceeding was made by a judicial board on 25 August 2021 which stated that the authority of the head of the pre-trial investigation body to determine the investigator (investigators) conducting the pre-trial investigation, in the form of a written «instruction» containing the same details as the decision, in particular: the position of the head of the pre-trial investigation body, the time and place of drawing up the order, the grounds for its issuance (Articles 39, 214 CPCU), the number of criminal proceedings, preliminary legal qualification and instructions for conducting a high-quality, efficient and expeditious pre-trial investigation (as in this case) which does not contradict the requirements of the Article. The CPCU provides such an investigator with sufficient authority to conduct pre-trial investigations in specific criminal proceedings. It is this written form of decision (not an order) that does not show that the pre-trial investigation was carried out by an unauthorized person and that the evidence obtained during the investigation is inadmissible on these grounds (Judgment on August, 25, 2021; No 663/267/19).

This shows that despite the existence of a legal opinion on the proper form of the procedural decision regarding the powers of the prosecutor and the investigator in criminal proceedings the judicial board presented the opposite legal position on the matter subsequently in fact during the cassation proceedings.

However, there were no attempts to depart from the initial legal opinion in the decision of

the Joint Chamber of the CCCtSC on 22 February 2021. In order to consider exactly such a similar issue, on 12 October 2021 the judicial board referred the next criminal proceedings No 344/2995/15 to the Joint Chamber of the CCCtSC for consideration which in turn by resolution on 24 December 2021, returned it to the College of Judges on the grounds of lack of grounds for derogation from the stated legal position (Decision on October, 12, 2022, decision on Decemder, 24, 2021; No 344/2995/15-k).

The final issue in this criminal proceedings was resolved in the decision of the judicial board of 1 November 2021 which found that the absence of a decision on the appointment of prosecutors in charge of the pre-trial investigation did not violate the rights and freedoms of the convicted person in any way and did not affect the fairness of the trial in general (Judgment on November, 01, 2021; No 344/2995/15-k).

Discussion of the research results. In analysing such facts of jurisprudence it is understood that the initial legal opinion on due process powers of the prosecutor and the investigator in criminal proceedings is formulated in the decision of the Joint Chamber of the CCCtSC on 22 February 2021. It was noted that such a form is explicitly referred to as an order, and not an instruction from the head of the investigation which did not ensure the unity of the jurisprudence in the said matter. In the event that the CCCtSC returned the relevant criminal proceedings and did not resort to a mechanism of derogation from the legal opinion, the judicial board formulated their legal position on each specific criminal proceeding independently. At the same time the method of ensuring the unity of jurisprudence by the Supreme Court through the mechanism of formation of legal conclusions by the Joint Chamber of the CCCtSC taking into account the formation of competing legal conclusions by the judicial board of the CCCtSC has been found to be ineffective. This legal situation should be considered evidence of an imbalance in the evaluation of evidence in terms of the rules of admissibility as well as the lack of a balanced answer to the question of the proper procedural form of powers of the prosecutor and investigator in criminal proceedings. The reasons why the judicial community allows different interpretations of the legislative structures of the CPCU with regard to the powers of the prosecutor and investigator should be recognized the application of different methods of interpretation: from literal, conservative focusing on formal compliance with the «letter of the law» to expansive which in some cases takes into account the mandatory method is unacceptable.

Conclusions

The conducted analytical intelligence convinces that the conceptual changes of the CPCU on the initial stage of pre-trial investigation have influenced the substance in understanding the discharge of powers of the prosecutor and investigator in criminal proceedings which has an inescapable impact on the admissibility of evidence. The arguments put forward by judicial practitioners in specific legal positions in court decisions in favour of the mandatory determination of the powers of the prosecutor and the investigator by decree are also to be criticized exclusively and should equally be considered valid. It is impossible to authorize the prosecutor and the investigator to collect evidence by proxy. An important outcome of this research was the highlighting and coverage of the existing legal collapse of a local practical issue, which may be evidence of either a rethinking of the evidentiary activities of the prosecutor and investigator in domestic criminal proceedings or to provide the jurisprudence with doctrinally motivated ideas for the selection of effective ways of evaluating evidence.

This Article convinces in prospect of further researches of the given issue which is due to absence of doctrinal basis in certain formulated jurisprudence of the problem: the decision vs task. It is obvious that this decision focuses a more in-depth aspect of the conflicting understanding of the procedural form of the procurator’s and investigator’s powers under the new procedural format of the CPCU.

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FEATURES OF DIFFERENTIAL FORMS OF CRIMINAL PROCEEDINGS IN UKRAINE

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Abstract. The effectiveness of criminal proceedings depends on their ability to achieve their goals and objectives. It is impossible to establish the essential circumstances of a criminal offence, to bring the perpetrator to criminal responsibility, or to compensate the victim for the harm caused without the activity being carried out in the procedural form prescribed by law, and is a way of implementing criminal law. The differentiation in criminal procedure determines the systemic and structural organization of modern criminal proceedings, which is complex, significantly different from the previous one and requires a thorough scientific analysis.

The purpose of the research is to develop conceptual provisions of differential forms of criminal procedure in the formal and structural aspect on the basis of a systematic analysis of the procedural form of criminal proceedings. The object of the research is the system of criminal procedure in Ukraine. The methodological basis of the research is a system of philosophical, general scientific and special methods of scientific knowledge which are typical for legal science. The application of these methods ensured that the findings were correct and that the objectives were achieved.

Keywords: *differential forms of criminal proceedings, criminal procedural form, differentiation, unification, differentiation criteria.*

Introduction

All criminal procedural activities are carried out continuously within the framework of the procedure provided for by law which is called the procedural form of criminal proceedings. The extent to which these activities are fully and thoroughly regulated largely determines success in achieving the objectives of criminal proceedings. The current criminal process is characterized not by a trend towards unification but rather by a differentiation of the criminal procedural form. In view of the above-mentioned problem of research into the differentiation forms of criminal procedure acquires particular urgency.

Analysis of recent studies and publications shows that consideration of the problem of criminal procedural form and its differentiation is impossible without a significant legacy left by prominent scientists of the past, namely: S. Viktorskyi, M. Davydov, M. Dukhovskyi, A. Koni, M. Korkunov, P. Lublinskyi, I. Mykhailovskyi, S. Muromtsev, V. Riazanovskyi, I. Foynytskyi, etc.

Clarification of the essence of differentiation of criminal procedure implies the need to refer to scientific works on general theoretical issues of legal process of D. Bakhraha, V. Beliaiev, I. Benedyk, V. Gorshenov, O. Lukianova, Ye. Mamai, M. Maksiutin, P. Nedbailo, S. Oleinikov, A. Pavlushina, I. Pogribnyi, V. Protasov, V. Sorokina and others.

Presentation of the main research material. Among the problems that attract the attention of domestic scientists and practitioners a special place is given to the issue of ways of further development of the criminal process and the role of differential forms in it. In order to properly understand the nature of the problem and find possible solutions it is necessary first to clarify the content and meaning of the procedural form.

V. Trofymenko emphasizes that "the problem of differentiation of criminal procedural form has a long research history. However, because of its complexity and

multidimensional nature despite the considerable period of its scientific development it refers to those who receive a diametrically opposite solution in different periods of the development of legal science – from categorical denial (in particular the simplification of certain procedural forms) before support and observation, feasibility and rationale for further expansion" (Trofymenko, 2012b, p. 74).

In general legal theory procedural form is understood as a set of homogeneous procedural requirements imposed on the parties to a process and directed towards a certain substantive result. In other words the procedural form is a special legal structure embodying the principles of the most appropriate procedure for the exercise of certain powers (Nedbailo, Gorshenev, 1976, p. 14). This definition may claim to be uniform for all types of legal process not just for the activities of jurisdictional bodies as it embodies the basic features of the concept. However, as to criminal proceedings it may be specified taking into account the specific features of this type of legal process which will make it possible to identify its specific features in this area of State activity (Trofymenko, 2012c, 202).

Attention should be drawn to the scientific views of M. Yakub who "identified the procedural form with the executive procedure of the case and characterized it as the procedure, principles and system of criminal procedure activity" (Yakub, 1981, p. 11).

The most complete and accurate definition of the essence of criminal procedure is given by M. Strogovych. According to the scientist this form is the procedure established by the "law of criminal procedure for criminal proceedings, that is the sequence of stages and conditions for the transfer of a case from one stage to another; the general conditions governing proceedings at a particular stage; the grounds conditions and procedure for the conduct of investigative and judicial actions in which competent authorities and officials exercise their powers and citizens exercise their rights and duties; content and form of decisions that may be issued in a criminal case'' (Strohovych, 1968, p. 51).

As S. Melnyk noted the "procedural form in criminal proceedings is defined by criminal procedural law and the statutory system of procedural institutions and rules, the sequence of stages of criminal procedure and the essence of procedural requirements that are proposed to participants in criminal proceedings. The form establish: a) the basis of the most appropriate procedure for the exercise of their powers; b) the manner and duration of the proceedings relating to the collection, examination and evaluation of evidence; c) the procedure for making and processing decisions; r) the legal regime of the court, the investigative bodies of the procuratorial supervision and the conditions created for the conduct of a criminal case; d) the realization of the rights of all parties to the proceedings; e) the guarantee of the desired material and legal result" (Melnyk, 2001, pp. 6-7). There is also a scientific conclusion that the criminal procedure form is a legal regime of criminal procedural activity which includes the fulfilment of certain procedural conditions, legal procedures and safeguards in criminal proceedings (Hroshevyi, 2010, p. 11).

Supporting the opinion of V. Trofymenko it should be noted that "the criminal procedural form is a set of legal procedures, conditions and guarantees established by law that ensure the solution of the tasks of criminal proceedings. In this case the procedures shall be understood as the sequence provided by the law of carrying out both individual procedural actions and their aggregates which constitute the content of separate proceedings and stages of criminal proceedings" (Trofymenko, 2012c, p. 205).

It is known that criminal procedure is a type of cognitive activity differing in its content and objectives. The criminal procedural form which has accumulated many years of experience in combating crime is based primarily on general methodological patterns of this educational activity.

Complexity and detail of the criminal procedural form are due to the specific tasks of the criminal process in particular the complexity of the activities to establish the factual circumstances of the criminal proceedings, the need to ensure maximum guarantees of individual rights and freedoms in criminal proceedings and the legality and reasonableness of all criminal proceedings and decisions. Therefore, the procedure for the conduct of criminal proceedings provides for the movement of criminal proceedings in stages, each of which has its own form. This facilitates the task of a particular stage and provides an opportunity to verify the validity of the conclusions and decisions taken at the

previous stage. The procedural form ensures the so-called admissibility of evidence. The violation of the procedural form of obtaining evidence therefore renders the evidence void (Code of Criminal Procedure, art. 85, part 1).

The procedural form is a specific kind of State activity and its value is that it creates a detailed, stable, strictly mandatory, stable legal regime for the conduct of criminal proceedings, consistent with the objectives and principles of criminal procedure. It is therefore inadmissible to distinguish from the requirements of procedural law and strict observance of the procedural form is a prerequisite for the legality of actions and decisions taken in proceedings.

In summary it should be noted that the importance of the procedural form lies in the fact that it provides a regime of legality in criminal proceedings, creates conditions for the adoption of lawful, well-founded decisions in criminal proceedings, guarantees the protection of the rights and legitimate interests of persons involved in the proceedings.

The conducted analysis of scientific views of scientists allowed to determine the general content of the important subject of research of the term "criminal procedural form". So it is a set of legally established uniform procedural requirements (conditions) that determine the rules of behavior of participants in criminal proceedings, the grounds for conducting procedural actions aimed at achieving the objectives of the criminal-legal result.

In this connection, V. Trofymenko believes that "procedural conditions are normative provisions that establish the grounds for the conduct of procedural actions, the range of participants, the time frame, rights and obligations of the persons involved in them. Criminal procedural guarantees are special legal means to ensure the realization of the rights and legitimate interests of the participants of the proceedings as well as their performance of procedural obligations. These elements of procedural form in their abstract expression are inherent in any type of criminal process. However, their specific content differs significantly in different procedural systems allowing to determine the typology of the process, to give its characteristic features" (Trofymenko, 2012c, p. 205).

Criminal procedural form has two characteristics: unity and differentiation which in their content are opposite but sometimes are in a dialectical correlation.

The rational achievement of the objectives of criminal proceedings is ensured by the differentiation of the criminal procedure form. It should be noted that differentiation must follow certain rules otherwise it may lead either to undue simplification of the procedural form by reducing the procedural guarantees of individual rights or to the complexity of the justice process which is unable to achieve the objectives of criminal proceedings within a reasonable time.

Scientific development of the problem of criminal procedural form implies the importance of substantiation of the most appropriate procedure of criminal proceedings, its differentiation in the light of the public and private interests it protects, the principles of proportionality, rationality and procedural economy which create optimal conditions to ensure the effective performance of its tasks together with the other pillars of criminal procedure.

If we look at the historical basis of this issue it should be noted that a heated discussion between the supporters of the unity of the procedural form on the one hand and the supporters of its differentiation on the other took place in the 1980s of the twentieth century in which won the advocates of differentiation.

Differentiation is a term borrowed from criminal procedure. In the theory of the system of differentiation – (fr. differentiation, from Lat. differentia – difference, difference) is the side of the process of development associated with division, dismemberment (Philosophical encyclopedic dictionary, 1983).

The idea of differentiation of the procedural form became widely implemented in the current Code of Criminal Procedure of Ukraine (Teteriannyk, 2017, p. 140). The following criteria set by the drafters of the draft law prior to the definition of the procedural forms may be noted in the summary of its provisions: public danger; specificity of the subject of a socially dangerous act; respect for the sovereignty of the foreign State; the need for speedy judicial protection of the rights, freedoms and legitimate interests of participants in criminal procedural relations; the balance in criminal proceedings between State authority and dispositive power. In accordance with these criteria, the new Code of Criminal Procedure of Ukraine provides for

such differentiation of criminal procedural forms as: criminal proceedings; special procedures for criminal proceedings: agreement between a procurator and a suspect who is accused of an offence; agreement on conciliation between the victim and the suspect, the accused; criminal proceedings in the form of private prosecution; criminal proceedings containing State secrets; judicial proceedings on the basis of the examination by the investigating judge of the investigator's submissions; the procurator on the conduct of investigative actions and the application of measures to ensure criminal proceedings, as well as the consideration of complaints by participants in criminal proceedings against the actions and decisions of the investigator and the procurator; reduced judicial investigation; International legal assistance in legal proceedings; trial by jury, etc.

M. Manova is convinced that differentiation of criminal procedure form is carried out at the level of separate procedural proceedings when there are significant differences in the degree of complexity of the procedural form of the same proceedings which leads to the design of a self-contained procedure. The differences that exist in modern investigative and judicial procedures in individual categories of criminal cases tend to be single features which cannot be considered as manifestations of a differentiation of the main form of the relevant proceeding (Manova, 2005, p. 14).

There is no need to argue that the problem of differentiation of criminal procedural form is rather complex and multifaceted and its solution should be carried out on the appropriate criteria (grounds) ensuring optimum, the temporality and efficiency of criminal proceedings. And therefore the accomplishment of its tasks which have a normative basis and with this in min, determine the direction of activities of all participants (Trofymenko, 2017, p. 75).

Supporting the position of the proponents of differentiation of criminal procedure form, V. Trofymenko argued its grounds. Firstly the existence of various forms of criminal proceedings creates real prerequisites for the effective protection of the rights and legitimate interests of the parties to the proceedings; secondly it provides resource savings; thirdly it rationalizes and optimizes production; fourthly in rare cases contributes to the normalization of the psychological situation the settlement of the criminal law conflict (Trofymenko, 2012a).

G. Vlasova believes that "the differentiation of criminal proceedings consists in the existence on the one hand of proceedings carried out in a shorter period of time on the other hand of proceedings in which there are additional guarantees for establishing the truth fully complies with the purpose of criminal proceedings. And the existence of summary proceedings is possible and does not contradict any essential basis of criminal proceedings" (Vlasova, 2015, p. 156).

Having analyzed the scientific views regarding the theoretical substantiation of the definition of "differentiation of criminal procedural form" we will try to give our own definition of this term. Thus, differentiation of the criminal procedural form should be understood to mean such a structure of criminal proceedings in which there are procedural forms in addition to the usual procedure. They provide both for the simplification of the procedure for criminal offences of minor social danger and for its complications in the most dangerous proceedings. Procedural protection of the rights and legitimate interests of suspects accused persons or other participants in criminal proceedings.

That is the differentiation of the criminal procedural form implies the existence in the system of criminal procedure of different types of independent proceedings which on various grounds (criteria of differentiation) are significantly different from ordinary criminal proceedings. The differentiation of criminal proceedings is a complex multi-faceted process involving different proceedings at different stages of the criminal process.

Differentiation must take into account certain grounds otherwise it may lead either to undue simplification of the procedural form by curtailing the procedural guarantees of individual rights or to making the administration of justice so complicated that it will not be able to realize the objectives of criminal proceedings within a reasonable time.

There is no doubt that the existing criminal procedural form should be differentiated, modernized towards the creation of special procedures ensuring the successful fulfilment of the tasks of the bodies of inquiry, pre-trial investigation, the Office of the Procurator-General and the court. And it have to ensure success development of the rights, freedoms

and lawful interests of participants in criminal proceedings that further develop. Of course it is possible to make only certain changes and additions to certain elements of the existing procedure of pre-trial investigation, trial which do not violate its foundations but take into account the special, exceptional conditions of proceedings that is at the level of the stages of the process and at the level of procedural actions. These procedures may be specific but not like specific proceeding.

The literature notes that the differentiation of the criminal procedural form of the main proceedings is due to a combination of objective criminal (material) and criminal procedural grounds.

G. Vlasova notes that "in the science of criminal procedure there is no clear concept regarding differentiation of criminal procedural form. The proponents of differentiation are of the view that while it is undoubtedly important to follow the same established procedure in all criminal proceedings this procedure should be specific to the nature of the criminal offence, the identity of the accused and other circumstances. This differentiation maximizes the usefulness of the executive procedures so that they are efficient in order to solve criminal offences quickly and fully to expose the guilty participant, etc." (Vlasova, 2015, p. 156). We support the scientific point of view of G. Vlasova, which proposes "to differentiate criminal proceedings in such areas as: 1) general proceedings; 2) simplified proceedings. In turn, simplified proceedings under the current legislation include the following: simplified proceedings for criminal offences; simplified proceedings on the basis of agreements which are differentiated by: first, a conciliation agreement between the victim and the suspect or accused and, secondly, a simplified agreement between the prosecutor and the suspect or accused; 3) a differentiated procedure for criminal proceedings with strengthened procedural guarantees which include: private prosecution; juvenile proceedings; proceedings involving the use of coercive measures of a medical nature; criminal proceedings before a jury; proceedings containing information on State secrets; production on the territory of diplomatic representations" (Vlasova, 2015, p. 157).

Conclusions

Taking into account the analysis of scientific opinions we are convinced that the following types of criminal proceedings are distinguished according to the degree of complexity of the criminal procedural form, and indeed according to the degree of guaranteeing the rights provided by law of participants in criminal proceedings: ordinary (in which pre-trial investigation and criminal proceedings are conducted according to the general rule); simplified (for example in private prosecution proceedings, transaction proceedings); more complex procedural form in other words with many guarantees of subjective rights (proceedings in cases involving minors, proceedings for the application of coercive measures of a medical nature, proceedings containing information constituting a State secret).

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RELIGION AND LANGUAGE: HISTORICAL ANALYSIS OF THE COMPARATIVE STUDIES

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Abstract. Religion and language are intertwined on a profound level. A comparative approach has shown itself to be essential in the early days of philology/linguistics.

The purpose of this paper is twofold: 1) to revisit key historical formational milestones of religious studies as a field and reexamine its foundational and essential concepts in the context of *comparative studies of language and religion*; and 2) by reanalyzing classical literature, which contains those key concepts, to address some of the problems and reactualize academic discourse, the relevance and necessity of an multidisciplinary or interdisciplinary approach to the comparative study of ancient sources, languages, and everything related to both. The goal of this article is only to highlight the main issues. An extensive problem mapping needs a separate and dedicated paper (or sets of papers), dissertation, or monograph.

Keywords: *comparative studies, religious studies, religion and language, language family, comparative philology, multidisciplinary / interdisciplinary approach*.

Introduction

This particular paper is concentrated on classical sources, historical and analytical approach.

Literature review. Available sources on the topic are quite diverse in terms of their subjects of research and goals; nevertheless, all of the present literature can be divided into two groups by the field criteria:

1) Sources that dealing with general issues of religious studies and its development history, as well as its comparative methodology (contributions of Oliver Freiberger, André Droogers, Donald Wiebe, Arvind Sharma, Walter H. Capps, William E. Deal, Timothy K. Beal, and others);

2) Sources that dealing with issues of language studies, textual studies, and comparative methodology in the linguistic context (both classic: Franz Bopp, Archibald Sayce, Berthold Delbrück, Friedrich von Spiegel and contemporary: Raimo Anttila, Theodora Bynon, Jean Kellens). All of them have made a significant contribution to the partial study of the current topic, depending on their field and goals. Despite the abundance of literature, there is a lack of sources that coherently combine endeavors of the both mentioned fields.

The phenomenon of religion is one of the most complicated in the human world, and it affects almost all facets of the civilization, including language, philosophy, ethics/morality, law, etc. It's so both conceptually broad and deep that scientists are trying to grasp the full scope of its phenomena. This postulates numerous problems for the religious studies, among which, I would argue, two are the most important: 1) definition problem; 2) unity-fragmentation problem. If these problems sought to be ever solved, it's only by combining different fields, and building coherent picture of the world.

Problem of the definition. So far, there is no single and universal, scientifically acceptable definition of religion that would cover all aspects of this phenomenon and encompass all of its diversity and complexity. This definition problem is known right from the beginning of religious studies, nay, even before (Capps, 1995, pp.2-8).

On the one hand, as stated above, core of this problem partially lies in the deep and vast nature of religion itself, which has an enormous amount of diverse traditions and forms. This leads to the

challenge of combining all the features and qualities, all the forms both modern and ancient, all its functions in the societies under one inclusive definition that is neither broad nor narrow.

On the other hand, the problem partly stems from various kinds of prejudices and preconceptions about religion. And they arise not only from the extreme positions that Müller wrote about (Müller, 1873, p.4.), but also from biases within the academia itself. This can be seen immediately at the foundations of this field, when different and in many ways polar and opposing views on the essence of the religion have been formed. Each one of this approaches tried to reduce religion to one historical root (in the context of so called "*genetic*" (Ibid., p. 41,82.), relationship between religions and its development), to find its true essence or its "*minimum*" (Tylor 1871, pp.383-385.), and to explain its nature through one core characteristic: whether its sociological (E. Durkheim, L. Lévy-Bruhl), initial (E. Tylor, R. Marett, H. Spencer) or later anthropological approaches – psychological functionalism (B. Malinowski) and structuralism (C. Lévi-Strauss), or any other theories, which all was limited by a single conceptual prism.

Unity-fragmentation problem. This matter is more of a conceptual/philosophical (metaphysical), and psychological nature, which unfolds into at least two paradoxical issues

1) Religion, as we call it, is not homogenous. None of the religious movements have ever been. Each religious tradition is a multilayered phenomenon, with, it appears, innate tendencies to branch off into different sects, denominations, and numerous factions within itself. Though, these branches connected one to another. There is no completely isolated culture, just as there is no absolutely isolated religion around the world. That's why we can trace the migration of different ideas and views from one part of the world to another, from one culture to another. And that's why the actual visual representation of the interconnected ideas between religions looks more like a web than anything else. However, a tree-like diagram is a classic visual rendition of the interconnectedness between religions and their lineages. It's an established schematic tool for representing the evolution of different cultural and natural phenomena, including both religion and language.

2) Our innate perception of reality forces us to fracture the objects and subjects that we study or perceive into smaller, more comprehendible fragments, both consciously and subconsciously. It appears that the underlying reality, whatever it is, is unified. But our venture in its understanding demands its fragmentation into countless subjects (each with their own fields of study), which afterwards we are attempting to assemble into a single, unified, and coherent worldview. That's why we have to be aware of this paradox and trait of perception, which also includes perception time and its vector.

Origo et hereditas: *Origins and legacy of comparative studies*. The emergence of *religious studies* in its various names (Freiberger, 2019, p.8.) had many factors at its root: whether it was biased theology, or various attempts by philosophers of different directions and traditions to critically evaluate the phenomenon of religion, or the fruits of a critical, literary approach to sacred texts (in particular, the fruits of biblical studies), or a comparative approach to understanding language (the so-called "*comparative philology*" or "*comparative linguistics*"), all these factors, to varying degrees, played a role in the formation of this field. But the final momentum came from comparative method in linguistics. This is not so unexpectable or strange, considering the fact, that language is one of many, but arguably one of the main forms to embody religious ideas (Sayce, 1890, p.299). Comparison of the Vedas and the Avesta revealed the kinship of Sanskrit with Middle and Old Persian and further added to knowledge about the Indo-European language family, while archaeological finds of Babylonian cuneiform sources and analysis of their content revealed the kinship of the Akkadian with the Ancient Hebrew and Aramaic, which at that time had been studied actively in the context of textual analysis of the biblical literature.

The study of ancient languages, translation and analysis of ancient textual sources are many of the common tasks of philology and religious studies. And the success of the comparative approach to language studies both inspired and stimulated the development of the comparative approach to religion. It was famously propagated by *Friedrich Max Müller*, one of the pioneers in the comparative study of religion, in his lectures (Müller, 1873, pp.2, 12-13.). He argued that the study of religion required a comparative approach, in which scholars would compare and contrast the beliefs, practices, and traditions of different religious traditions from around the world in order to identify commonalities and differences, and map those relationships in the manner necessary to form a coherent picture. He firmly believed that by examining the diversity of religious traditions across cultures and times, scholars could gain a deeper understanding of the universal human religious

experiences that underlie beliefs and religious practices. His advocacy for comparative religion emerged within the context of a broader 19th-century movement towards the scientific study of different phenomena, including religion. This movement sought to apply philosophy and analytical methods of the sciences to the study of religion and was shaped by the emphasis on rationalism, empiricism, critical and analytical approaches. As for Müller, as a linguist, he saw comparative philology as a model for religious studies, which he famously called "*science of religion*". Müller's work helped lay the groundwork for the development of the field of comparative religion, which has since evolved to encompass a diverse array of perspectives and methodologies.

As Müller states, a few hundred years before establishing comparative philology, the idea of Hebrew being the original language, from which other languages have descended, was almost universally accepted (Ibid., p.10) among "researchers" and "educated people" of that time. And only the actual process of language comparison and critical analysis of textual sources provided an objective picture of language development and established a "*language family*" category. Müller, based on available at the time knowledge, has tried to group known languages into families and connect them with religions. As a result, in his classification, he distinguished three branches (Ibid., p.54): *Aryan*, *Semitic*, and "*Turanian*" (Müller, 1854, p.220). He also pointed out the migration of religious ideas from one language family to another[1] and described genetic relationships between the phenomena of language and religion (Müller 1873, p.90).

The comparative approach has yielded many successful results in both linguistics and religious studies. But it will suffice to point out just one of the two examples: 1) discovering links among Indo-European languages, in particular Sanskrit and Persian; 2) identifying links among the Afro-Asiatic language family, in particular the affinities between Akkadian and Hebrew.

Persian and Sanskrit: sources and words of sacred and divine meanings.

1) *Persian vs. Sanskrit: historical background*.

Similarities between different languages obviously have been noticed a long time ago, but clear textual evidence we can trace starting at least from the 16th century. Filippo Sassetti[2] (16th cent.), Marcus Zuerius van Boxhorn (17th cent.), Gaston Coeurdoux (18th cent.), William Jones (18th cent.), and many others, observed and noted this. However, all these examples are more like hints, simple observations, and educated speculations than fully dedicated academic studies, as we know them now. And only after the 18th century scholars begun to take seriously these astonishing similarities between European and Asian languages, both ancient (such as Latin and Ancient Greek) and contemporary (such as English, German, French, Italian, other Romance languages, as well as Slavic languages, including Old Church Slavonic). Eventually, this discovery caused a thorough examination of the possible connections and eventually led to comparative language studies and the development of the field, which sought to identify and reconstruct the ancestral languages. As part of this effort, scholars began to compare the grammar patterns, shared vocabulary, and phonetic systems of different Indo-European languages, including Persian and Sanskrit. These similarities suggested that Persian and Sanskrit were both descended from a common ancestral language, which scholars then called "Proto-Indo-Iranian" or "Proto-Indo-Aryan", which was one of the bigger branches of "Proto-Indo-European" languages along with Italic, Germanic, Balto-Slavic, and other branches.

2) *Persian vs. Sanskrit: analysis of sources.*

Some of the first steps in these comparative endeavors can be considered The German scholar Friedrich von Spiegel, in his work "*Die arische Periode und ihre Zustände*" ("*The Aryan Period and its Conditions*"), drew attention to the similarities between many words that had related semantics: water, wind, air, fire, heaven, etc (Spiegel 1887, pp.142-158). Many of the words had religious-related meanings (Ibid., pp.178, 194, 243, 289, 303). Then, in the late 19th and early 20th centuries, James Darmesteter, Georges Dumézil, and Albrecht Weber made their contributions to the comparative studies, including that of the Avesta and Vedas. Darmesteter, a French scholar of Iranian studies, published a book called "*Le Zend-Avesta*" ("*The Zend-Avesta*"), which provided a

[1] He wrote: "*Buddhism, being at its birth an Aryan religion, ended by becoming the principal religion of the Turanian world. The same transference took place in the second stem. Christianity, being the offspring of Mosaism, was rejected by the Jews as Buddhism was by the Brahmans. It failed to fulfill its purpose as a mere reform of the ancient Jewish faith, and not till it had been transferred from Semitic to Aryan ground…*"
(Müller 1873, p.55).

[2] He wrote "*...ed ha la lingua d'oggi molte cose communi con quella, nella quale sono molti de' nostri nomi e particolarmente de' numeri il 6 7 8 e 9, Dio, serpe, ed altri assai.*" (Sassetti 1844, p.221).

critical translation and analysis of the Avesta corpus. He argued that the similarities between the Avesta and the Vedas reflected a common Indo-Iranian cultural and linguistic heritage. Dumézil focused on the similarities between the myths and rituals of the two traditions, while Weber, predominantly concentrated on Vedic culture and its corpus of texts, but he also hinted at the linguistic and historical connections between Old Persian and Sanskrit languages.

In the 20th century, scholars continued to refine and expand upon the comparative study of the Avesta and Vedas. The American scholar Mary Boyce made significant contributions to the study of Zoroastrianism and its connections to the broader Indo-European world. The French scholar Jean Kellens contributed to the study of Avestan culture, religion, grammar, and the reconstruction of Proto-Indo-Iranian.

The comparisons went through many stages, and they did not go in the same vein; each scholar focused on their own specific goals, whether it was analyzing and translating sources or studying society, mythology, and rituals. But the vector and conclusions they reached were similar.

3) *Persian vs. Sanskrit: words of sacred and divine meanings.*

Some of the most suitable sources for comparing those ancient languages were sacred/epic literature and monumental texts and inscriptions. On the one side, it was the Avesta and Behistun Inscription, and on the other, the Vedas and related literature.

Noumerous similarities have been noted when comparing the religious terminology of the Avesta and the Vedas. This is especially true of such central concepts as "*god*", "*deity*" and its attributes, ethical concepts, some names of gods, the elements and forces of nature (as mentioned above), et cetera (Ibid., p.225). In this sense, the word "god" is quite important for comparison, helping to reconstruct common semantic and etymological origins. The word has several variants in Sanskrit and Avestan language, two are most known: 1) baga/bhaga, and 2) deva/daeva.

1) The ancient Persian language had a word "*bagâ*" (*bagâha* in plural)[3] to refer to a deity. Sanskrit had the cognate term "bhaga" (Pokorny 1959, p.107; 154). So do the Slavic languages – "*bog*"/"*бог*"" (Croatian: bog, Czech: bůh, Slovak: boh, Polish: bóg, Ukrainian, Belarusian, Bulgarian: бог, and etc.), which we can reconstruct to Proto-Slavic **богъ* (*богŭ*), and all the examples above – ultimately reconstruct to Proto-Indo-European root **bʰeh₂g-*.

2) The second example is unique, having numerous forms in Indo-European languages (Ibid., pp.183-185). Most of the languages have words derived from its ancient root, maintaining its ancient semantics, referring to concepts like "light/bright", "day", "heaven", "divine" (which itself in English of this root), or "god" (i.e., a heavenly, light being). This word was reconstructed to its hypothetical Proto-Indo-European root **dyeu-*. As well, based on its intrinsic religion-related semantics it was proposed "Sky Father" *(*Dyḗus ph₂tḗr*) hypothesis.

Conclusions

A comparative approach has shown itself to be essential in the early days of philology/linguistics. Discovering and examining connections between roots and their respective languages had led to the establishment of comparative language studies, and their success had led to the development of the field of religious studies. There are still many unresolved issues: the definition problem, the fragmentation problem, the one-sided approach to the nature of religion and language (and other phenomena), and many more. If these problems are ever sought to be solved, it's only by bringing different fields together in multidisciplinary or, even better, interdisciplinary settings – and building the most complete and coherent picture of the world as possible.

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STRUCTURE OF THE PROSECUTION IN CRIMINAL PROCEEDINGS IN UKRAINE

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Abstract. This article deals with the content and essence of the concepts of "state prosecution" and "prosecution" enshrined in the current criminal procedural legislation of Ukraine. The activity of authorized officials and bodies in the pre-trial investigation stage of criminal proceedings was considered in the context of determining the end of this stage. The article analyses subjects assigned to the prosecution party by the current legislation. The compatibility of this legislative structure with the functions assigned to these entities has been considered. It has been established that the content of the concepts of "state prosecution" and "prosecution" are not identical. The provisions on drawing up the final document (indictment, application for medical or educational measures, application for exemption from criminal liability) as the moment of completion of the pre-trial investigation have been substantiated. Proposals have been made to amend criminal procedural legislation to exclude the investigator, the person conducting the initial inquiry, their leaders and the operational and investigative units from the list of subjects of the prosecution. The results of the research should contribute to a deeper understanding of the nature of the concepts of "state prosecution" and "prosecution" and in the future entail the introduction of appropriate changes in the criminal procedural legislation of Ukraine.
Keywords: *prosecution, state prosecution, investigator, prosecutor, criminal process.*

Introduction

Problem statement. "State Prosecution" is one of the basic concepts of modern Ukrainian criminal process as the concept of "prosecution". At the same time it has not been studied in sufficient depth in both normative and doctrinal terms so that legislative regulation is ambiguous and remains controversial. The same applies to questions related to the definition of the notion of "prosecution" first of all with regard to the definition of subjects assigned to it.

The importance of research in this area lies in the fact that it is a natural part of the definition of the functions of the subjects of power involved in some form of pre-trial investigation of criminal proceedings. The achievement of certainty in this matter should contribute to a deeper understanding of the nature of the Ukrainian criminal process, a reasonable choice of its appropriate type (competitive – mixed). In this regard, it will be possible to clearly identify the place and role of those in authority during the pre-trial investigation phase. In the process of reforming the criminal procedure and the criminal justice system this will make possible to move away from the practice of mechanically transferring the procedural practice of foreign States to the territory of Ukraine and to avoid systematic manifestations of crisis processes.

There is an urgent need to determine when the pre-trial investigation will end as this is directly related to the moment when the function of maintaining a public prosecution will arise. In our view this is linked to the high level of discussion regarding the existence or absence of conflict of interest between the prosecutor as the procedural head of the pre-trial investigation and the prosecutor – the public prosecutor. Since, according to the provisions of the current criminal law they may be the same person.

Analysis of recent researches and publications. The adoption and entry into force in 2012 of the new Criminal Procedure Code of Ukraine (hereinafter referred to as the CPCU) the provisions of which had already been the subject of considerable discussion, ranging from outright seizure to categorical non-reception, led to increased interest among scholars in his novels. Among other

things scientists such as P. Andrushko, V. Galagan, V. Gryniuk, M. Danshyn, V. Dolezhan, N. Karpov, O. Kislitsyna, M. Kosiuta, T. Myronenko, V. Nor, M. Pogoretskyi, M. Rudenko, Ya. Tolochko, L. Udalova et. all have been researching questions related to the understanding and content of the concepts of "prosecution", "state prosecution", "prosecution (party)" and other closely related categories. At the same time the problems of interaction of the subjects referred to the prosecution by the current criminal procedural legislation regarding the nature and content of the public prosecution, the timing of the prosecution function, etc. has not been properly investigated and remains contentious.

The purpose of this research is to determine the place and role of the investigator, the prosecutor and their supervisors among the subjects referred by the Ukrainian procedural legislation to the prosecution, an analysis of the provisions of existing legislation and their comparison with the respective authorized subjects in the criminal proceedings of some States of the continental system.

Presentation of the main research material. The task of the authors of the CPCU dated 2012 was to transform the type of criminal proceedings in Ukraine from mixed to competitive, as one of them even 5 years ago M. Pogoretskyi noted: "It [the Code] lays down a competitive model of criminal proceedings and provides mechanisms for ensuring". At the same time he acknowledges that "the Code is imperfect, even though more than 570 amendments and additions have been made to it in 5 years" (Volina, Pohoretskyi, 2018).

In our view this inadequacy of the CPCU has led to the fact that among Ukrainian scholars and practitioners the provisions introduced in 2012 by the current CPCU remain highly controversial. There are no exceptions to the provisions on the basis of which the prosecutor, the pre-trial investigation body (bodies conducting pre-trial investigation and inquiry), the head of the pre-trial investigation body, the head of the body of inquiry are referred to the prosecution, pre-trial investigator, investigator and operational units (arts. 36 – 41 of the CPCU).

The charge under the current CPCU is defined as a "allegation of the commission by a certain person of an act provided for by the Law of Ukraine on Criminal Liability, made in the manner established by this Code" (Paragr. 13, section 1, art. 3 of the CPCU).

At the same time, paragraph 3 of the same legal norm stipulates that the state prosecution is "the procedural activity of the prosecutor which is consisting in bringing charges before the court for the purpose of ensuring criminal responsibility of the person who has committed a criminal offence".

It is clear that the contents of the concepts are not identical which is already the source of the discussions emerging in the scientific environment.

As a manifestation of such contentiousness is considered the position of I. Kislitsyna. She shares the opinion of a group of scientists that the term "state prosecution" is used in the following meanings: a) the prosecution formula, the thesis on the culpability of a person in committing a crime, attempt to refute the presumption of innocence in respect of a person notified of a suspicion; b) activity aimed at establishing the crime of an act of a person; c) procedural document (indictment); d) function of the Prosecutor's Office" (Maintaining the state prosecution, 2012 pp. 10; Kislitsyna, 2018, p. 181).

On the basis of the content of the legal norms we must come to the conclusion that as an allegation the accusation concerns a "certain person" and must be put forward "in the order provided by this Code". The current CPCU provides that during the pre-trial investigation stage such an allegation is made when a person is notified of a suspected criminal offence in the cases provided for by law (Section 1, Art. 42, Art. 276-279 of the CPCU). At the same time the law establishes three cases where a person is necessarily informed of a suspicion only one of which (detention at the place of commission of a criminal offence or immediately after its commission) may occur at the beginning of the pre-trial investigation. However, the law does not provide for such a person to have the status of an accused person at the pre-trial stage. According to Section 2, Art. 42 of the CPCU establishes the status of an accused person when the indictment has been referred to the courts under the Art. 291 of the CPCU.

Taking into account the legislative definition of the concepts of "prosecution" and "state prosecution" which we have given above we can come to the conclusion that the prosecutor can start the activity on the implementation of state prosecution not earlier then the Committee is of the opinion that the State party is not a party to the Convention. Even so the person does not acquire the status of accused.

In such circumstances the only possible means of obtaining answers to the questions posed is an analysis of the functions performed by the said authorities and officials during the pre-trial investigation.

According to the Section 2, Art. 36 of the CPCU at the stage of pre-trial investigation the prosecutor shall "supervise compliance with the laws during the pre-trial investigation in the form of procedural guidance of pre-trial investigation". To this end he is given certain facilities set out in the same rule of law. An analysis of these powers leads us to conclude that the competence of the prosecutor as defined by the said article of the CPCU goes beyond the powers necessary for the conduct of the pre-trial investigation since the requirements of paragraph 2, Section 15, Art. 36 of the CPCU which deals with the powers of the prosecutor to bring a public prosecution before a court, to dismiss a public prosecution, to modify it or to bring a supplementary charge concerns not the pre-trial investigation stage but the trial stage.

An analysis of paragraphs 11, 13 and 14 of the same rule of the CPCU shows that an official of a public authority entrusted with the responsibility of procedural direction of a pre-trial investigation at a certain stage it acquires the power to determine a certain level of culpability. In our view, this is a manifestation of the prosecutor's activity in support of the public prosecution. In such case the allegation that the prosecutor had a conflict of interest would be absolutely justified.

It is obvious that the state of conflict of interest does not disappear even when we acknowledge that the prosecutor ceases to exercise the function of monitoring the observance of the law during the pre-trial investigation after notification of the suspicion (procedural guidance)And he starts acting as a public prosecutor because it's the same person.

It should be taken into account that after notification of the suspicion the pre-trial investigation authorities and their officials continue their activities aimed at ensuring the full and high-quality investigation of criminal proceedings. It is only after the indictment has been drawn up and sent to the court that this function becomes impossible. It clearly determines the moment when the pre-trial investigation is completed and the beginning of the public prosecution function.

During the considering the powers of pre-trial investigation bodies, heads of pre-trial investigation and initial inquiry bodies, investigators and persons conducting initial inquiries we conclude that their function is not to establish the information accusing the individual but also to justify his statements i.e. the purpose of the pre-trial investigation is to establish the truth in criminal proceedings. This claim was made many years ago but it has not yet been refuted. Even when these bodies and officials carry out certain investigative and other procedural actions after informing the person of suspicion they do not assume the function of prosecution.

In such circumstances it is difficult to accept the view that the State prosecution is to establish the crime of an individual. In any case this assertion raises a number of objections which we have already mentioned.

With regard to the determination of the place and role of the operational units in the context of their attribution to the prosecution it should be noted that they have no independent procedural value at the pre-trial investigation stage, procedural actions may be carried out only on the instructions of the investigator.

In this connection we believe that the attribution of these bodies and officials to the prosecution is erroneous and should be eliminated by law.

If the current situation remains unchanged we must note that the activities of these bodies and officials have a legally enshrined accusatory bias which is clearly contrary to European and international standards, attempts to comply with which our state constantly declares.

The reference by the proponents present to the fact that in European States (for example Germany) the same person presides over the proceedings and the prosecution in court is incorrect because the German criminal trial is a classic competitive type from beginning to end. It's also competitive at the pre-trial stage. As such the pre-trial investigation is not carried out by a prosecutor who issues instructions to the police. The prosecution is represented by the prosecution and the defence by the accused and his representatives.

At the pre-trial investigation stage the Ukrainian criminal trial has the features of a mixed type of process which makes it impossible to implement the idea of turning it into a competitive type of process.

Conclusions

Thus taking into account the fact that Ukraine's criminal procedure is of a mixed type, the lack of clarity in the competence of the procedural head of the pre-trial investigation refers to the pre-trial investigation bodies and the heads of the pre-trial investigation and initial inquiry bodies, operational units, investigators and prosecutors to the party are unfounded and must be cancelled.

The time at which the pre-trial investigation ends is not defined in the legislation on criminal procedure nor is the time at which the public prosecution functions. In this connection and in view of the need to avoid a state of conflict of interest in the activities of the prosecutor at the pre-trial investigation and trial stage it is advisable to exclude the possibility of participation in the criminal proceedings as a trial manager and the public prosecutor of the same person.

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HUMAN RIGHT TO FREEDOM OF ASSOCIATION: CONFLICT OF INTERNATIONAL LEGAL AND NATIONAL REGULATION

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Abstract. The article deals with the analysis and comparison of norms of international law and practice of its application, legislation of Ukraine, scientific researches of the status of informal public organizations. It has been found that according to European Union law sources the practice of the European Court of Human Rights for the establishment of an association of persons requires only two criteria, namely: freedom of association and the legitimate purpose of association. The inclusion in Ukrainian legislation of conditions for the mandatory formalization of voluntary associations creates a potential threat to the realization of the human right to freedom of association. The Law of Ukraine "On Public Associations" should enshrine the right of persons to establish informal associations that do not require State registration in order to achieve common legitimate goals; provide for a procedure for notifying State authorities, local government on the establishment of a public association. The envisaged administrative responsibility for leading and participating in unregistered associations of citizens (Article 186-5 of Code of Administrative Offences of Ukraine) is contrary to the norms of international law and should be deleted therefore.

Keywords: *freedom of association, public association, informal association, state registration, administrative and legal responsibility.*

Introduction

Freedom of association is one of the fundamental human rights, namely the possibility of joint realization of common cultural, economic, social and other interests of subjects of law. Along with personal interest this right is essential for the functioning of democracy and is a prerequisite for the realization and protection of other human rights. Ukrainian legislation provides for obtaining legal permission from the State to establish a public association and for further State control and legal responsibility for participation in informal public associations. Fundamentally this is at variance with the international legal approach, the case law of the European Court of Human Rights on the implementation of the human right of association with others and legitimately requires the adaptation of the existing international legal standards by existing legislation in this field.

The research objectives are: 1) an analysis of international law, the practice of the European Court of Human Rights regarding the regulation of the right of association of persons, including the informal (illegalized) position of the association or persons; 2) its comparison with the current legislation of Ukraine on public associations, scientific assessments; 3) formulation of reasoned proposals to the legislator.

Literature review. In our research we used the acts of international law, the case law of the European Court of Human Rights, the legislation of Ukraine in terms of regulation of the right to freedom of association, liability for violation of its implementation as well as the scientific works of M. Buromenskyi, O. Drozdov and O. Drozdova, O. Zhukovska, Ye. Zakharov, J. McBride, Yu. Ryabchun.

Research results. The freedom of association was first proclaimed in the Convention of the International Labour Organization "On freedom of association and protection of the right to organize", 1948 in connection with the protection of employment rights of employees. This right was soon enshrined at the global level in the Universal Declaration of Human Rights of 10 December 1948 as a political right in Article 20.

The first step taken by humanity required the implementation of international legal instruments and national legislation establishing State obligations to civil society. On the European continent the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (hereinafter the ECHR) was concluded to give effect to the rule of law and respect for human rights, Article 11 enshrines freedom of assembly and association. The content and potential of the right to freedom of association is developed and protected through the jurisprudence of the European Court of Human Rights which will be summarized below in the context of the purpose of the research.

At the national level the right to freedom of association is enshrined at the basic level in the Article 36 of the Constitution according to which "citizens of Ukraine have the right to freedom of association in political parties and public organizations in order to exercise and protect their rights and freedoms and to satisfy political, economic, social, cultural and other interests, except for restrictions established by law in the interests of national security and public order, public health or the protection of the rights and freedoms of others" (Section 1). Sections 2 and 3 of this rule set out a general approach to the right to membership in political parties and trade unions. Section 4 enshrines the right to freely choose to join any association of citizens and prohibits discrimination on the basis of membership or non-membership of a particular public organization. The equality of all associations of citizens before the law was proclaimed (Article 36, Section 5 of the Constitution of Ukraine, 1996).

In accordance with the above provisions the 4572-VI Law of Ukraine "On Public Associations" of 22.03.2012 was adopted (hereinafter referred to as the Law) defining the legal and organizational framework for the exercise of the right to freedom of association. Consider the individual provisions of current legislation that are of direct relevance to the subject of the research. In particular it is determined that "a public association is a voluntary association of individuals and/or legal entities of private law for the exercise and protection of rights and freedoms and the satisfaction of public in particular economic, social, cultural, environmental and other interests". A public association may carry out activities with or without the status of a legal entity (Article 1, Sections 1, 5). One of the principles of formation and activity of public associations is self-government, providing for the right of members (participants) of the

public association to independently manage the activity of the public association in accordance with its purposes (objectives) to determine the directions of activity as well as non-interference of state authorities, other state bodies, local self-government bodies in the activity of a public association, except in cases defined by the law» (Article 3, Section 3).

Formation and activity of public associations whose purpose (objectives) or actions are aimed at eliminating the independence of Ukraine, changing the constitutional order by force, violating the sovereignty and territorial integrity of the State, undermining its security, unlawful seizure of State power, propaganda for war, violence, incitement of inter-ethnic, racial, religious hatred, infringement of human rights and freedoms, public health, propaganda of communist and/or National Socialist (Nazi) totalitarian regimes and their symbols are prohibited. Other restrictions on the right to freedom of association including the right to form and operate public associations may be established solely by law in the interests of national security and public order, public health or the protection of the rights and freedoms of others (Article 4, Sections 1, 3 of the Law).

If a requirement is not connected with the exercise of the person's rights as a person entitled to represent a public association or a member (participant) of a public association such requirement to indicate information about the membership (participation) of a person in a public association is not available except as specified by the Section 3 of Article 5 of the Law. On the basis of these general norms we believe that Ukrainian legislation on public associations could be considered democratic and pro-European in nature. After all according to the opinion of M. Buromenskyi, O. Zhukovska in accordance with the ECHR and the practice of the European Court of Human Rights in "the establishment of an association requires only two criteria: freedom of association and the purpose of association. The European Court of Human Rights also stresses the importance of these criteria. The inclusion of other additional criteria in national legislation may potentially threaten the realization of the right to freedom of association" (Buromenskyi, 2004, p. 622).

However, other provisions of the Law provide grounds for a critical assessment of the legal regulation of the right to freedom of association. They have introduced compulsory State registration and subsequent strict State control over the establishment and activities of voluntary associations which cannot be considered democratic. In particular in Sections 8-9 of the Article 9 of the Law stipulates the requirement to pass the «State registration in the order determined by the Law of Ukraine "On the State Registration of Legal Entities, Natural Persons, Entrepreneurs and Public Formations" within 60 days from the date of holding the constituent assembly. In the event of failure to submit (non-delivery) documents for the registration of a public association within 60 days from the date of its establishment such public association shall not be deemed to have been formed. Actions on behalf of an unregistered public association shall be prohibited except for actions connected with the registration of such an association". It should be mentioned that in the draft of the Law "About the Youth" of 05.09.2019 it was proposed to provide for the creation of informal youth associations which are unregistered groups of young people united by common interests and to give them the right to participate in the bodies of self-organization of young people as observers without the right to take decisions (Section 7 of Article 1, Section 3 of Article 7). However, this bill was withdrawn by its authors. As can be seen, the Ukrainian State provides for the mandatory formalization of citizens' associations as a condition for authorizing their activities. After registration the State seeks total control over the activities of public associations. Systematically implementing the idea of control of civil society the legislature introduced administrative responsibility for the management of the association of citizens which was not legalized in the manner prescribed by law as well as participation in the activities of such an association which is the basis for imposing a fine of 25 to 130 tax-exempt minimum incomes of citizens (Article 186-5 of the Code of Administrative Offences of Ukraine).

This legislative approach is inconsistent with the rule of law and the essence of the right to freedom of association. According to article 11 of the ECHR and the case law of the European Court of Human Rights freedom of association not only guarantees the right to form and register associations but also

includes those rights and freedoms, freedom of association implies a degree of autonomy from the State. It fully protects formal and informal associations.

The European Court of Human Rights in the case of "Chill v. the United Kingdom" indicated that according to Article 11 of the ECHR the aim of the freedom of organization is a protection of the private sector from State interference. Associations have the right to create their own rules and manage their own affairs. In the case of "Sigurdur A. Sigurjonsson v. Iceland" the European Court of Human Rights focused on the private nature of the public association which is its most important characteristic (The decision of the European Court of Human Rights in the case of "Sigurdur A . Sigurjonsson v. Iceland», 1993). The organizational autonomy of associations is an important aspect of freedom of association which is protected by Article 11 of the ECHR (The decision of the European Court of Human Rights in the case «Lovric v Croatia», 2017).

Moreover, no restrictions may be imposed on the exercise of the rights of associations for the protection of their rights except in the case of "which are provided by law and necessary in a democratic society in the interest of state security, protection of health or morality of the population or protection of rights and freedoms of others" (Article 11 of the ECHR). Restrictions on the freedom of association must be interpreted clearly and only valid and reasoned evidence can justify restrictions on the right to freedom of association. The essence of freedom of association is that an individual or a group of persons may freely establish associations, determine their organizational structure and legal objectives, implement them in practice, implementing measures that play an important role in their activity. Restrictions on such activities must be established by law and pursue a legitimate aim. National legislation may provide for any procedure for registration of associations as well as for refusal of registration may have consequences for legal status and legal capacity. However, such legislative requirements may not be mandatory for any association of people. In the case "Gorzelik and others v. Poland", the European Court of Human Rights stated: "The main aspect of freedom of association is the possibility for citizens to establish associations in accordance with the law for joint action in the area of common interests. Without this possibility the right of association will have no practical significance» (The decision of the European Court of Human Rights in the case "Gorzelik and others v. Poland", 2017). This makes it impossible for unregistered associations to operate and therefore limits the very essence of freedom of association.

Based on the unprecedented law of the European Commission and the European Court of Human Rights and the recommendations of the Council of Europe the "Guidelines on Freedom of Association" adopted by the Venice Commission at the 101st plenary session (Venice, 13-14 December, 2014) were developed. The Act states that "in view of the importance of associations it is essential that their role and activities as well as the right to freedom of association have to be effectively supported and protected by the norms enshrined in the laws and other legal acts of States". ... "National legislation should not prohibit or unreasonably impose restrictions on the formation of an informal association since the establishment of an association with legal personality may require compliance with certain formal requirements" (Guidelines on Freedom of Association, adopted by Venice Commission at its 101st Plenary Session, 2014, ch. 149). Thanks to modern technologies an increasing number of associations are established on the Internet. Despite the fact that it may seem that such associations challenge the established ideas about the procedure of formation of associations and membership in them, their main difference from "ordinary" associations, in fact there is only a lack of possibility of their members physical presence at the meetings. However, they have common objectives and there are legal instruments regulating the activities of such associations. In this regard legislation should support this form of association formation and the possibility of its further operation. Access to the Internet must also be ensured (The decision of the European Court of Human Rights in the case "Cheall v.the United Kingdom", 1985). It is reasonable to request registration or submission of a communication to those associations that wish to acquire legal personality, provided that the process involves sufficiently substantiated claims, is not too burdensome and does not undermine the exercise of the right to freedom of association" (Guidelines on Freedom of

Association, adopted by Venice Commission at its 101st Plenary Session, 2014, ch. 151-152). We see inconsistency of norms of the Ukrainian legislation on public associations which provides only the procedure of their state registration again.

Our monitoring of the case law of the European Court of Human Rights also gives rise to a proposal to amend Article 185-6 of the Code of Administrative Offences of Ukraine. As it is true that informal associations of citizens do not have a "rigid" membership, the structure raises the question of whether all such entities are protected by the action of Article 11 of the ECHR. According to J. McBride has taken a very broad approach to the ECHR case law in determining which constituencies are afforded protection under the freedom of association rules. But for these guarantees to apply it is necessary to prove that the group concerned is more than just a society with common goals because Article 11 of the ECHR is not intended to protect the ordinary assembly of people who just enjoy spending time with each other. In particular, in the case of "McFeely v. the United Kingdom the European Commission described the freedom of association as «relating to the right to form or join a group or organization with specific objectives" (The decision of European Court of Human Rights in the case of «McFeeley v. United Kingdom», 1980). Thus, the position of the European Commission clearly shows the weight to be given to the element of "institutionalization" of a public association on the criterion of achievement of a certain goal (MakBraid, 2004, p. 569). The European Court of Human Rights has repeatedly pointed out that an association of citizens should not be forced to take a legal form that it does not attempt to obtain as this would reduce the freedom of association of its founders and members making it either non-existent or devoid of practical value (Decision of the European Court of Human Rights on «Republican Party of russia against russia» dated April 12, 2011; Decision on "Zhehev vs Bulgaria" dated June 21, 2007; Decision on «National Turkish Union Kungyun vs Bulgaria» dated June 08, 2017) (Guide to Article 11 of the Convention «Freedom of Assembly and Association», 2019, p. 24). However, the approach of the European Commission and the European Court of Human Rights requires not only that a group of persons be formed to achieve a certain goal, but also that its existence will be characterized by a certain degree of permanence, that is, the presence of some organizational (not necessarily formalized) the structure of which persons together constitute this group could be objectively defined (McBraid, 2004, p. 571).

The State may establish liability for specific acts constituting a threat to interests as defined by Article 2, Article 11 of the ECHR. However, it is the association, participation in it is unlikely to harm these interests. Therefore, legal liability for the activities of illegal public associations is contrary to the international obligations of Ukraine, in particular the Article 11 of the ECHR and the International Covenant on Civil and Political Rights. This allows for the arbitrary prosecution of any more or less stable, even informal, associations of people. The abolition of responsibility for the activities of illegal public associations will constitute compliance by Ukraine with its international obligations in the field of human rights, in particular freedom of association. "The administrative penalty in force is contrary to the principles of the Council of Europe on non-governmental organizations and the practice of the European Court of Human Rights. It should be deleted", says the head of the Ukrainian Helsinki Union E. Zakharov (Riabchun, 2020). In the context of our support the exclusion of administrative liability for participation in informal public associations should be mentioned the practice of the European Court of Human Rights to prohibit sanctions for membership in an association. In particular, the Court has repeatedly stated that one of the positive duties incumbent upon States in protecting the right to freedom of association should be borne in mind according to which the state shall not apply inappropriate sanctions to a person only for his membership in the association (McBraid, 2004, p. 572). Obviously, the current edition is in Article 185-6 of the Code of Administrative Offences of Ukraine does not correspond to such an equitable approach of the European Court of Human Rights, so it must be brought into line with the corrected position.

Conclusions

In accordance with international law and the practice of the European Court of Human Rights only two criteria are required for an association of persons, namely: freedom of association and the legitimate purpose of association. The scope of international guarantees is not limited to organizations with formal status and covers groups of an informal nature, provided that their existence is not (or is not intended to be) short-lived. According to the approach of the European Commission and the European Court of Human Rights the association of citizens should not be forced to take a legal form which it is not trying to obtain as this would reduce the freedom of association of its founders and members. The European Court of Human Rights has repeatedly pointed out that the State should not impose inappropriate sanctions on a person solely for membership in an association. The State may establish liability for specific wrongful acts that threaten the public interest.

According to the "Guidelines on Freedom of Association" of 2014, the national legislation of the member States of the Council of Europe should take into account that the acquisition of legal personality status should generally be interpreted as a right and not a duty or obligation. States may require associations wishing to receive various forms of State support or to be granted a special status. In order to obtain the status of a legal person it must be sufficient to notify the public authorities of the establishment of the association.

However, Ukrainian legislation provides for the mandatory formalization of public associations as a condition for allowing lawful action. After registration, the State seeks total control over the activities of public associations. The envisaged responsibility for the leadership and participation in the activities of the association of citizens which is not legalized in the manner established by law (Code of Administrative Offences, Article 186-5) is contrary to Article 11 of the ECHR.

On the basis of the foregoing we consider it necessary to provide in the Law of Ukraine "On Public Associations" for the right of persons to establish informal associations that do not require State registration in order to achieve common legitimate goals. It seems also advisable to provide in the said Law of Ukraine a procedure for notifying state and local self-government bodies about the establishment of a public association which completes the process of legalization. In our opinion, separate State registration of an association of citizens should be envisaged only when its activities require the acquisition of legal personality. It is necessary to exclude from the provisions of Article 186-5 of the Code of Administrative Offences the responsibility for leadership or participation in unregistered associations of citizens.

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APPROACHES TO THE CODIFICATION OF FAMILY LEGISLATION IN UKRAINE AND HUNGARY: COMPARATIVE ASPECT

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Abstract. The article deals with integration processes in Europe. The connection of family legislation recodification with the integration of Ukraine is becoming a challenge; the area of family law is one of the most demonstrative because of its legal regulative ambiguity and particularities. The author compares the above mentioned processes in Ukraine and its neighbour - Hungary as a member of EU. The author proves that just monistic approach affirms the integration direction policies of the state rather than dualistic approach to codification in the field of family law. Monistic codification ensures within its goals a coherent system of family legislation as a unity of elements ordered according to a principle. The subject legal example of Hungary would be valuable for Ukraine in the context of contemporary integration of Ukraine to Europe, migration processes and the development of private legal relations.
Keywords: *dualistic; harmonise; integration; monistic codification.*

Introduction

Ukrainian as well as Hungarian legal system has always been defined as Romano-Germanic legal system. The fundamental source of law is the written Constitution. Branches of law are represented by branch codified legislative acts (Codes) and other laws and bylaws. Codes are the complex sources of law which regulate relations of different institutes of this or that branch of law. They are not the main sources of law because have the same legal force as other laws. That's why they do not have the priority over other laws of a branch of law. Judges use them in complex with other legislation for the adjudication of cases. Besides, as laws regulate more important relations then bylaws, laws take precedence over bylaws in case of controversy between them. Bylaws shall correspond to laws and the Constitution concerning both states. This is the background of the beginning of the civil legislation recodification in Ukraine. Scientists and practitioners stress on the reasons of civil and family legislation unification. Among them is "the need of further private legal reforms, the existence of the norms of international acts models, modern experience of French and German civil codes recodification, a potential of native private legal science" (National Association of Ukrainian lawyers, 2020). But views differ. On the contrary to well-proved grounds and reasons of recodification, it lacks proved scientific legal basis. There is no doubt on this question in Hungary. The unification of civil and family norms has taken place in 2014 in this European country. The national values were reflected in the new code. This has the further effect. "In 2022, the European Commission brought a lawsuit before the European Court of Justice against Hungary for a 2021 law that discriminates against LGBTQ minorities. A majority of member states have joined the lawsuit on the commission's side"(Gulyas, Kasnyik, 2023).

Literature review. The topic of civil legislation codification is recently reviewed by many Ukrainian scientists and lawyers. Among them are. Such well-knowen Ukrainian lawyers as A. Dovgert, A. Kuznezova, M. Khomenko, H. Buyadzhi, V. Zahvataev, V. Kalakura, Y. Kapiza, O. Kot, O. Kohanovska, Maydanyk., Stefanchuk R. offer the concept of Ukrainian civil code renewal with the family code. They have represented the concept of recodification of civil and family legislation of Ukraine as a Working group established by the Cabinet of Ministers of Ukraine.

Research methodology. Comparative legal method is the main in the research. The methods of logical analysis, dialectical and dogmatic methods are also used.

Research results.

"It is important to admit that Ukrainian legal system is considered to have a well-structured hierarchy of normative acts. The number of laws increases constantly, which creates the problem of contradictions between them. The imperfectness of Ukrainian legislation lies in its instability, overregulation, complexity of norms etc." (Chernyavsky, Brusko, 2021).

The legal system of Hungary recognizes the universal rules and regulations of international law. The state continues to harmonize the internal laws and statutes of the country with the obligations assumed under international law. Such harmonization concerns not only international but also supranational EU law.

Thinking about advantages and disadvantages of a legal system it is necessary to account membership of a country in EU.

Ukrainian legal system is based on codes among which are: the Civil Code of Ukraine, Family Code of Ukraine, Commercial Code of Ukraine, Criminal Code of Ukraine, Land Code of Ukraine and others.

The Family Code of Ukraine is closely connected with the Civil Code of Ukraine. On the contrary to Economic Code of Ukraine the Civil Code of Ukraine is based on the market principles and was adopted on January 16, 2003 and came into force from January 1, 2004. During the last codification of Ukrainian civil legislation the legal norms of family legislation were planned to codify in the VI Book of the Civil Code of Ukraine. The family Code of Ukraine was adopted on January 1, 2003 as a separate code. But due to the close connection with the Civil Code of Ukraine it could came into force only at the same time as the last one.

The place of family law and family legal norms in Ukrainian and Hungarian system of law and the system of legislation has always been a controversial question.

The opinion of the well-known scientist H. Matveev is still the basis for the position of a dozen of scholars about the family law as a separate branch. It is composed on the idea of "particularity of matrimonial relations" (Matveev, 1985, p.34-34). In connection with this it is supposed expedient to add one more particular feature – existence in family law a large number of public legal norms – that can serve as quite weighty argument in favour of recognition of family law as a separate branch (Bondar, 2013).

For example, the majority of Russian lawyers in the former USSR supported the idea about family law as the branch of civil law. But the Code on Marriage and Family of 1969 as the separate act of legislation existed in the former USSR. The Civil Code of USSR did not comprise the body of norms for the regulation of family relations. Thus, in practice the place of family law does not directly influence the place of family norms in the legislation of a state. In other words the place of family law in the system of law does not determine the way of codification of family norms in this or that country.

In any case family law is the institution of private law within the boundaries of civil law. That's why family norms find their reflection in such forms of codification's expression as Civil or Family Codes. In different countries with pandect system family legal norms are organized in a Family Code or in one or several books of a Civil Code.

The aim of codification inside a country is the renewal of legislation, removal of controversies, gaps, other disadvantages, bringing it to the requirements of contemporary needs. Codification is aimed at fundamental change of current legislation by the way of drafting and passing of a new codified act. This promotes stability. Codes are the basis of legislative activity. That's why codification can be only official.

So as social order is changing periodically and property, non-property relations is changing together with it, civil codes, that regulate these relations, also are changing. The regulation of family relations, also property and non-property, between particular classes of subjects of civil relations, has to be coordinated with the regulation of civil relations. That's why joining family and civil norms in one codified act according to the aim of codification has to provide their coordination and correspondence. As the practice shows norms within one code are more coordinated then legal norms of different codes, for example, Commercial Code of Ukraine and Civil Code of Ukraine contain a lot of contradictions till now. However, family and civil norms of the Civil Code of Hungary,

norms of Civil and Family Codes of Ukraine are coordinated at the proper level as these three codes are drafted on the basis of the same fundamentals and principles of market economy; the norms of the last one were planned to pass in one act. That's why the last civil codifications of both countries created the basis of the coordinated legal regulation of social relations in the sphere of civil and family relations (with some exceptions in judicial practice) at present. This is the positive aspect in the legal regulation of both countries.

The last codifications of civil law in Ukraine and Hungary were conducted by the method of codification-reform, not compilation. Codification-reform stipulates gathering legal norms and their bringing in some codified form with changes and amendments. It stipulates the higher level of juridical science and law making mastery. The aim of these codifications was not only gathering valid legal norms, simplification and unification of legislation but renewal of the legal regulation in accordance with the gradually changed social order of both countries at that time. Such renewal in family and civil law has to be conducted simultaneously each time. "The role of private property has cardinally changed and the development of market economy demanded full alternation of the Code" (Vekas, 2009, p.23) in Hungary as well as in Ukraine. The essence of hundreds of amendments was valuably reshaped in the united instrument – Civil Code.

The exclusive particularity concerning the last civil codification in Hungary, comparing with Ukraine, became Hungarian membership in EU that promoted its monistic character. "In general it is possible to say that new codification of private law in the Central and Western Europe goes in the direction to monistic structure" (Vekas, 2009, p. 23). Thus, Hungary follows European monistic way of civil legislation codification.

Ukraine on the contrary to Hungary has chosen the way of dualistic principle (approach) of codification, in other words, family, civil, commercial legal norms were incorporated in different codes, and the norms on protection of customers' rights and some norms were formalized by the separate law. "Dualistic structure during the regulation in the sphere of private law in Ukraine, particularly concerning family code, is based on the specific features of family relations", as G. Matweev admitted (Matveev, 1985, p.35) that causes the specific legal regulation of these relations. Hungarian lawmakers, particularly professor L. Vekas, accounted specific features of family relations during the codification of civil legislation, that is: "the division into separate book played the role in the integration of the Code and let to account particularities of the legal material" (Vekas, 2009, p.24). That's why the argument concerning appropriate particularities can seem not the necessary condition for a separate Family Code as stated above.

Ukraine as well as Hungary is the participant of integration European processes (not only in law) that determines their future and current trend of development.

Family relations connect Ukrainian citizens with the citizens of Germany, France, Italy, Poland, Hungary and other citizens of EU. Ukraine makes affords to ensure protection of its citizens, in particular in the sphere of family relations, declares and carefully changes and amends its legislation in the direction of modern trends of legal regulation and international standards.

Family relations connect the citizens of Ukraine with the citizens of Hungary, Poland, Germany, France, Italy and other countries of EU. The legal system and civil society of Ukraine have been formed, that are called for correspondence to contemporary tendencies of the legal development and international standards, promotion of European international processes.

However, the absence of the unified legal regulation in some institutions of family law of the countries within the legal space of EU constitutes the practical reflection of the problematic of social and legal origin. Substantive law of member-states differ from each other. At present even the idea of the European Civil Code is hardly implemented into life. The Treaty of Lisbon declares that the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States. However, taking into consideration the abovementioned, the precedence of EU legislation over the national legislation of member-states is less manifested in the area of family law than in non-family branch. "In the area of family law the 'replacement' of national private international law by EU rules is less manifest" (Kramer, 2012, p.9). This affirms that harmonization and unification in the field of

family law would proceed more complicated and prolonged. "For a number of important issues rules on jurisdiction, applicable law and recognition and enforcement are absent. It is also in this area that substantive law in the Member States is not necessarily developing in harmony. This is also an area where a general principle of EU law (e.g. European citizenship) may continue to influence the development of the law in the area of private international law", Prof. Dr. Xandra Kramer says (Kramer, 2012, p.52).

Thus, just very family legal norms of member-states would be the hardest to bring to the unified standards while implementing into life the idea of the European Civil Code private law. This would get more complicated by the internal contradictions in the legislation of member-states. The less contradictions and particularities in the internal legislation of member-states and non-conformity of family legal norms to international standards and common tendencies in EU are, the faster Europe would pass the way to the united European legislation.

Elimination of such obstacles, softening of differences is especially urgent in the family law sphere of the legal regulation of community social relations.

The term 'harmonization' refers both to the 'harmonization' of various legislative acts within one legal system, as well as to the approximation of laws between different legal systems" (Faure, 2000, p.174). The first notion concerns such concept as 'codification' in the ultimate form and the second notion concerns such concept as 'integration'. Successful codification is the true way to successful integration.

These definitions are closely connected with the key issues of family law and policy of Ukraine and Hungary. Thus, the first-rate issues that spring to mind: what are the substantive goals of family policies and in what way does the form of the legislation matter?

The crucial idea consists in that one generalised act guaranties that family and civil legal norms are harmonized and similar rules are applied in all institutions of family law. "Let us first examine the concept of a system. A system is a unity of elements which are ordered according to a principle" (Haase, 2011). Civil and family legal norms regulate family relations in concord within the unified principles determined in the general part of one code. Thus, changes and amendments in family law go hand in hand with changes and amendments in civil law. In such a way contradictions and separate approaches to the regulation of matrimonial relations are out of the question. Consequently, the substantive goals of matrimonial policies of a country are determined, transparent and correspond to the civil law principles. The codification mentioned concern the internal regulation of family relations. Transparent and determined policies are followed by the external integration (the way of monistic codification simplifies integration within the boundaries of Europe in the sphere of family law).

"We might well urge that the law, with its ultimate reliance on enforcement by coercion, has only a limited role to play in the sensitive field of inter-personal family relationships: and that there is a private realm of family life which the State cannot and should not seek to enter. Laying down principles and rules of human behaviour it can and should influence attitudes and behaviour" (Cretney, 1981). In this sense principles and rules of a united civil code would be important for the regulation of family relations.

The complexity of legal norms, excessive legal means do not promote integration and accession to EU for Ukraine not only in the realm of family law. No wonder that most European states have chosen the monistic codification of family norms. Recent codification of Hungarian civil law accepted the same monistic approach.

It is necessary to admit the goals of monistic codification of family legislation indicating the family policies of a country: 1) harmonization and clarification of internal family and civil legal norms; 2) improvement of their implementation; 3) more consistency in family legislation; 4) integration in the field of family law.

Without regard to the absence of the unified legal regulation the (on the part of European law codification), mental diversity, national customs and traditions, tenor of family life of European citizens, Europe makes maximum efforts for its legal, cultural, economic, social unity, integration and development. In historical retrospect the representatives of European community are assimilated in the view of their unified values, which open the boundaries of the national traditional culture. That's why the issue of the

united approach to some institutions of family law is the matter of time.

"As a theory of European integration, neo-functionalism provided an explanation of the European integration processes based on a 'spill-over' effect, which envisaged the 'spilling over' of one area of integration into another, in which law played a central role. This is illustrated, for example, by reference to 'the spilling over of community legal regulation from the narrowly economic domain into areas dealing with issues such as occupational health and safety, social welfare…" (Augestein, 2016, p. 224). In such a way it is clearly shown the close connection of integration processes and law.

The lawmakers of Hungary sagaciously and prudently treat the question of European codification and harmonization in law. Taking into consideration the abovementioned, the inclusion of the family legal norms in the Civil Code of Hungary will promote integration European processes, harmonization and unification of member-states' legislation and in its turn the strengthening of the structural and legal unity of EU. At the same time the Hungarian legislators unambiguously stand for the protection of national interests and national legal order. At present the national customs and traditions prevail over European tendencies in the legal regulation of family relations. But the implementation of monistic approach to the codification of Hungarian civil law ensures in the far perspective the technical possibilities for the fluent transition to and joining with the unified EU tendencies in controversial issues of family law. Monistic approach would be more urgent for Ukraine with the achievement of accession to EU.

Discussion of research results.

The results of the research were discussed on the workshops and round tables within Kyiv University of Law of the National Academy of Sciences

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Conclusions

Thus, family law in the system of law does not determine the way of the codification of family norms in this or that country. Joining family and civil norms in one codified act according to the aim of codification has to provide their coordination and correspondence. The last civil codifications of both countries created the basis for the coordinated legal regulation of social relations in the sphere of civil and family relations on market principles.

The contrary practical examples of Ukraine and Hungary in the area of family legislation codification highlight and prove the different real movement of the development of a country towards integration. Hungary follows European monistic way of civil legislation codification on the contrary to Ukraine. One generalised act guaranties that family and civil legal norms are harmonized and similar rules are applied in all institutions of family law even with the flow of time, changes and amendments in legislation. At the same time monistic approach proves the regulatory environment is directed to the current integration processes in Europe. As the topic argued is hanging over in discussions for the last year of war or so in Ukraine it has the deep roots to the integration processes taking place now and perspective of development alongside. The dualistic approach saves the native values of a family in the society broadly regulating family relations and has its advantages. But the unified civil code seems to be inevitable in the light of contemporary priorities of Ukrainian policies.

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IMPLEMENTATION OF CRIMINAL LIABILITY FOR VIOLATIONS OF THE PROCEDURE FOR CARRYING OUT INTERNATIONAL TRANSFER OF GOODS SUBJECT TO STATE EXPORT CONTROL

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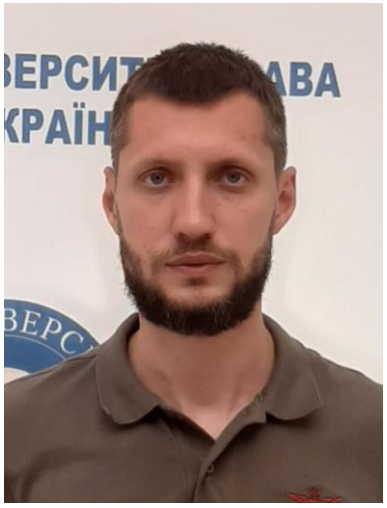

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Abstract. The article notes that violation of the order of international transfers of goods subject to state export control carries a danger directly to the national security of the state. Criteria have been defined to measure the social conditions of criminalization of violations of the procedure for international transfers of goods subject to State export control. Groups of factors that influence criminalization have been allocated. A literature review of the grounds of the criminal-legal prohibition which serve as objective prerequisites for its establishment has been carried out. The materials of judicial practice have been analyzed.

Keywords: *criminal liability, criminalization basis, state export control, national security, order of international transfers of goods.*

Introduction

The criminalization of the violation of the procedure for international transfers of goods subject to State export control is conditioned by the construction of a system of effective measures to establish national control over activities. It is related to the implementation of international transfers of goods subject to State export control including through the incorporation in national legislation of not only regulatory but also protective norms. This is extremely topical in modern realities, therefore the state policy in the State export control should be formed in accordance with the principles of priority of Ukraine's national political, economic and military interests the protection of which is necessary for national security.

Literature review. Some issues related to criminal liability for violation of the established procedure for the international transfer of goods subject to State export control have been examined in the works of such scholars as: S. Galaka, S. Grachov, O. Grishutkin, A. Danilevsky, S. Miroshnychenko, R. Orlovskyi, G. Perepelytsia, O. Pluzhnyk, N. Sklyar, I. Kondratov, O. Siver, O. Shamara, S. Yatsenko. At the same time, some provisions in connection with the process of military globalization need new approaches to understanding their essence which gives rise to a number of new directions in the elaboration of the problem.

Research methods. The article uses such methods as analysis and synthesis, comparison, explanation, formulation of logical conclusion, generalization.

Research results. Criminal liability is a type of legal responsibility that reproduces the main features of both social and legal responsibility and has features of legal influence that distinguish it from constitutional, administrative, procedural, civil and other types of legal liability (mandatory method, legal coercion, features of tort capacity, etc.) (Kozachenko, 2017, pp.42-62).

Several scientific concepts of the content of criminal responsibility have emerged in national criminal law doctrine, in particular: 1) criminal responsibility as the implementation of sanctions; 2) criminal responsibility as punishment; 3) criminal responsibility as a duty to suffer certain limitations; 4) criminal responsibility as a special type of legal relationship. Differences in the understanding of criminal responsibility result in different content of its implementation. For example, O. Kozachenko speaks about four stages of criminal responsibility: the occurrence of criminal responsibility which is connected with the moment when a tort capable person commits a criminal offence; prosecution (the beginning of criminal responsibility); it is connected with the moment of notification of a person on suspicion of committing a criminal offence; the direct realization of criminal responsibility which relates to the date of entry into force of the conviction and acquires concrete features; the end of the criminal responsibility is connected with the moment of discharge or removal of the criminal record (Kozachenko, 2017, pp.42-62).

In the opinion of I. Mytrofanov the forms of criminal liability are the procedure for the application of criminal-legal influence as a reaction of the state to the committed crime into regulated public relations manifested in the State conviction of a specific person found guilty of committing a specific socially dangerous act as well as in the limitations of the Criminal Code of Ukraine of a personal, property or other nature clearly defined by the court's guilty verdict (Mytrofanov, 2015, p. 53).

At the same time, the scientist does not link the form of implementation of criminal liability with the application of specific measures provided for in the Criminal Code of Ukraine. V. Navrotskyi highlights the following forms of criminal responsibility: 1) conviction by the court which is not combined with the imposition of any criminal penalty; 2) conviction by the court which has been sentenced to a specific type and amount (term) of sentence and contains a court decision on (conditional or unconditional) release of a person from serving the sentence imposed on him; 3) sentencing by the court in the conviction sentence with his actual serving, common law and criminal law consequences, i.e. (Navrotskyi, 2013, p. 87).

In fact such an understanding of the implementation of criminal responsibility is corresponding to the third stage of «direct» implementation of criminal responsibility which is connected with the moment of entry into force of the guilty verdict. In our opinion understanding of criminal liability by V. Navrotskyi is more reasonable as its separation at stages covers various aspects of criminal responsibility not the exercise of criminal responsibility. Therefore, we include to the forms of implementation of criminal liability for violation of the procedure for international transfers of goods subject to state export control such actions: 1) exemption from criminal liability that is without sentencing; 2) imposition of a sentence with the application of a release from serving sentence; 3) the imposition of a sentence with its subsequent serving.

Only a small part of the case-law (9 of the 100 judgments examined in the 2019-2022 period) of exemptions from criminal responsibility without punishment for violations of the procedure for international transfers of goods subject to State export controls. In 7 cases (7 determinations) the exemption from criminal responsibility was granted on the basis of Art. 47 of the Criminal

Code of Ukraine in connection with the transfer of a person on bail (reyestr. court.gov.ua/Review/104783229). In all cases the accused was in an employment relationship with the staff who applied for bail and the prosecutor did not object to the application being granted. For example, the Liuboml District Court of the Volyn region considering the application of the general meeting of the collective of "VB UKRAINA" company about the exemption from criminal liability of PERSON_4 an engineer on service and service of products of the said company based on the premise that the exemption from criminal liability in connection with the transfer of a person on bail of the labour collective is a right of the court. Therefore the court should be convinced of the possibility through active public participation to achieve positive changes in the social behaviour of the person. The Court referred to the fact that a systematic analysis of the said rule of law leads to the conclusion that the release from criminal responsibility in connection with the surrender of a person on bail may take place under the combination of the following conditions: 1) a person has committed a crime for the first time; 2) actions refer to a criminal offence which is an offence or a minor offence; 3) acts do not relate to corruption offences or traffic offences; 4) the person has made a sincere confession; 5) the staff of the enterprise, institution or organization wishes to take a person on bail and has applied to the court for bail; 6) the person does not object to the closure of the criminal proceedings on this non-rehabilitating ground and agrees to abide by the conditions of bail; 7) the conditions for granting bail are that the company, institution or organization that accepts bail must comply with the measures of an educational nature and respect for public order. The court also found that the criminal offence provided for in Art. 12 of the Criminal Code of Ukraine is a minor offence which does not refer to corruption (note to Art. 45 of the Criminal Code of Ukraine) or to violations of traffic safety, and the fact that the accused sincerely repented, confessed the guilt, criticised the act, no harm done. On the basis of the above the court decided to exempt PERSON_4 from criminal liability for the commission of the criminal offence under Section 1, Art. 333 of the Criminal Code of Ukraine based on Art. 47 of the Criminal Code of Ukraine in connection with the transfer of it to the labor collective of "VB UKRAINA" company if justifies the trust of the collective and will not evade educational measures and not disturb the social order it within a year from the date of its release on bail (reyestr.court.gov.ua/Review/96054894).

The exemption from criminal liability was applied in connection with a change of circumstances in two cases. In particular the decision of the Ripkyn District Court of Chernihiv Region in case No.743/1392/21 exempted the defendant from criminal liability on the basis of Art. 48 of the Criminal Code of Ukraine was motivated by the fact of the russian aggression against Ukraine above all. In the decision of June 6, 2022 on 24 February 2022 the Court stated the following: "Russian Federation launched military aggression against Ukraine and the martial law was introduced by the Presidential Decree No. 64/2022. The organized group in which PERSON_4 was a part purchased military goods for which the defense enterprises of Ukraine have demand in the territory of the russian federation and in the future such goods were under the guise of other goods. In particular spare parts and components for various types of equipment moved to the territory of Ukraine across the border with the Republic of Belarus where they were carried out by entities controlled by the organized group to the defence enterprises of Ukraine. It should be taken into account that in implementing the scheme for the importation of klystrons into the territory of Ukraine from the territory of the russian federation through the Republic of Belarus. The accused persons thus committed acts aimed at reducing the defense capability of the aggressor country and increasing the defense capability of the Armed Forces of Ukraine since klystrons were to receive enterprises that manufacture and repair air defense equipment. Pursuant to Art. 11 of the Criminal Code of Ukraine the public danger inherent in a criminal offence, occurs where the act has caused substantial harm or could cause such harm to a natural or legal person, society or the State. Thus as a result of the war between the russian federation and Ukraine the actions of PERSON_4 expressed in the actual provision of military goods, the defense enterprises of Ukraine are not actions which have caused or could cause such damage to a natural or legal person, society or the State. So it can be argued that the situation has changed and that the act committed by PERSON_4 has lost the public

danger. In addition, the offence under the Section 2, Art. 2 of the Criminal Code of Ukraine is not difficult according to Art. 12 of the Criminal Code of Ukraine. In the established circumstances the Court considers that the grounds defined in Art. 48 of the Criminal Code of Ukraine for the release of the accused PERSON_4 from criminal liability in connection with the change of the situation".

Another ground for the determination of exemption from criminal liability under the Art. 48 of the Criminal Code of Ukraine has become a loss of public danger. An example of this is the ruling of the Putyvl District Court of Sumy Region dated July, 17 2020 in case No. 584/868/20. The court established that the defendant "PERSON_4" first committed the crime which according to Art. 12 of the Criminal Code of Ukraine is a moderate crime and he was not prosecuted previously. He is no longer the director of the "SEYM" company. The act committed by him has lost public danger, accused of a 2 disabled group person and now his health has deteriorated due to burns of limbs as confirmed by medical certificates. There is reason to believe that due to the change of circumstances he is not a socially dangerous person".

The imposition of a sentence applying the exemption from serving the sentence included release from serving the sentence with trial (Art. 75 of the Criminal Code of Ukraine) (8 sentences) and exemption from serving a sentence due to expiry of the statute of limitations (Articles 74, 49 of the Criminal Code of Ukraine) (1 resolution). Relatively small percentage of releases from serving a sentence with a test (Art. 75 of the Criminal Code of Ukraine) is explained by the fact that the courts have applied release from serving a sentence with a trial period in the imposition of custodial sentences is only a fraction of the fines imposed most frequently by the courts as shown by the following branch. Making the decision on release from probation (Art. 75 of the Criminal Code of Ukraine) the courts took into account the following: 1) the seriousness of the criminal offence committed – violation of the procedure for the international transfer of goods subject to State export control is a minor offence; 2) data on the identity of the accused – no criminal record, positive description of the place of residence; absence from the records of the doctors of the narcologist and psychiatrist, employment; 3) existence of extenuating circumstances: sincere repentance, active assistance in solving the crime, no harm; 4) absence of circumstances aggravating the punishment of the accused. Of the 5 sentences out of 8 it is considered that release from the sentence with trial was provided for by a plea agreement concluded between the accused and the prosecutor and approved by the court (reyestr.court.gov.ua/Review/90128597).

With regard to the exemption from serving a sentence due to the expiry of the statute of limitations the example of such dismissal is reflected in the determination of the panel of judges of the Criminal Chamber of the Zaliznychnyi District Court of Lviv dated September, 15 2022 in case No. 1-681/11. According to this decision during the appeal review of the verdict of the Zaliznychnyi District Court of Lviv dated November, 17 2015 which convicted PERSON_6 for a criminal offence under Section 1, Art. 333 of the Criminal Code of Ukraine the penalty of which in the version in force at the time of its commission was a tax of 100 to 200 of a tax-free minimum income of citizens or a restriction of liberty for up to three years or imprisonment for the same term with or without the right to hold certain positions or engage in certain activities for a period of up to three years. That means that the alleged criminal offence is a minor offence and established that more than four years have elapsed since its commission. According to paragraph 3, Section 1, Art. 49 of the Criminal Code of Ukraine exempts a person from criminal liability if five years have elapsed between the date of the commission of the criminal offence and the date of the entry into force of the sentence in the case of a misdemeanour except in the case referred to in paragraph 2 of that Section. On the basis of the above the Lviv Court of Appeal decided to exempt PERSON_6 from serving the sentence on the basis of Section 5, Art. 74 of the Criminal Code of Ukraine on the expiry of the statute of limitations (reyestr.court.gov.ua/Review/106302163).

Conclusions

From the context of the research we see that forms of criminal responsibility, such as release from criminal responsibility without sentencing and the imposition of a sentence with parole form almost equal parts of the mechanism for the implementation of criminal responsibility for violation of the procedure for international transfers of goods subject to State export control – each of them accounts for 9% of the sample of judgments rendered under Art. 333 of the Criminal Code of Ukraine during 2019-2022 period. In turn the largest proportion of the forms of criminal liability for violation of the procedure for the international transfer of goods subject to State export control is the imposition of a sentence followed by its execution (serving).

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CHANGES IN THE LABOUR RELATIONS' ORGANIZATION UNDER MARTIAL LAW

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Abstract. The article deals with the peculiarities of labor relations under martial law in Ukraine. The current state of legal regulation of labor relations is described. The article analyses the issues of organization of labor relations under martial law regime, outlines the features of labor relations of employees of all institutions, organizations and enterprises in the country regardless of the type of activity, ownership and industry ownership. The lack of experience in regulating labour relations between the State, employers and employees under martial law makes the study relevant.

Martial law has had a dramatic impact on all spheres of life of Ukrainians including work. This in turn has had an impact on changes in labour legislation in particular with regard to: the conclusion of an employment contract under martial law; the grounds for the termination of an employment contract; the termination of an employment contract; legal regulation of working and rest time; the article is aimed at studying labour relations under the martial law regime in the territory of Ukraine and conducting research of actual changes. The article is aimed at the study of labor relations under the military situation in Ukraine. The study of the problem was carried out through the use of methods of comparison, abstraction, analysis and generalization as well as the method of system–structural research. In the course of the study, actual changes in labour legislation were summarized, the basis of legal support for the activities of individuals was identified as well as the features of regulation of legal relations were generalized.

Keywords: *employment relationship, employment contract, legal regulation, employee, employer, mobilization, martial law.*

Introduction

The introduction of martial law in the territory of Ukraine under the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated 24 February 2022 No. 64/2022 had a direct impact on the organization of labour relations in the war conditions which made it necessary for the Verkhovna Rada of Ukraine to review the legislation governing such attitudes to the beginning of the armed aggression of the russian federation against Ukraine

The Law of Ukraine "On the Legal Regime of Martial Law" stipulates that martial law is "a special legal regime which is introduced in Ukraine or in its individual localities in the event of armed aggression or threat of attack, danger of the state independence of Ukraine, its territorial integrity and provides the relevant State authorities, military command, military administrations and local self–government bodies with the powers necessary to prevent a threat responding to armed aggression and ensuring national security, eliminating the threat to the State independence of Ukraine and its territorial integrity as well as temporarily threats to human and civil liberties and the rights and legitimate interests of legal persons, indicating the period of validity of these restrictions" (Law of Ukraine "On the legal regime of martial law" dated 12.05.2015).

The organization of labour relations under the martial law regime is a feature of the labour relations of employees of all institutions, organizations and enterprises in the country, regardless of the type of activity, form of ownership and branch affiliation as well as persons working under an

employment contract with individuals during the regime of martial law introduced in accordance with the Law of Ukraine "On the legal regime of martial law".

It is known that during the operation of martial law under the Law of Ukraine "On the legal regime of martial law" may occur temporary due to a threat restriction of constitutional human and civil rights and freedoms and the rights and legitimate interests of legal persons with an indication of the duration of these restrictions.

For the period of the legal regime of martial law according to the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated 24 February 2022 No. 64/2022 may temporarily limit the constitutional rights and freedoms of man and citizen provided for in Articles 30–34, 38, 39, 41 – 44, 53 of the Constitution of Ukraine (Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated 24.02.2022).

Research results.

In order to settle various aspects of labour relations during martial law the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the organization of labour relations under martial law" dated 15 March 2022 No. 2136–IX. The law entered into force on 24 March 2022 and will be in force during martial law introduced in accordance with the Law of Ukraine "On the legal regime of martial law" dated 12.05.2015 No. 389–VIII. Some of its provisions namely Section 3 Art. 13 (compensation at the expense of the aggressor State) will continue until the completion of the process of compensation of wages, guarantees and compensation of employees by the State carrying out the military aggression against Ukraine.

The analysis of the Law No. 2136–IX reveals the following changes in labour legislation:

Relating to employment contracts:

– the form of the contract – with consent;

– probationary period – for all;

– temporary suspension of the contract – giving and doing work through military action if impossible.

Relating to working conditions:

- working week: normal – up to 60 hours; reduced to 50 hours.

Related to pay:

– timely – if the enterprise is working;

– late – if the enterprise does not work (after

resumption of its activities).

Related to weekends:

– shortened holidays are cancelled;

– public holidays are cancelled;

– postponement of holidays are cancelled;

– weekend – minimum 24 hours.

Related to vacation:

– paid annually for 24 days;

– unpaid – indefinite.

Related to dismissal of employees:

– at the employee's initiative – if threatened (except for critical infrastructure workers or involved in community service) – 2 weeks without notice;

– at the employer's initiative – during sick leave – from the first working day (Taran, Pleskun, 2022, p. 354).

The Law specifies that the provisions of the Law of Ukraine "On the organization of labour relations under martial law" which regulate certain aspects of labour relations differently from the Labour Code and other labour legislation have priority for the period of martial law for employees of all enterprises, institutions, organizations in Ukraine regardless of the form of ownership, type of activity and branch belonging as well as persons working under an employment contract with individuals.

Norms of labour legislation contrary to the provisions of this Law shall not be applied during the period of martial law. However, other labour laws that do not contradict the provisions of Law No. 2136 can or should be applied between an employee and an employer also.

It is noted that Law No. 2136 applies only during martial law which is reflected in Article 1 of the Law. It is important that during the martial law regime restrictions are introduced on the constitutional rights and freedoms of individuals and citizens in accordance with Articles 43 and 44 of the Constitution of Ukraine (Taran, Pleskun, 2022, p. 354).

Article 43 of the Constitution of Ukraine states that: "Everyone has the right to work including the opportunity to earn for a living by work that he freely chooses or agrees to. The State shall create conditions for the full exercise by citizens of the right to work, guarantee equal opportunities in the choice of profession and employment and implement vocational training programs; training and retraining of personnel in accordance with

public needs. The use of forced labour is prohibited. Military or alternative (non–military) service as well as work or service performed by a person under a sentence or other court order or under the laws of martial law and emergency shall not be considered forced labour. Everyone has the right to adequate, safe and healthy working conditions, to a wage not lower than the legal wage. The employment of women and minors in work that is hazardous to their health is prohibited. Citizens are guaranteed protection against unlawful dismissal. The right to timely remuneration for work is protected by law" (Constitution of Ukraine, 1996, Art. 43).

Article 44 of the Constitution of Ukraine states: "Those who work have the right to strike to protect their economic and social interests. The procedure for exercising the right to strike is established by law taking into account the need to ensure national security, health care and the rights and freedoms of others. No one may be compelled to participate or not to participate in a strike. The prohibition of a strike is possible only on the basis of law" (Constitution of Ukraine, 1996, Art. 44).

The prohibition of a strike is possible only on the basis of law. (Constitution of Ukraine, 1996, Art. 43).

Thus, in war times there are restrictions on the right to free choice of work and the right to strike to protect one's own interests. This in turn is in accordance with the provisions of the Law of Ukraine "On the legal regime of martial law". Article 19 of this Law prohibits strikes and paragraph 2 of Section 2 of the Art. 8 allows the military command (military administrations) to introduce labour service for able–bodied persons (Law of Ukraine "On the legal regime of martial law" dated 12.05.2015).

The provisions of Law No. 2136 apply to employers, employees of all enterprises, institutions and organizations in Ukraine, irrespective of their form of ownership, type of activity and branch affiliation as well as to persons working under an employment contract with individuals.

Law No. 2136 does not expressly prohibit the granting of "more extended" rights and guarantees to employees, for example by voluntary decision of the employer or as a result of agreements made between the employer and the trade union. If this ensures better performance during martial law and the rights of the parties to an employment contract are not oppressed. There will be no grounds for sanctions for non–compliance with the law.

Article 2 of Law No. 2136 regulates the question of determining the form of employment contracts during the period of martial law, setting the test when new employees are hired as well as the reasons for concluding fixed–term employment contracts in case of replacement of temporarily absent employees ("On the organization of labour relations under military conditions", 15.03.2022).

In the options provided by law a mandatory written form of employment contract was used. But under martial law the parties have the right to independently determine the form of employment contract (Kovalchuk B., 2022, Art.7).

Regardless of the form of employment contract chosen by the parties there is a statutory requirement to provide the Notification of acceptance of the employee/concluding a gig–contract.

At the same time regarding the submission of a notification to the bodies of the State Tax Service the obligation to submit which is provided for the owners of enterprises, institutions, organizations or their authorized bodies (persons) or individuals during the operation of martial law such a communication may not be submitted in the light of Law of Ukraine "On Protection of the Interests of Subjects Submitting Reports and Other Documents During Martial Law or a War State" accepted by the Verkhovna Rada's (Law of Ukraine "On Protection of the Interests of Subjects Submitting Reports and Other Documents During Martial Law or a War State", 03.03.2022)

Consequently, the sequence of actions to formalize labour relations during martial law is as follows:

– determination of the form of the labour contract (verbal or written). Written form is optional even in the cases provided by Section 1 of the Art. 24 of the Labour Code of Ukraine;

– conclusion of an employment contract: the employee shall write an application for employment and/or sign an employment contract;

– issuing an order for employment (arbitrary form or P–1 form);

– submission of the Notification of acceptance of the employee/concluding a gig–contract (mandatory before actually admitting an employee to work) to the STS body.

The legislator retained the possibility of setting tests for employment and for the duration of martial law for all categories of persons (Kovalchuk, 2022, Art. 6).

In order to quickly recruiting of new employees the Law No. 2136 provides employers with the opportunity to conclude fixed–term employment contracts with new employees during martial law or for the period of replacement of a temporarily absent employee ("On the organization of labour relations under martial law", 15.03.2022) .

For the duration of martial law an employer has the right to transfer an employee to another job not specified in the employment contract without his consent. Art. 33 of the Labour Code of Ukraine (1971) contains a similar provision. Still such work should not be contraindicated to the employee for health reasons. A ban has also been imposed on such transfers to another area where active hostilities continue ("On the organization of labour relations under martial law", 15.03.2022, Section 1, Art. 3). At the same time the salary of the transferred worker has not been changed: for the finished work it is not lower than the average salary for the previous work.

During the period of martial law the employer is relieved of the obligation to notify the employee in advance (2 months in advance) of changes in essential working conditions as stipulated in Section 3 of the Art. 32 of the Labour Code of Ukraine (Labour Code of Ukraine, 1971, Section 3, Art. 32). However, significant changes in working conditions are still permitted if this is due to changes in the organization of production and work.

Employees may thus be warned of changes in essential working conditions as soon as the employer decides to make such a change but no later than to be allowed to work in changed working conditions.

According to the Commentary of the Ministry of Economy of Ukraine dated 23.03.2022 absence of a worker due to combat activities cannot be qualified as truancy without a valid reason (Commentary of the Ministry of Economy of Ukraine on the Law of Ukraine "On the organization of labour relations under martial law", 15.03.2022).

It is therefore advisable to consider the absence of an employee for unclear or other reasons before ascertaining the reasons for his absence and obtaining written explanations from him.

The labour legislation does not provide for the obligation of an employee to inform the employer of his whereabouts and refugee status or to acquire temporary protection status. Considering the extremely difficult situation in the territory of Ukraine according to the Ministry of Economy of Ukraine the workers who is not working as a result of circumstances related to the fighting or who are unable to work due to the danger to life and health are not subject to automatic dismissal or for example dismissal under paragraph 4 of Section 1 of Art. 40 of the Labour Code of Ukraine for "truancy without a valid reason" (Kovalchuk, 2022, Art. 6)

If there is no communication with such an employee until the reasons and circumstances of the absence are clarified the position of the employee are retained. In this case the employment relationship is not terminated.

Article 36 of the Labour Code of Ukraine was supplemented by the following new paragraphs: 8–1) death of an employer – a natural person or entry into force of a court decision declaring such a natural person missing or deceased; 8–2) death of an employee, finding him missing or pronounced dead; 8–3) employee absenteeism and information on the reasons for absence for more than four consecutive months (Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Optimization of Labour Relations", 01.07.2022).

Today, it is possible to terminate an employment contract on the initiative of an employee or an employer. (On the organization of labour relations under martial law, 15.03.2022). If possible the employer and the employee must notify each other of the suspension of the employment contract by any available means.

That is, notification in any messenger will be considered a proper notification by both the employer and the employee of the initiative to suspend the employment contract.

In addition, working and rest time standards change: normal working hours cannot exceed 60 hours per week (40 hours) and 50 hours per week with reduced working hours (24 and 36 hours) and weekly uninterrupted rest may be reduced to 24

hours. There are no restrictions on overtime work, no longer being allowed to work on weekends, public holidays or non–working days and the working day before public holidays, non–working days and working at night has been reduced (Analysis of the provisions on “organization of labour relations under martial law”, Law No. 2136).

As far as wages are concerned, the issue is mostly settled: the employer has to carry out all possible wage payments. Art. 10 of Law No. 2136 describes the peculiarities of payment of wages to employees during martial law. However, during the martial law regime an employer is exempted from responsibility for late payment of wages if he proves that there are valid reasons for this: the legal regime of martial law, hostilities or other circumstances of force majeure. In addition even exemption from liability for late remuneration does not relieve the employer of the obligation to pay.

In a letter dated 28.08.2022 No. 2024/02.0–7.1 the Chamber of Commerce and Industry of Ukraine certified the force majeure circumstances (circumstances of force majeure) due to the military aggression of the russian federation against Ukraine. Ukrainian Chamber of Commerce and Industry confirms that these conditions from February 24, 2022 until their official end are extraordinary, unavoidable and objective circumstances for economic entities. The order should refer to the conclusions of this letter.

Article 12 of Law No. 2136 establishes a number of peculiarities in the context of the duration of vacation and the procedure for granting them to employees during martial law. From the date of entry into force of Law No. 2136 until the end of martial law, the maximum duration of the annual basic vacation will be 24 calendar days. In this case the employee may be granted annual additional vacation, social vacation and other vacation in accordance with the Law of Ukraine "On vacation". If the employee’s annual basic acation is more than 24 calendar days, the additional days of vacation shall not be lost but shall be granted after the end of martial law. During martial law an employer may refuse to grant an employee any type of vacation (other than maternity vacation and vacation to care for a child up to the age of three years) if the employee is engaged to perform work at the facilities of critical infrastructure.

If an employee is not involved in the work on critical infrastructure facilities it should be borne in mind that according to Art. 10 of the Law of Ukraine “On vacation”, the priority of granting holidays is determined by schedules approved by the owner or his authorized body in agreement with the elected body of the primary trade union organization (union representative) or other authorized representative of the labour collective and shall be notified to all employees.

Conclusions

Therefore, changes in the organization of labour relations under martial law make it clear that the legislative regulation of labour relations is the influence of a set of legal regulation documents and laws of Ukraine on the order of organization of relations between employee and employer. The military aggression of russia against Ukraine and accordingly the conditions of martial law significantly complicated the interaction of the parties, the basis of which is reflected in the Law of Ukraine «On the organization of labor relations under martial law» which plays a priority role over other legislation regulating the regulation of employment in war time.

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LEGAL TERMS: STRATEGIES OF TRANSLATION

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Abstract. This research is the study of English legal terms and the means of their translation into Ukrainian. It manifests the peculiarities of the interpretation of English and Ukrainian legal terms taking into account both linguistic and extra linguistic factors. The research analyzes English terms in the theory of translation, determines the characteristics of the Ukrainian and English legal terminology systems, and discusses transformations and the ways of translating. The results provide the main methods and techniques of translating English legal terms, identify the difficulties faced by a translator, and determine the ways to overcome them: selection of an analogue, descriptive translation, semantic tracing of the term as a terminological phrase, and verbatim translation of phrases.

Keywords: *legal terminology, legal terms, transformations, methods and techniques of translating, analogue, descriptive translation.*

Introduction

The practice of translating legal texts is widespread in everyday life. This is explained by the emergence of new means of communication, the integration of the Ukrainian legal system into common European law, and the adaptation of national legislation in accordance to the requirements of the European Union.

Legal translation is "the translation of one legal system into another". The interpretation of legal terms is complicated by both linguistic and extra linguistic factors.

The development of research in the field of legal translation studies and legal terminology, in particular, contributes to the solution of many applied tasks and the exchange of legal information.

The aim of this article is to study the functioning of legal terms in English and Ukrainian, the means of their translation.

To achieve this goal, the following tasks have been defined:

- to analyze the functioning of English terms in the theory of translation;
- to determine the characteristics of the Ukrainian and English legal terminology systems;
- to describe the main methods and techniques of translating English legal terms;
- to identify the difficulties faced by a translator when translating legal terms and determine the ways to overcome them.

Literature review. Numerous studies by Ukrainian and foreign linguists are devoted to translation in the field of law. The works of S. Nikiforova (2012), N. Hlinka (2011), R. Bilokon' (2018) and E. Selyvanova (2017) are the researches in the field of specialized translation of legal texts. Problems of legal terminological translation are investigated by D. Cao (2010), A. Kocbec (2008), V. Tolstyk (2013), and Udina (2015).

Considering the diversity of approaches of scientists in this field and the existence of certain difficulties in the translation of legal documents, the adequacy of the translation of legal terminology requires additional researches.

Research methodology. Depending on the tasks to solve, appropriate research methods are used: the interpretive method, the descriptive-comparative method of data analysis, the semantic analysis, the critical analysis of theoretical works on translation theory.

Research results.

Terminology of legal vocabulary

The change in legal discourse is associated with the strengthening of the influence of legal structures on activities in the field of jurisprudence.

The legal terminological vocabulary of the modern English language consists mainly of lexemes of Latin origin. The formation of new terms is accompanied by an intensive process of derivation, which leads to tangible changes at the semantic level. Most legal terms continue to retain their semantics. Some of them lose or acquire new meaning, the others are desemanticized.

Discourse is the basis of the correct understanding of the term. A. Kocbec (2008) and M. Künnecke (2013) gave an understanding of the pragmatic function of discourse as a text. Its main feature is a logical combination of interacting language forms connected by the linguistic and extra linguistic content. The discourse determines the exact semantic limits of the term, the sphere of its distribution, and the connection with a certain branch of knowledge.

The Ukrainian term system is developing due to borrowings from other languages. Translators can create national terms from international terms. In order to correctly understand the term, the translator has to know the basics of term formation, and understand the influence of Latin and Greek on the word formation of legal terms (Hlinka, 2011).

V. Karaban (2018) distinguished lexical difficulties of translation, emphasizing the need to apply permissible transformations.

The main difficulty in translating legal terms is the transfer of foreign realities. Such difficulties are overcome by detailing the description of the phenomenon under study and conveying it in terms. The translator compares all cases of the new terms' use, the general meaning of the text, and the ways of their interpretation.

K. Bilokon, summarizing the basis of S. Nikiforova's position, prevides a variety of legal terms: 1) general terms or commonly used terms characterized by clarity and importance in everyday life, e.g.: *refugee, witness, employee, accreditation, accomplice*; 2) special legal terms that have specific usage in a certain area. Only specialists can understand them, e.g.: *satisfaction of the claim, to retaliate accusation*; 3) special terms which have a specific usage in the field of special sciences, e.g.: *safety rules, non-patentable* (Bilokon', 2018; Nikiforova, 2012).

Transformations and ways of translating legal terms

Since legal terms are complex phrases, they require varying translation methods to achieve equivalence during translation. Most of the terms are prepositive attributive phrases.

The translation of terms consists of two components: analytical and synthetic. At the analytical stage, the components of a complex term that make it up are determined, the relationships and interconnections between its components are established. The nature of these relationships will determine the conjugacy of the term. The synthetic stage is based on the construction of components depending on semantic relations and the formation of the final meaning of the term.

A. Shveytser (2003) singles out several types of semantic equivalence: component and denotative. Semantic equivalence is achieved due to the presence of the same units in two languages. Such relations are called component semantic equivalence. The second type, denotative, is related to selectivity. To achieve equivalence in this case is to use various translation transformations (Shveytser, 2003).

Y. Retsker (2006) identifies three categories of correspondences: constant correspondences, contextual correspondences or analogies based on synonymous choices in a particular context, and adequate replacements with transformations (Retsker, 2006).

E. Selyvanova (2017) writes that a term can be used to denote native state institutions and other terms are used for foreign state institutions, e.g., the term *parliament* is used to denote "your" parliament, and the term *diet* is used to denote the parliament of other countries: *Member of Upper House, Diet in Poland or Hungary* (Selyvanova, 2017).

The level of denotative equivalence requires complex lexical-grammatical transformations which lead to changes in the semantic structure of the statement. A translation version of the text is created on the basis of contextual correspondences.

The absence of regular correspondences refers to the existence of non-equivalent vocabulary.

Two types of English terms belong to the non-equivalent vocabulary: 1) terms that

name phenomena or concepts do not exist in Ukrainian legal realities; 2) terms that have not concept differentiation in Ukrainian reality.

Transformations during translation are divided into stylistic, morphological, syntactic, semantic, grammatical, and lexical. Mixed transformations are often used.

Lexical transformations include transcription and transliteration, lexical-semantic transformations – concretization, generalization, and modulation. Although such a division is approximate, they usually combine and complement each other.

The essence of tracing a term is to create a new word by replacing its constituent morphemes or words. The process of copying the structure of a foreign lexical unit is taking place, e.g.: *Grand Jury, Magistrate's Court.*

During concretization, the word is replaced by another word that has a broad or narrow meaning. As a result, a certain correspondence is created.

Generalization is used in cases where the subordination of lexical units differs.

The compression method, such as omitting unnecessary elements, is also used when translating terms at the level of the entire text.

The method of translation is chosen according to the context in which this term is used. The main goal is to preserve the sound form and morpheme structure of the original terminological unit.

The English terminology system produces many legal terms. Therefore, the best way to develop the modern Ukrainian term system is its adaptation to existing international standards. It is necessary to create a system of bilingual correspondences.

Descriptive translation is used when it is necessary to convey the meaning of a word by means of an explanation of its meaning, if there is no dictionary correspondence. For example, the term *acknowledgment of will*, having no dictionary correspondence, can be translated descriptively as follows: *confirmation by a witness that the signature on the will belongs to the owner of the will*.

Descriptive translation can partly explain certain ambiguities in the use of the term, e.g., *Fred is accused of involuntary manslaughter (intentional murder committed without malice aforethought) when he accidentally kills a person*.

Tracing and transcribing reproduce the term verbatim. Transcription is most often used when translating the names of companies and institutions.

Modulation (or semantic development) is used as the replacement of a unit in the translation text with a controversial and logically related word or phrase.

The meaning of polysemantic words is revealed only in the context. For example, the expression *treatment under the law* has several translation options: *the use of the mode of exploitation, the mode of use*, etc. In the context of the legal text, the correct translation is *the attitude to the law*.

Ukrainian terms include a wider class of denotations. In English the class of denotations is more limited and differentiated. Omission implies an exception of secondary information.

Thus, the main problems of translating the terms' meaning are their polysemanticity which is overcome by analyzing the context and other concepts.

According to Glinka and Bilokon, there are often cases of combining transformations in the process of translating terminological units due to some differences in the grammatical, syntactic and morphological structures of the English and Ukrainian languages. The transformations carried out in the process of translation are divided into four types: 1) permutation (*prosecutorial judgment – the decision of the prosecuting authority*); 2) replacement (*Criminal Justice Act*); 3) addition (*citizen's arrest – detention of an offender by a civilian*); 4) seizure (*sea lawyer – maritime law specialist*) (Bilokon', 2018; Hlinka, 2011).

Discussion of research results. The results of this research shows that differences in existence of Ukrainian and English term systems are determined by their features, which must be taken into account in the translation process.

The Ukrainian terminological system functions on the following principles: 1) the national nature of the terminology and its synonymy; 2) the original source determines the semantics of terms; 3) the terms have a laconic character and word formation possibilities. The Ukrainian term system develops due to borrowings. The difference in the terminological systems of Ukrainian and English can be explained by their historical development.

These conclusions are in agreement with statements of V. Tolstyk (2013).

This research distinguished the main difficulties a translator faces when translating legal texts: lack of equivalent terms; the existence of terms that are associated with a specific legal system; the specificity of the language of law is that it is used only for special purposes; vagueness in the definition of some terms. These statements proved the D. Cao' research (Cao, 2010).

There were found the translation difficulties which are necessary to take into account. The first group of translation difficulties is represented by the translator's false friends. The second group includes terms denoting professions, realities of the judicial system, and terms belonging to various branches of law (Harvey, 2002). The third group is word terms that have both a general and a special meaning (Cao, 2007). The fourth group of difficulties is defined by terms that are characterized by their uncertainty and ambiguity (Cao, 2010).

To overcome these difficulties, the following strategies of translating English terms can be used: selection of an analogue; descriptive translation of the term; transliteration with explanation; semantic tracing of the term as a terminological phrase; verbatim translation of phrases; translation with a descriptive form.

Conclusions

This research is the study of the functioning of legal terms in English and the means of their translation into Ukrainian. It analyzed the functioning of English terms in the theory of translation, determined the characteristics of the Ukrainian and English legal terminology systems, described the main methods and techniques of translating English legal terms, and identified the difficulties faced by a translator and determined the ways to overcome them.

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