CONTENT

PREFACE

Contemporary development of national law and legislation of Ukraine is characterized by intensity and dynamism.They are caused by a large number of reforms. Consequently, radical transformations in all spheres of our life have urged the need for the formation of an adequate legal framework for the development of a society. This framework will contribute to the achievement of the goal of a law-governed state.

Qualitative transformations have affected all relations. This process caused the emergence and development of not only relevant legislation, but also new areas of legal science.

It is impossible not to emphasize the influence of market management mechanisms on the formation of modern legislation. This factor influences on qualitative transformations of legal regulation structures and affects the fundamentally new modes of regulation, etc. This involves the transition to a new stage of scientific generalizations and a qualitative rethinking of legislation. As a consequence, it provides the creation of an effective array of legal acts.

Approximation of national provisions of the legislation to relevant EU legislative acts promotes the comprehensive protection of the rights, freedoms and interests of individuals and others. In addition, the use of a positive world experience can accelerate the solution of complex, contradictory moments in the transformation of scientific views, improvement of legislation, built on the basis of the praxis component.

All of the above influenced the formation of the goal of this study. The main purpose of this monograph is to highlight the institutional transformations of legal science.

A monographic study is aimed at creating an updated conceptual approach at the level of fundamental research on the construction of a more perfect system of regulation of certain social relations.

The monograph offered by the reader is the result of scientific research by the authors. Despite different points of view, all scholars support the thesis that the main vector of development of Ukrainian legal science is the same type,

covering universal standards of scientific comprehension and understanding of social relations, assessment of legal values. As a consequence it needs creation of the basis for promising fruitful scientific cooperation between Ukrainian and European lawyers.

The content of the monograph consists of the actual achievements of the authors. In this connection, the chapters presented in this study consider the urgent issues of the development of national legislation. The practical implementation of the conclusions and suggestionsthat are made by the authors is aimed at forming a planned legislative strategy and its transformation towards the formation of an updated model of law.

This monographic study is interesting because it allows forming an idea about the main trends in the development of certain areas of legal science in Ukraine. It also contributes to the development of discussion, forecasting the further functioning of the national legal system, taking into account European and international standards.

In connection with the above-mentioned, the monograph "Development of national law in the context of integration into the European legal space" is addressed to a diverse audience (scientists, practitioners working in the field of law, interested persons). It will contribute to the intensification of the transformational processes of national law.

SECTION I

LEGAL SYSTEM OF UKRAINE UNDER CONDITIONS OF THE LEGAL GLOBALIZATION: THEORETICAL AND LEGAL ANALYSIS

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Annotation

This article discusses the impact of the processes of legal globalization onto development of the contemporarynational legal systems. The degree of the problem development and modern approachesto its comprehension are also considered. The legal analysis of the content of legal globalization has been carried out as well asthe existing forms of interaction of the legal systems and the means with which the national legislation complies with the modern international principles and standards have been characterized. There are defined the positive and negative aspects of the legal globalization. The author of the article presents his own definition of the notion of legal globalization.

The article outlines the forms and means of modernization of the legal system of Ukraine defined by The Association Agreement between Ukraine and the European Union and other legal acts. The tendencies of forming of the legal policy of Ukraine in terms of improvement of the national lawaccording to the requirements of the international law and legislation of EU are analysed.

Preface

The priority course of development of the Ukrainian state at the modern stage of the state creation is a realization of the number of democratic transformations in different spheres of activities of society, where the rights and freedoms of an individual and a citizen, guaranteed by the Constitution of Ukraine, must be properly secured. The successof realization of the state policy is stipulated not only by the presence of the necessary material and technical resources, but alsoby the proper legal support, the evidence of the latter is the experience

of the economically developed countries. In the author's opinion, the process of passage of the normative and legal acts necessary for reforms must be carried out systematically and consistently, be internally agreed, have exceptionally the national interests and needs of the Ukrainian society as a priority. This matter is the subject of the separate direction of the state policy – the legal policy, whichrequires the unique, scientifically substantiated concept of development of the state and society.

The author of the article defines the ***legal policy*** as a complex of ideas of the strategic character developed by the public authorities and local government bodies, with participation of the public, which are embodied in the specific development programs of the legal life of society and state.

Legal acts of different legal force are the form of expression of the legal policy, that have to be not only timely adopted, but also be envisaged by the proper programs of development of different areas of the state economy in advance.

At the same time, the world community requires today from Ukraine not only to activate the process of carrying out of political, administrative, economic and social reforms, but also to provide a compliance of the normative and legal acts, based on which these reforms will be realized, to the standards of the European legislation that acquires today ***the*** special ***actuality*** in terms of the globalization processes**.**

§ 1. Notion and content of the legal globalization

Development of human civilization in the twentieth century was marked by origin of new, postindustrial paradigm of society that wasconditioned by the introduction of the newest information technologies. Appearance and widespreadusage of the Internet have facilitated activation of the social and economic cooperation of the different societies and their social institutions under the patronage of the world monopolists not only at the national or macroregional levels, but also at the worldwide level. At the same time such rapid development of human civilization is characterized bythe emergence of the new problems for humanity caused by the ecological catastrophes of the world scale, cyber crime, defaults, etc.

A necessity of solution of new, global problems in economy, policy, social and cultural spheres induces the states to cooperatenot only in the area of economic (commercial) collaboration, but also in the field of national security, law. In the modern science this process is called "globalization". In opinion of V. Bogatyrjov, globalistics should beunderstood as an area of science that synthesizes in one whole the achievements of all areas of knowledge about the earthly civilization to establish the general regularities of thedevelopment of humanity as a unique organism [1, p. 73].

Today globalisticsis being formed into two directions. First of all, a concept about humanity as a unique whole is being developed at philosophical and general scientific levels. Secondly, the researches of separate spheres of global processes are being conducted, where every branch of humanities and social sciences develops its own vision about globalization: in economics – creation of global economy;in politics– origin of the new world order and forming of the world civil society, etc.

The settlement of the various global processes is going onwith a help of different instruments – principles of economy, political arrangements, law. Currently, lawis not not only the instrument of globalization, but it is also simultaneously a separate sphere of globalistics: it is impossible to settle global processes with the help of national law, the sphere of influence of which is territorially limited, more advanced, renewed mechanism of the legal regulation is required for this purpose. Thus, a national lawalso undergoes the influence of globalization, which in its turn becomes precondition for forming of the new branch of public knowledge – legal globalistics.

In opinion of the investigators, the formation of legal globalistics can be performed in two directions: first of all, by means of research of perspectivesof the legal science in general: from the norm of the law to the general world order that is formed under new global conditions; secondly, within the limits of possibilities of the legal regulation only of the global processes that take place in the world [1, p. 75].

Universalization of the national law began, when the states under the aegis of the UNOentrenched the modern complex of inalienable natural rights and freedoms of a person and a citizen directly at the constitutional leveland generally recognized principles and norms of international law became the priority component of the legal system of the majority of states – members of the world community, including Ukraine.

The content of legal globalization lies into a process of interaction of the modern legal systems, first of all English-American and continental. In the legal

literature such cooperation was called *internationalization* [2, p. 44], that means approach of the national legal systems of the states, intensification of their cooperation under influence of the international law.

There are the following components of the legal globalization:

I. Interinfluence and interaction of the international and national law

One of the objective regularities of development of the modern law is an extension of interaction of international and national law. This extensive cooperation stipulates the so-called internationalization of the nationallaw thatis going onby different methods.

One of the methods of interaction is a recognition of priority of the international law over the national one. In particular, the article 10 of the Constitution of Czech 1992 stipulates that the ratified and promulgated international agreements on human rights and fundamental freedoms, according to which the Czech Republic took therelevant obligations,are valid and have advantage before a national legislation [3].

The question of priority of norms of the international law over the norms of the national legislation, and in particular constitutional and legal norms, divided the opinions of scientists: the Russian legal scholars considerthe norm of the Constitution (part 4 article 15 of the Constitution of RF) about priority of the international law over a national law as a demonstration of a globalization that inevitablyraises the question of firmness of the state sovereignty, meanwhile, such delegation of the part of powers in terms of the realization of the person's rights and freedoms does not harm the interests of citizens as it actually facilitates additional guarantees for the person's rights and freedoms [4, p. 84; 5, p. 107].

The analysis of provisions of the article 9 of Constitution of Ukraine does not give a ground to talk about the priority of the norms of international law over the norms of Constitution, it recognizesthe ratified by parliament valid international agreements as a part of national legislation of Ukraine on condition that they comply with the Constitution of the state [6]. At the same time it is possible to talk affirmatively about priority of norms of international law over the other norms of the Ukrainian legislation, coming from provisions of the part 2 article 19 of Law of Ukraine "On the international agreements of Ukraine" 2004 [7]. In the legal science there are often expressed the ideas regarding the expediency of constitutional directions which would establish the advantage of international law over the nationalone [3].

The influence of international law onto national law is performed by means of signing of the new international agreements, conventions, acts and other documents which require the changes of the national legislation. For example, the ratification of Convention on Safety and Health in Agriculture, 2001 (ą 184)by the Parliament in 2009[8]supposes a development of the Ukrainian national policy on safety and hygiene of labour in the agriculture as well as adoption of the normative acts or introduction of the changes and amendments to the current acts in the of the labour legislation and labour protection. The influence of international law onto national law also occurs when the state joins the international organizations on condition of introduction of some changes into the current legislation. Thus, the accession of Ukraine to the WTO in 2008 was conditioned by accession to Agreement on the World Trade Organization that presupposed thefulfillment of a numberof obligations in strictly defined terms [9].

Other demonstration of internationalization of the nationallaw is its intensive change by conformingthe national norms to the international legal standards.

The term "international and legal standard" is introduced intothe scientific discourse by the American philosopher and futurology O. Toffler in the second half of the ŐŐ century. Legal standardization aims at establishment of the unique minimum norms and requirements to the legal regulation of public relations within the framework of the international organizations.

Nowadays,the legal standards are used in the different spheres of the legal regulation, for example,the standards in the field of ecological quality regarding the management of the natural resources and water protection are established by the Water FrameworkDirective (Directive of 2000/60/EU). But, foremost, it is the international and legal standards in the field of rights and freedoms of personality, for example, minimum standard rules of the UNOregarding the realization of justice in relation to juveniles became a basis for "Conception for the development of criminal justice for juveniles in Ukraine" [10]. A positive effect from introduction of international and legal standards is expected in terms of intensification of struggle against the new undesirable global phenomena, such as, for example, transnational organized crimes.

II. Correlation and interaction of the public and private law

In legal science during along period of timeexisted a strict division onto a public and private law in the legal system.However, such approach nowadays no longer proves its value under conditions of the global processes.Laws of

market economy and tendency of unification of the national markets with the purpose of their transformation into the global world market, all thesecompel to change the legal methods of regulation of the public relations in the field of economics.There is an interpenetration of private legal methods of regulation into the sphere of public law and, vice versa, private lawuses more frequently public and legal methods of regulationof the public relations. This tendency ofdevelopment of the legal system can be defined as a dissolution of boundaries between private and public law and in relation to the system of legislation – as a growth of the complex normative regulation of public relations.

The mentioned-aboveprocesses demonstrate themselves by the following features:

– the basic branches of law that regulate the private legal relations (civil, commercial law) have begun to apply the imperative norms of administrative law more widely, the latter is determined by the necessity of the state'sinterferen ceintothe economical processes with the purpose of defending the interests of all participants of contractual relations. Thus, the legal nature of contractual lawchangesaswell as changes the importance of civil legal agreement itself: there is a deviation from classic principles of agreement such as an equality of contracting parties, but the restrictions of freedom of agreement and standardization of itscontent are introduced. The institute of property right also undergoes the changes, it has lost its absolute character partly because there arethe norms in the national legislation of many states which presuppose, for example, the compulsory expropriation of some kinds of property for state or public necessities or establish the obligatory order of its exploitation;

– the intensification of private and legalprinciples in the field of public law resulted ina transformation of such fields of law as financial, municipal, ecological, which were traditionally considered public. Such processes, in opinion of scientists, do not always bring benefits.In particular, the attempts to change the environmental content of the Water Code of Ukraine, 1995 ontomerely economic one in result of amendments are considered not successful enough [11].

Thus,currently, a combination of private legal and public legal methods of regulationis more widely used in the differet fields of national legislation. Combination of the public and private norms under condition of the state regulation of economy aims an optimum correlation of interests of society and state at preserving the free enterprise. Ukraine as an integral member of the

world community also undergoes the influence of the world tendencies, especially it was expressed since its going over to the market relations at the end of ŐŐ century.

III. Changes in the system of sources of law

Approach of the different legal systems in the process of globalization determines the changes into the national systems of sources of law as well. Analysing this question it is possible to mark the followings tendencies:

– a growth of the role of the normative legal acts in relation to a legal precedent in the countries of the English-American law, where a legal precedent remains the important means of interpretation, application and development of law;

– a prevalence of normative and legal act in the system of sources of law in the states of the continental legal system because of the exceptional qualitiesand simultaneous growth of a role of the judicial practice, including international and legal one;

– a growth of the role of normative agreement due to the advantages of conciliation of a will of all participants of contractual market relations;

– a growth of the value of such a legal act as a model legislative act that is adopted by inter-state organizations (inter-parliamentary, inter-governmental, international) with the purpose of normative orientation of parliaments in the field of legislation.Model acts are directly based on principles and norms of international law and their content underlies into national legislative acts. Model acts go into force within the limits of state formation after their acceptance in any measures by national parliament [12, p. 49]. There are, for example,Model Lawof Commission of the UNO on a right for international trade "On International Credit Transfers", International Code of Advertisement Practice developed by the workinggroup of Commission on advertisement of the International Chamber of Commerce (Paris).

The analysis of sources of the Ukrainian lawgives the possibility to assert the following things. In the legal system of Ukraine there is also an extension of the range of law sources among which the normative agreements, legal customs and business customs begin totake a notable place. Thus, the commercial customsare obligatory used while concluding the external economic contracts, they are envisaged by the exchange rules developed by the exchange committees, in the special collections of the chambers of commerce (in particular, the Unified

rules and customs for the documentary letters of credit 1974, preparedby the International Chamber of Commerce).

A question of judicial creativity, a recognition of the court decisions as the source of lawremains debatable. Judicial practice in Ukraine formally is not obligatory at a next trial of analogical cases, however, the inferior courts follow the judicial practice of the superior courts, as,for example, the explanations of the Plenum of Supreme Court of Ukraine, Higher Economic Court of Ukraine. According to the decisions of Constitutional Court of Ukraine as the constitutional justice body, they can not be considered as a legal precedent, but only as a variety of official normative interpretation. At the same time, it necessary to admit the origin of such new legal phenomenon as a consideration by the national judicial bodies in their activity of the practice of the European Court ofHuman Rights regarding the interpretation and application of Convention for the Protection of Human Rights and Fundamental Freedomsand its protocols. Thus, the Higher economic court of Ukraine noted in the informative letter that "in accordance with the article 17 of Law of Ukraine "On implementation of decisions and application of practice of the European Court ofHuman Rights" the Ukrainian courts apply at thetrials the Convention and practice of the Court as a source of law" [13].

IV. Expansion of a sphere of the legal regulation

Interaction of national and international law in the process of globalization conditions the proper changes, modernization of such elements of legal system of a state as law creation, law realization and law application.

The influence of international and legal factor on the law creation of a state predetermines the change of the subject of legal regulation and as a result appearance of the new fields and institutes of law and legislation, such as space law, informative law, transport legislation, competition legislation, build legislation, etc., that continue to rapidly develop.

In the conditions of globalization a power of influence of different social factors on law creationis considerably changed, in particular a role of economic interest is notedly growing edging outa political expediency to the background. In particular, the economic legislation of Ukraine today is the product of mutual cooperation of the Ukrainian legislator and international institutions. According to the modern tendencies of legal globalization the economic laws and subordinate normative legal acts are based onthe governingprovisions of international pacts, declarations, conventions, agreementsand contracts, unified rules and

model acts. The drafts of the most substantial for economy laws are passingthrough the expertize in the European Council.

The change of the legal regulation is expressed not only byapproach of the law itself, but also by a practice of its realization and application. It is about the considerable renovation of legislative basis of Ukraine in the field of the proceduralregulation. During the judicial and legal reform that is still in progress in Ukraine until nowadministrative, civil, commercial and judicial legislation have undergone the substantial changes; the system of constitutional justice is formed and functions successfully. However, the unification of procedural rules and category apparatus play not the most important role, but a rational harmonization of material and judicial lawofthe different countries and regions thatmakes a regulatoryimpact on the conduct of subjects of the legal relationships has far more significant meaning.

In the Ukrainian law application practice, the norms, principles and precedents of international law as an instrument of substantiation of the legal positions during the decision-making process are widely used. Thus,there are the decisions in practice of the Supreme Court of Ukraine and the Higher Economic Court of Ukraine that are directly based on the norms of international law. Internationalization of law application is still at the stage of development, however,a number of caseswhich are considered at the basis of norms and precedents of international law annually increases, that indicates the necessity of itsprofound study and generalization.

V. Changes in category apparatus

There are also certain changes in the category apparatus that appearedinthe result of introduction into use of the foreign legal terms, that, in its turn, causesthe changes in legal nature of a number of civil,commercial and legalagreements: rent agreement, property leaseare gradually substituted bya leasing agreement which is not already determined as a complex civil legal agreement,but coming from the context of new national normative and legal acts presents the independent variety of property agreements (contracts); a agency contractis an agreement of confiding property (the trust) and etc. In the bilateral agreements, in particular during conclusion of the external economic contracts, there are often applied the special rules of interpretation of national and internationalconcepts, provisions, norms, as, for example, International rules for interpretation of commercial terms – Inkoterms 1990 (different releases).

VI. Changes in the legal awareness

In the modern conditions of development of the legal state and civil society in Ukraine,which are based on strengthening of guarantees of human and citizen rights, it is important to form the proper level of legal awareness and legal culture of population. A great attention in this process is paid tothe legal education, because without the proper level of legal knowledge and skills the consciousparticipation of person in public and political life is impossible today. This issue has to be considered in two aspects: legal education of population and professional legal education.

With the purpose of development in Ukraine of legal education that would assist a promotion of level of legal awareness and legal culture of population, anumber of normative and legal acts was adopted on the basis of which the legal disciplines and courses were introduced into the educational process of all higher educational establishments of Ukraine,such as "Basics of law" ("Jurisprudence"), "Basics of labour law", "Protection of right of intellectual property" and etc. Besides, there were made the data basis that contain the norms of current legislation which the population of country can be freely familiarized with. The specialized editions with the systematized and regulated normative materialare publishedto increase the level of legal culture of separate participants of legal relations, as for the subjects of economic activity in the field of building there is "Bulletin of Fund of Building Normative Documents".

However,a strategy of development of legal education in Ukraine must anticipate not only the familiarization of population with a current legislation, but also upbringing of citizens according to the best legal traditions of the European states, where the respect to the laws and conscious fulfilment of the duties are common for the citizens.

In the field of professional legal education should be takena number of practical measures on the way to internationalization of higher legal education, that is conditioned by the obligations of Ukraine concerning harmonization of national legislation with international, accessionof Ukraine to The Convention on the Recognition of Qualifications in terms of HigherEducation in the European Region (Lisbon) [14]. One of the ways of realization of the defined tasks, in opinion of specialists, must be intensification of international aspects of legal education, which will directa higher legal education to the integration into European and world educational environment [15, p. 6-7].

The described forms of interaction of the legal systems do not exhaust all possible forms of cooperation.

Thus, summarizing all mentioned above, one can say that today there is not a common doctrinal determination of notion of legal globalization as well as normative definition of legal nature of globalization, there are only theoretical developments of separate elements of this social phenomenon. In our opinion, it is possible to give the following definition of notion of the legal globalization: ***legal globalization*** is an interaction of the legal systems of contemporaneity in the form of convergence, assimilation or integration that results in establishment of norms of the major spheres of social reality by means of legal modernization of all static (legal norms, principles and institutes) and dynamic (law creation, law realization,law application, legal culture) elements of law.

§ 2. Forms and means of legal globalization

In legal literature there are distinguished three main forms of interaction of legal systems: convergence, assimilation and integration [16, p. 10].

Convergence of the legal systems is a detection process of positive and effective means of legal adjustment in legal systems of the different states with the purpose of mutual adoption of the separate elements of the national legal systems.

In the process of legal convergence every state explores the legal institutes and legal practice of foreign countries using comparative and legal methods as well as adoptionof the most effective elements of the legal system of other states, that assists to fill the gaps in a legislation and to improve the mechanism of legal adjustment of public relations. Most actively the interpenetration is going on in interaction of Roman-Germanic and Anglo-American types of the legal systems. It is considered that most national legal systems of continental Europe do not have traditional European features for today but they are the hybrid. Other systems represent non-European traditions [17, p. 70-71].

Nowadays, the legal systems interact foremost in the field of private law than in the public law. The question of necessity of development and acceptance of adequate means of the legal adjustment of activity of economic entities predetermines the modernization of material law. Thus, the process of carrying out the codification in the separate fields of law by the legislature of the USA has caused not only the changes of law applicative practice technique but also the

adoption of a number of elements of the Roman Law, in particular, the imperative methods of contractual law which regulate the consumption processes etc. On the contrary, in the legal systems of Roman-Germanic family there are appeared the institute of trust, leasing, electronic digital signature, etc.

During the last 20 years there was also observed the mutual adoption in the field of procedural law. Thus, the content of the Criminal Procedure Code of Ukraine included the provision about the order of the legal proceeding of participation of jurors as a result of examining the judicial institutes of western countries [18].

At the same time, it needs to avoid the mechanical borrowing of taking the elements of the foreign legal system. On practice, in some cases a legislator's striving for refining the mechanism of legal adjustment of a certain branch of public relations by adopting a foreign legal institute results not for improving the legal adjustment mechanism. On the contrary, it complicates the inculcation of the adopted norm into the national legal system [12, p. 71] and even can result in its imbalance [19, p. 84].

The assimilation of the legal systems is a process of interaction of legal systems that results in their merger and loss of the characteristic signs and elements by one of them.

Legal assimilation is going on in the next way:

– at cooperation *of normative components* of the legal systems, when the legal system of one state adopts unusual principles, mechanisms and norms which are imposed by a foreign legal system, at the same time ousting traditional legal institutes through their revocation or are not applied in legal practice at the terms of the formal preservation;

– at cooperation *of organizational components* of the legal systems, that results in the origin of organs and establishments of a foreign legal system in the hierarchy of the national legal system or they keep the independence only nominally, but actually submit to the will of assimilative subject of international law;

– at cooperation *of components related to expression of public sense of justice*, when legal, ideological and socio-cultural values of assimilative subject are spread directly or indirectly by carrying out the propagandist work and legal education at tacit consent of national state authorities.

In the process of legal assimilation the Least Developed Countries are actually forced to make the transformation of the legal systems in an exchange on

economic or military aid which is given by the dominant states in the modern world. Such a form of influence was named in legal literature as "legal expansion" [16, p. 10]. A prime example of legal expansion is a political situation in Greece, which is compelled to the form of legal policy under a force of the imposed EU directives (a pension reform, an administrative reform, etc.), based on promised currency tranche (credits) of IMF. Ukraine did not become an exception either pension and medical reforms indicate, that they have caused a negative reaction in Ukrainian society.

The integration of legal systems is a process of interaction of legal systems that results in conciliation of national legal interests and the introduction of the unique legal standards by state development of normative and legal acts on the basis of international and legal agreements, conventions, international unified rules and model acts.

According to researchers the content of legal integration consists of three elements: legal sphere, subjects of integration and legal instruments of integration such as formally juridical and procedural means of approach of national laws and order [19, p. 77].

Legal integration can be expressed in the following forms [2, p. 44]:

– reception, that is an adoption in the unilateral order by one state of normative and legal acts of other states. Nowadays such form of the legal integration is not used;

– harmonization, that is realized by approaching of mechanisms of legal adjustment of two and even more states in the separate spheres in a form of assertion of general norms, institutes and elimination of antinomies;

– unification, that is the enactment of similar norms by two and more states. The legislation of Sweden, Norway and Denmark can exemplify such a form of integration, where the unique norms (technical and legal standards) or similar laws operate in field of trade, financial operations, steam navigation, etc. [20, p. 71].

Nowadays, the most common form of integration there is harmonization. The term "harmonization of legislation" is considered in a wide and a narrow meaning. In *a wide aspect* harmonization is regarded as a conciliation of provisions of legislation of one state with the legislation of other state or with acts of international law. In *a narrow aspect* this term means the method of approaching of legislations of the member states of the European Union by the directives, which set the general final aim of the legal adjustment, retaining the methods of

realization of directives at discretion of the member states. At such form of approaching there should be taken into account not only the material content of the adopted norms but also complex character of its practical application.

In the European Union harmonization of legislation of the member states with the EU law consists of bringing of norms of the national law of the member states into accordance with the requirements of the EU law with the purpose of making the identical legal terms for the participants of market relations. In the constitutive treaty and other documents that create legal fundamentals for adjustment of European integration in the EU there are used different terms for determination of process of bringing national legislation into accordance with the law of the European Union. In particular, in TheTreaty on the Functioning of the European Union there are used such terms as: "rapprochement" (the articles 81, 114, 115, 151), "harmonization" (the articles 113, 149, 165, 166, 191), "establishment of minimum rules and standards" (the articles 78, 82, 83), "mutual recognition of national rules and standards" (the article 70) [21].

The terms of "rapprochement" and "harmonization" are often used in the EU law. In relation to "rapprochement" itis referring to achievement of one or the other level of accordance, and "harmonization" can mean both achievement of certain identity of norms of law of the member states of the EU by acceptance of the EU regulations and also the determination of unique aims for the member states by acceptance of the EU directives. However, none international act does not contain the determination of the notion of harmonization, it's said that the obligatory character of harmonization of the national legislation of the member states with the EU law and the spheres, methods and the legal mechanism of harmonization of legislation.

On the whole the process of approaching is understood as the complex of mutually conditioned actions in relation to making a general course of legal development, use of measures for the determination of legal differences and making the general, common or unique legal rules. Moreover, as it is stated by the practice of activity of the European integrative associations, in spite of application of different terms either in the law of EU and in the agreements of EU with the third countriesitmeans the same process of bringing a national legislation into accordance with the orders of the law of the European integrative organizations.Therefore, in opinion of the Ukrainian legal scholarV. Muraviov, the term "harmonization" most adequately characterizes a purpose of this process: conciliation of national norms in such way that they in both cases create identical legal conditions for activity of economic entities within the limits of internal market [22, p. 36].

Harmonization has different forms: *approximation of legislation*, *implementation*, *standardization* etc.

In legal literature there are determined different *legal means of approaching* of national legislations. Thus, in the opinion of the Russian scientist Yu. Tikhomirov, there are such means of approaching as the general legal regime; recognition of equal volume of rights of subjects; unique standards; recognition of legal documents; procedures of conciliation of legal acts, setting of sanctions, etc. [20, p. 75-76]. Only three means of them are most substantial and effective, in opinion of A. Egorov [19, p. 83-84]:

– *legal* regime, at the help of which the state sets certain standards, privileges or limitations for the elements of a foreign legal system in the national interests as, for example, in the field of investing or taxation and so forth;

– *legal recognition*, that envisages the recognition of norms by the states which already exists in international practice – declarations, covenants, conventions and so on, by their including without changes to the national system of legislation completely or passing a new national act which contains the substantive provisions of the acknowledged international act;

– *community of legal mechanisms*, that should be understood as a means of providing identical approaches in a work of basic components of the legal system at the reservation of sovereign plenary powers of the states in a legal sphere.

Exactly the absence of common mechanisms and first of all in the law-making sphere, in opinion of most adherents of the integration by law, is resulted in lag of the normative base from the real objective necessities of integration communities [21, p. 83].

In the question of correlation of the national legislation of the member states of Community with the law of EU there acts the principle of priority of law of Community to the national law which is acknowledged by a constitutional law of the states. Community's acts in the sphere of exclusive plenary powers have direct validity that they do not need ratification.

Besides, the participant states of Community allotted the separate participants of international relations – mainly TNCs, by a law to develop the norms independently by which their activity will be arranged. For example, joint suggestions on insurance of responsibility developed by the special commission of

GAIPEC, where the representatives of both the build sector and insurance companies entered in, were underlain in the article 23 Directives of 2006/123/ EU "On services in the internal market" [23, p. 176]. However, in opinion of some researchers, the delegation of law to non-state, non-governmental and even private institutes to decide the key decisions of economic, financial and even social character is a dangerous step that poses a real threat to national sovereignty [24, p. 6].

Harmonization of the third countries national law with the law of the European Union is passing mainly on the questions of the EU Internal Market and is carried out within the framework of creation of free trade area with the EU. Forms and means of realization of harmonization are stipulated by a type of associations with the EU, determined by article 217 The Treaty on the Functioning of the European Union [21].

One of the methods of harmonization is a transposition of provisions of the EU directives in the national legislation of the associated states by reference to the acts or their including in annexesto The Treaty on the Single Economic Space or regulations of the Common committee of association. Transposition is applied in the spheres where there is no developed national legislation or it desperately became out of date and requires a rapid renovation. Transposition is going on by the direct including the provisions of the European Union's law in the internal legislation of the state without bringing in them the substantial changes and does not need to pass the parliamentary procedures and to abrogate of the existent normative and legal acts. In this case, the bodies of executive power receive more authority in relation to adoption of normative and legal acts, as it was done in Hungary, Baltic countries, Bulgaria, partly in Poland for their accession to the European Union [22, p. 39].

Therefore, it is possible to consider that the success of passing of legal integration process is conditioned mostlyby the specific of the sphere of state life as well asthe sphere of national legislation. Thus, approach in the different spheres of economy (production, trade, finances, etc.) is going on more quickly becauseit represents for the most part the homogeneouspublic relations.However, approachin the political or socio-cultural sphere is carried out not only slower but also with grate difficulties due to thepriority of political interests of sovereign state power.

Ukraine is one of the associated countries.The integration process in the field of law began for Ukraine in the first half of the 1990's.The prerequisite for it was the international scientific conference "Cooperation between the countries of EU and CIS in forming of legal infrastructure of market economy" conducted in Kyiv in 1992. Soon The Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other partwas signed in 1994. But The Interim Agreement on Trade and Commercial Collaboration between Ukraine and the EU (1995) was operated till 1998.

On the whole the convergence was envisagedthrough theapproval of internal rules brought into accordwith the norms of EU law (the articles50, 51, 60, 61, 63, 68, 71, 75, 76, 77) [25]. The spheres of harmonization of Ukrainian legislations with the law of EUwereprotection of intellectual property rights, customsbusiness, technical rules and standards, nuclear energy, transport, industry, agriculture, company law, competition rules, banking, health protection and life of people, animals and plants, environment and others like that.

However, stepstaken by Ukraine in relation to realization of the programs and plans on legal integration did not providethe high degree of conciliation of the Ukrainian legislation with the EU law. Besides, the bounds of harmonization of national legislation with the law of EU were not defined. The thing is thatthe provisions of the Agreement had a frame but not obligatory character and did not set the clear terms of realization of harmonization (except of the sphere of protection of intellectual property right). Therefore, the absence of concrete obligations of the Agreement's Parties, their supervision for the process of harmonization of the Ukrainian legislation can be considered as the defect of this stage of legal integration. And most importantly harmonization did not contribute to the process of reforms in Ukraine.

The new stage of legal integration was the signing of the Association Agreement between Ukraine and the European Union by the President of Ukraine on 27 June 2014, which includes almost all spheres of cooperation of Parties, and namely the reformation of economy, legal system and also deepening of political association.

Ukraine for fulfiling its commitments on legal integration must adapt the legislation to the EU legislation and establish an appropriate and effective institutional system to the end that providing the proper realizationof reforms in Ukraine. Harmonization is considered one of the most acceptable for Ukraine forms of convergence to the European legal standards. However, in the Association Agreement the term "harmonization" is not used generally, instead there is the term "approximation" that is reduced to the notion of approachof Ukrai-

nianlegislation towardskey elements of the EU *acquis*. Among the existent means of implement of harmonization in the Association Agreementthere are determined, firstly,transposition in the field of standardization, cross-border rendering of services, public purchases (the articles56, 96, 153), and secondly, mutual recognition by the Parties of the rules of the other Party in the field of production certification, recognition of qualifications, e-commerce (the articles 70, 106, 140) [26]. The question of priorities of legal policy is solved by Ukraine itself.

Harmonization boundaries are defined by The National Programme for the Adaptation of Ukrainian Legislation to the Legislation of the European Union, which provides bringing the laws of Ukraine and other normative and legal acts into accordance with *acquiscommunautaire*, taking into account criteria that are laid down by the European Union to the states which intend to enter to it [27]. In opinion of V. Muraviov, such a method of approach to harmonization, firstly, does not correspond to the practice of countries-candidates for joining the EU, and secondly, on the current stage of development of relations between Ukraine and the EU it is necessary to focus first of all on economic *acquis*, but not on all *acquis*of the European Union [22, p. 41].

In general, analysing the provisions of the Association Agreement, it is possible to assert that the process of harmonization of the Ukrainian legislation contemplates, at first, the accession of Ukraine to the international and legal documents that determine international standards in a certain industry, and secondly, conciliation of provisions of national normative and legal acts with the orders of regulations of the EU institutes and mutual recognition of national standards by Ukraine and the EU.

Conclusions to Section I

In the conditions of modern globalization thatmanifests in the different forms of cooperation of the states in the field of politics, economics, culture, there is also close interaction of the national legal systems. Approach of the legal systems of the states of the modern world to the international standards promotesthe modernization of content of national legal norms, which provide the guarantees of fundamental human rights and freedoms, protection of the interests of subjects of economic activity from an unfair competition, environmental protection against pollution, etc. At the same time, the consequence of

legal globalization for some states is the weakening of their sovereign right to form independently the national legal policy. However, despite the positive and negative aspects of legal globalizationa process of interaction of legal systems is objective, and thereforeit is impossible to stop it. Today,in order to achieve a balance of interests of all subjects of the World Community it ought to modernize not only the separate national systems of law but also international law and orderon the whole, taking into account the fact of non-fulfillment by the separate states of the international obligations, what properly has been mentioned more than once in the decisions of the General Assembly of the UNO.

Participation of Ukraine in the processes of globalization on a parity basis requires the thorough study of legal globalization as a social phenomenon as well asthe consequences of its influence on the national legal system. The question of the presentstate of national law and possible ways of its improvement should be studied in the context of action as factors of internal state character – the form of the state, the state of economy, the peculiarities of legal mentality, andas factors of external importance – the specific of forms and means of realization of legal globalization. It is obvious that the law-making process should be deprivedof the mechanical borrowing of foreign legal norms and the external pressure becausethe state sovereignty in the field of lawshould remain the dominant factor in the legal cooperation of the modern states. Instead of that the development of Ukrainian legal system in the conditions of legal globalization shouldtake place on the basis of the scientifically grounded conception of the legal policy of the state, which it is expediently to assign at the official level. The concrete directions and forms of improvement and development of the modern Ukrainian state and Ukrainian legal system shouldbeaccurately defined in such a conception taking into account the processes of globalization and experience of law universalization in the countries of the developed democracy as well asmodern tendencies towards the transformation of worldwide policy and international law and order.

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SECTION II

LEGISLATIVE PROCESS IN UKRAINE AND THE EU: DIRECTIONS TOWARDS HARMONIZATION

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Annotation

The research covers scientific fundamentals and practical specifics of the preparation and adoption of legislative acts in Ukraine and the European Union. The analysis of legislative acts regulating the lawmaking process in Ukraine is made and the main shortcomings in the system of legal regulation of the legislative procedure in the Ukrainian parliament are identified. A study was conducted on the legislative procedure in the European Parliament and in certain countries of the European Union, as well as in Great Britain. Particular attention is paid to the comparative legal aspects of lawmaking in different countries of the EU and the the point is made about the special importance of the government in the lawmaking process of individual countries. The results of the study are the directions of harmonization and analysis of the significance of the lawmaking process in the countries of the EU for the purpose of improving of the legislative practice in Ukraine, as well as proposals concerning the improvement of the current legislation of Ukraine based on harmonization of the experience of effective regulation of the lawmaking process in European countries.

Preface

Problems of the legislation of the countries of the European Union (hereinafter – the EU), as well as the legislative process of the EU as a supranational formation, have impact not only on those countries that are members of the EU. The initiated process of European integration of Ukraine as a neighboring state, a strategic partner and a future candidate for accession to the EU creates the need for synchronization of the main state-legal institutions where the lawmaking process is one of the leading problems of the implementation of the Euro-

pean integration strategy. It is necessary to take into consideration the fact that the EU as the recipient of the Ukrainian European integration policy demands the transparency of legislative procedures, the perfection of the current legislation and the legislative guarantees of the reforms implementation.

On the other hand, the presence of imperfect regulations of social relations in Ukraine, the occurrence of collisions and a large number of important social problems remaining unresolved require improvement of the legislative process in the first place. Harmonization of the legislative process between the EU and Ukraine is a mandatory strategic task that should become an integral part of the policy of European integration of Ukraine, since in the long term Ukraine becoming a member of the EU will result in the formation of a common lawmaking policy based on procedures. Therefore, the scientific relevance of improving the legal regulation of the lawmaking process in Ukraine is obvious, which, in our opinion, should be based on the regulatory traditions of this very process in the EU, and it is necessary to take into account the experience of both individual countries and the supranational legislative system of the EU.

The problem of the development of legal science at the present stage is a subject of research of such scholars as O. V. Bogachyov, T. L. Gladkova, D. S. Kovryzhenko, T. V. Komarova, O. L. Kopylenko, M. G. Okladna, V. I. Salo, S.V. Soroka, K. S. Yakimenko and many other scientists. The works of these scholars provide an analysis of the lawmaking procedures in the EU, the interaction of various institutions in this process and highlight the peculiarities of the practice of lawmaking in different EU member states and in supranational lawmaking processes. Similarly, these and other scholars describe in detail the processes of lawmaking in Ukraine. Foreign scholars such as J. Williams, A. Smith [1], F. Laursen [2], and Ross. [3], D. Hill [4], R. Shick, V. Tseg [5] and others cover the topic of legislative procedures both in separate EU countries and in the European Union as a supranational institution. Together with the availability of extensive scientific literature, it is to be noted that the study of the harmonization of legal regulation of lawmaking procedures in Ukraine and the EU requires a comprehensive fundamental approach that led to the choice of the topic of this paper.

The aim of this study is to identify the prospects for harmonization of Ukrainian legislation in the lawmaking field implementing the most effective directions of legal regulation of the lawmaking procedure in the EU at the national and supranational levels. The purpose of the research determined the tasks of scientific research, they are as follows:

– studying of the legal regulation of the lawmaking process in Ukraine and the EU;

– search for ways towards harmonization and analysis of the importance of the lawmaking process of the member states of the EU for improving the Ukrainian lawmaking practice.

The research of the tasks mentioned above causes the implementation of a number of methods that make up the general methodology. Among such methods, the ones of particular relevance are the formal-dogmatic method, the method of legal comparativism, the method of analysis and synthesis and other general scientific and special-scientific methods that helped to analyze the domestic and foreign legislation as well as scientific literature in achieving the aim of the research.

§ 1. Legal regulation of the lawmaking process in Ukraine and the EU

The legislative process is one of the most important state-building functions, since the creation of legal norms is solely the prerogative of the state, taking into account the fact that rule-making has the greatest impact on social relations. In Ukrainian rule-making practice lawmaking is carried out exclusively by a parliamentary institution – the Verkhovna Rada of Ukraine (hereinafter – the VRU) on the basis of constitutional norms and regulations of legislative acts. However, the democratic European integration of the state leads to the modernization of norms and provisions that reflect the legislative process in Ukraine as an objective reality of society's life and is the main indicator of the evolution of social relations.

The legislative activity in Ukraine is regulated by legislative acts hierarchical in accordance with the imperative force of action, they create the legal basis for the implementation of lawmaking procedures. The main legislative act here is the Constitution of Ukraine of June 28, 1996, No. 254ę / 96-ÂÐ [6], where the lawmaking process is given special attention in Section IV of the Verkhovna Rada of Ukraine in the framework of articles 75 – 101. Article 75 of the Basic Law stipulates that the only body of legislative power in Ukraine is the Parliament – the Verkhovna Rada of Ukraine, and this gives the state in question the exclusive authority in the adoption of legislative acts that are of binding nature.

According to the Constitution of Ukraine, among other powers of the Verkhovna Rada of Ukraine, the lawmaking implemented by parliamentarians

is carried out on the basis of Article 85 that grants the deputies of the Verkhovna Rada of Ukraine: 1) adding amendments to the Constitution of Ukraine within the limits and in accordance with the procedure mentioned in Section XIII of the Constitution in question; 2) the appointment of an all-Ukrainian referendum for matters specified in Article 73 of this Constitution; 3) adoption of laws. At the same time the domestic parliament carries out the implementation of lawmaking activities through legislative work. This activity is regulated by Article 89 of the Constitution of Ukraine, according to which the Verkhovna Rada of Ukraine creates from the number of people's deputies of Ukraine the committees of the Verkhovna Rada of Ukraine and elects the chairmen, first deputies, deputy chairmen and secretaries of these committees having as an aim the implementation of law project work, preparation and preliminary consideration of issues assigned to its powers and the exercise of control functions.

Constitutional norms determine the order of the lawmaking process. As follows, on the basis of Article 91, the Verkhovna Rada of Ukraine adopts laws, decrees and other acts by a majority of its constitutional composition, except for cases introduced by other constitutional norms. Bills are the result of legislative initiative which is carried out on the basis of the right of legislative initiative in the Verkhovna Rada of Ukraine, which, according to Article 93 of the Constitution of Ukraine, belongs to the President of Ukraine, people's deputies of Ukraine and the Cabinet of Ministers of Ukraine. The laws are signed by the Chairman of the Verkhovna Rada as a result of law project work and voting of the deputies and are then directed to the President of Ukraine who in accordance with Article 92 of the Basic Law, signs it, accepts it, and officially promulgates it or returns the law with its motivated and formulated proposals to the Verkhovna Rada of Ukraine for re-examination within fifteen days after the reception of the law. The article also points out the consequences of the President not signing the law, as well as the procedure of reconsideration performed by the Verkhovna Rada and the procedure for its entry into force. From the mentioned above, it should be noted that the constitutional norms in Ukraine regulate the lawmaking process by three groups of norms: 1) the norms governing the process of consideration and adoption of bills; 2) the norms that establish the procedure for the entry into force of legislative acts, as well as their application; 3) a group of norms that establish the procedure for amending the legislation and abolition of the legislative acts. Therefore, the importance of adhering to the letter of constitutional norms in the legislative process is conditioned upon the recognition of

the adopted legislative acts as constitutional in nature and do not contradict the legal system of Ukraine, which is based on the Basic Law giving such legislative acts the nature of legitimacy (legality).

In addition to the Constitution of Ukraine, legislative acts of a procedural nature that regulate the lawmaking process are the Law of Ukraine On the Rules of the Verkhovna Rada of Ukraine of February 10, 2010 No. 1861-VI [7], the Law of Ukraine On Committees of the Verkhovna Rada of Ukraine of 04.04.1995 No. 116/95-VR [8] and the Law of Ukraine On the Status of People's Deputies of Ukraine of 17.11.1992 No. 2790-XII [9], as well as acts of a temporary investigation commission, a special temporary investigation commission and special temporary commissions of The Verkhovna Rada of Ukraine.

The Law of Ukraine On the Rules of Procedure of the Verkhovna Rada of Ukraine of February 10, 2010 No. 1861-VI [7], as amended and supplemented at the moment, defines the legislative procedure, the procedure of the work of the Verkhovna Rada of Ukraine, its bodies and officials, the principles of formation, organization and termination of the activities of parliamentary factions. Regulatory and legal definitude of the lawmaking process in Ukraine creates basic conditions for lawmaking, but even considering all its inherent properties the legislative act in question can not cover all the peculiarities of lawmaking. A Committee on Rules and Organization of Work of the Verkhovna Rada of Ukraine was established to ensure the continuous monitoring of the regulation of parliamentary procedures and the initiation of improvement of their legal regulation in the parliamentary structure having the issues of the Regulations of the Verkhovna Rada of Ukraine and parliamentary procedures as the subject of its legal competence.

The Regulations of the Verkhovna Rada of Ukraine is a legislative act that contains the rules of material and procedural nature that establishes the procedure of development, adoption, amending and abolishing of legislative acts. As a consequence, the significance of this legislative act is crucial for lawmaking process. The Regulations of the Verkhovna Rada (hereinafter – The Regulations) can be considered to be largely codified by a legal act, but as a fundamental legislative act, this act is not the only one in regulation of the lawmaking. As it was stated by scholars O. L. Kopylenko and O. V. Bogacheva [10] besides the Regulations themselves there are more than 160 normative legal acts covering the issues of the lawmaking process and this fact predetermines the dispersion of regulatory regulation involving the norms from various fields into this par-

ticular sphere. The occurrence of regulatory contradictions and incompatibility of norms (collisions) is to be noted as it determines the order of lawmaking and is due to the presence of a large number of legal acts.

Legal regulation of the legislative procedure established by the Regulations presents details of the constitutional and legal definition of lawmaking and establishes the procedure for the adoption of legislative acts, rules and conditions for the parliaments' work as a whole. According to the Regulations of the VRU the legislative procedure is implemented by means of parliamentary legislation through the application of legal means, among which the first one to be mentioned is a legal technique. Legal technique includes methods and mechanisms for the development and implementation of legal norms. Other legal means can be classified as means of protection in the process of establishing liability, the means of legal procedures that establish the order of lawmaking as a complex of opportunities for the implementation of the lawmaking function. These procedures are centered around the order and consistency of the adoption of legislative acts.

The 4th section of The Regulations Legislative procedure covering the procedure for introducing such amendments to legislation, the draft laws for the first, second and third reading, the preparation of law for the President's signature, the re-examination of the draft laws that didn't make it to the point of being signed by the President, and also publishing and preservation of the VRU acts (Articles 89 – 138) is the main section for the legislative procedure. Accordingly, the legislative procedures of the Verkhovna Rada of Ukraine are covered by Articles 141 – 223, that determine the procedure of how VRU reviews questions on special procedures regulating the order of adoption of the laws and other legislative acts covering issues as legislative proposals about amendments to the Constitution of Ukraine, early termination of the duties of people's deputy of Ukraine, etc.

It is to be mentioned that in addition to the legislative acts described before, the lawmaking process in Ukraine is also regulated by the Law of Ukraine On All-Ukrainian Referendum of November 6, 2012 No. 5475-VI; Law of Ukraine On International Treaties of Ukraine of June 29, 2004 No. 1906-IV and many other legislative and sub-normative legal acts. Given the abundance of normative legal acts, the domestic lawmaking process is in considerable need of improvement. The issue is the imperfection of the legal regulation of requirements to draft laws, their content, standardization of the structure of the legislative act,

the subject of its regulation and other technical and legal peculiarities. The form and content of legislative acts that are not defined in the current legislation become of particular interest. It is obvious that lawmaking process involves a level of creativity, however the requirements for the law, the matter that is of such importance to society, are not set at the legislative level. This very issue generates the presence of a large number of, legally speaking, low quality of legislative acts leading to erroneous regulation or violation of functions of the VRU as a whole, as of when subjects of legislative initiative withdraw their votes after voting at the plenary session of the Verkhovna Rada, as happened in the case of the Draft Law on Restructuring of Liabilities and foreign currency number 1558-1 from 23.12.2014 p. [11] when 229 deputies of the VRU 07.02.2015 p. constitutional majority adopted the draft law of questionable quality, which creates economic danger to the financial and monetary system of Ukraine.

Such features of Ukrainian lawmaking process as the hierarchy of legislative acts, that is currently based on the constitutional and legal definitude of the legal system and the general legal sense of the hierarchy of legislative acts, require legislative consolidation. The peculiarities of legal regulation of the lawmaking process in Ukraine that were mentioned above and the ones to be covered require a systematic legal improvement of the legislative process by codification of the extensive parliamentary legislation taking into account the experience in terms of functioning of defective norms and attracting effective lawmaking practices of foreign states, first of all the EU member-states.

§ 2. Lawmaking process of the European Union and European countries

Unlike the situation in Ukraine, the legislative process in Europe has significant differences depending on country. In EU member states, the legislative activity of parliaments, that is of two-tier character, is governed by national constitutions, as well as pan-European norms where the actors of the legislative process are the European Parliament, the EU Council and the European Commission.

The legislative function is implemented by the parliaments of the EU member-states mainly on the basis of the difference in the lawmaking initiative as it varies in different countries. The scope of the legislative initiative of parliamentarians and the government is characteristic in this context. In a large number of countries regulations and constitutional rules set priorities for the

consideration of legislative drafts introduced by governments. Thus, the second paragraph of Article 48 of the Constitution of France [12, p. 24] stipulates that two out of the four plenary session weeks are devoted to the consideration of government legislative proposals, accordingly, the law drafts that address issues of budget and public finances and bills on social security financing are considered first and foremost, regardless of other legislative initiatives. Also, Article 48 of the Constitution of France sets one day per month for the plenary consideration of opposition legislative drafts, as guaranteed by the rights of the opposition and minority deputies of the French Parliament.

In Germany, on the contrary, the government's influence on the lawmaking process is minimized. Before being submitted to the German parliament, drafts are submitted to the Bundesrat for an opinion, where they are reviewed within 6 weeks and the response from the Bundesrat decides the further fate of the public initiative. However, the Constitution of Germany provides for the application of a priority procedure for a government bill. Thus, Article 81 of the Constitution of the Federal Republic of Germany [13] establishes a procedure for the application of extreme legislative necessity, when on the proposal of the Federal Government, and also with the consent of the Bundesrat the President may declare the extreme legislative initiative in the priority of any draft law and it must be admitted, even taking into account disapproving decision of the Bundestag. The point is, according to S.V. Soroka [14, p. 22], this mechanism has never been applied in the history of its existence. A similar mechanism exists in the constitutional regulations of the United Kingdom, where paragraph 1 (b) of the Parliament Act of 1949 [15] gives the monarchy the right to approve draft laws rejected by the House of Lords, even if they have been rejected repeatedly.

For that matter, it is to be said that the most powerful governmental influence on the lawmaking process is observed in the United Kingdom, where 4 out of 5 days in the plenary week are devoted to the consideration of government bills. At the same time, one day of the parliamentary week is scheduled for consideration of the bills of individual parliamentary initiatives. In general, the lawmaking process in the UK is implemented through a special program established by the Government, 95% of bills [16, c. 16], which are reviewed by the Parliament, are governmental.

Thus, it should be noted that in the leading European countries the legislative initiative belongs to governmental structures, and where the initiative is constitutionally limited, as in Germany, the exclusive right for the legislative

initiative is given to the governmental structures. In our opinion, this lawmaking practice is probably resulted from the close co-operation between governments and parliaments of European countries, when the composition of the government is formed by the majority of the parliament, and this results in the minimization of legislative initiatives. It is believed that such a political and legal nature of interdependence occurred due to the political homogeneity of the parliamentary majority and the composition of the government that derives from it, which, in our opinion, is an effective constitutional and legal model of interaction between the legislative and executive branches of government.

The scholars claim that "... besides the executive authorities, the right to submit bills for parliament's consideration in all EU countries has been secured by members of the parliament (Austria, Bulgaria, Denmark, Estonia, Italy, Lithuania, Netherlands, Portugal, Romania, Slovakia, Slovenia, Hungary, Finland, Czech Republic), groups of deputies and factions (Latvia, Germany, Poland, etc.), committees (Estonia, Latvia, Slovakia, Hungary). In states with a federal system and countries that include autonomous territories, the right of legislative initiative is also provided to representative bodies of autonomy (self-governing territories). As it is pointed out by D. Kovryzhenko Spain and Portugal are among these countries [17, c. 4]. These and other countries have legislative procedures that are similar to the Ukrainian one but the regulation of legal and technical peculiarities of legislative stages differs according to the structure of the parliaments. However, the study of the legislative procedures of the EU member-states shows that, unlike Ukraine with The Regulations of the Verkhovna Rada, the main document defining the process of legislation are programs of legislative activity of governmental structures.

At the same time, the EU member-states play an indirect role in supranational lawmaking within the framework of the practice of parliamentary and governmental structures of the European Union. The supranational lawmaking is characterised by the lack of the term "law" in its classical sense, as a rule similar laws carry the title of regulations, directives, treaties and other sets of international norms.

The scholars claim that, as opposed to the state, the subjects to the legislative process in the EU are not higher state authorities but institutions with public authority elements, such as the EU Council, the EU Commission, and the European Parliament, and not all of them are the exponents of the supranational principle itself. Out of the bodies mentioned earlier, only the European Parlia-

ment and the Commission are the supranational authorities. According to scientists the EU Court, being a subject to the legislative process, plays an important role in the process in question. Thus, it beholds the right to cancel the legal act adopted by the EU institutions in case of violation of the procedure of adoption, etc., and in the lawmaking process as a whole the Court not only fills the gaps in the EU law, but actually develops and even creates the right, through the application of the teleological and a systematic interpretation of the founding treaties [18; 19; 20].

It is believed that the supranational features of the legislative process at the EU level are characterized by the inertia of the lawmaking procedures of the national lawmaking systems of the member-states. This statement is also based on the characteristics of the legislative process of the EU institutions, that are provided by scholars as H. C. Yakimenko, V.I. Salo and M.G. Okladna who emphasize that if the Commission and Parliament are supranational superiors in the process of integration, the Council is an intergovernmental mediator. The Council and the European Parliament are subjects to both legislative and budgetary procedures. The commission, which has a monopoly right of legislative initiative, mainly exercises its powers in the lawmaking process [20, p. 81].

Legislative procedures of supranational institutes of the EU are implemented, unlike constitutional acts and regulatory legislation, on the basis of founding treaties and it expresses the corporate will of the member-states that delegate it to the above supranational institutions. Since the corporate nature of the delegation of powers in the lawmaking process became the fundamental principle of the process in question, the lawmaking procedures also have a specific conciliatory-corporate character. Such procedures include [20, c. 81]: 1) the consultation procedure; 2) the procedure for joint decision-making; 3) sanction procedure; 4) procedure of cooperation. The title itself follows the co-regulatory and advisory nature of the lawmaking, when the draft regulatory acts pass the stages of consensus-seeking between the European Commission, the European Parliament and the EU Council. These procedures are of the general nature of the adoption of legislative acts in the EU, and within the framework of special procedures the EU institutions create such legislative acts as international legal treaties, budgetary norms, etc. The peculiarity of special procedures, in particular the conclusion of international treaties, is identical to the Ukrainian procedure for ratification of agreements concluded by all parliaments of the participating countries, for example, the process of ratification by the EU

member states "Association Agreements between Ukraine, the European Union and the European Community on nuclear energy and their member states of 27.06.2014, which is relevant up to this day.

Thus, the legal regulation of the lawmaking process in Ukraine and in the EU member states as well as supranational institutions of the EU has a number of common and distinctive features, among which the following ones are to be distinguished:

– common features of the legal regulation of the lawmaking process in Ukraine and the EU should be considered as: 1) the existence of fundamental legislative acts establishing the procedure for lawmaking and have the character of constitutional and codified normative legal acts, or consolidated constituent norms;

2) in the acts regulating the lawmaking, a clear procedure has been established for the legislative process, that consists in the preparatory stage, the stage of obtaining the draft status of the legislative act, the stage of entry into force and the grounds and order of cancellation of the act. It should be noted that the common features of the legal regulation of the lawmaking process in Ukraine and the EU are obvious and confirm the general legal nature of the lawmaking process of the continental legal family.

– the distinguishing features of the legal regulation of the lawmaking process in Ukraine and the EU are: 1) a diverse priority of legislative initiative in the EU countries, the EU and Ukraine institutions, where in EU member-states the subjects to legislative initiative in many practices act as deputies on the basis of governmental programs that are an equivalent of The Regulations characteristic for Ukraine, i.e. as a constituent legislative act. In the EU countries, there has been a practice of providing a legislative priority to parliamentarians as an initiative for government structures, which has also been reflected in the legislative process of supranational institutions of the EU; 2) availability of legal regulation of the right to legislative initiative of the opposition or minority deputies; 3) secession of the priority of the legislative initiative of factional initiatives, the majority of governmental structures and types of bills on the subject of regulation of social relations (bills on social security financing issues, etc.).

Thus, in order to improve the Ukrainian practice of the lawmaking process, the peculiarities of legislation in the EU member states and supranational institutions of the EU are of key importance. The Ukrainian regulatory legislation needs to be improved in terms of amendments and changes that, on the one

hand, will fill the regulatory norms regarding the procedure for adopting legislative acts, and, on the other hand, adapt the Ukrainian system of legislative procedures to all-European legislative tendencies, that is important in the process of implementing European integration procedures.

§ 3. The importance of the lawmaking process of the EU countries for improving the legislative practice of Ukraine

The signing and ratification of the Ukraine–European Union Association Agreement [21], Article 1, paragraph (e), obliges the parties to promote the rule of law, that is the consequence of effective lawmaking policy in the first place. The practice of the leading European countries in this area, as well as the mechanisms of legislation of the supranational structures of the EU, testify to the presence of significant positive developments, which should be taken into account in Ukrainian lawmaking practice. On the other hand, the adaptation of the lawmaking process in Ukraine to the traditions of lawmaking in the EU will facilitate acceleration of integration processes when domestic legislative provision and its practical implementation in the legislative sphere will provide transparency to domestic parliamentarism and the clarity of its national features to the European community.

First of all, in our opinion, the incorporation of the legal regulation of the lawmaking process into Ukrainian regulatory legislation should be carried out in respect of the control of the legal quality of draft laws. The adoption of questionable quality bills in the Ukrainian parliament, as noted above, creates a precedent for legal nihilism among legislative drafters and parliamentarians who directly implement the lawmaking function. The norm acts on controlling the quality of legislative products are contained in the mechanisms of the so-called impact assessment of legislative projects [22] creating a powerful mechanism for "quality control" of legislative initiatives. The introduction of impact assessment in the EU, as stated by T.L. Gladkova, facilitated the decision of the summits in Göteborg (June 2001) and Laaken (December 2001), when it was noted that the mechanism of impact assessment allowed to assess the potential impact of the bill or proposal on the economic, social, environmental and other spheres of social relations, and also significantly helps in making decisions on EU common policies. The application of the mechanism of the impact assessment also helps to determine whether it is necessary to adopt a legislative act at the EU level or justifies the absence of such a necessity, as well as the relevance of choosing the form of a legal act [23, p. 119], its harmonization with the current legislation of a homogeneous sphere of regulation.

The impact assessment mechanism is aimed to help the EU Commission to improve the quality and transparency of its legislative acts, as well as to find cautious decisions that are consistent with the objectives of the EU policies through:

– logical progressive analysis of potential impacts;

– consideration of various alternative policies (i.e. the use of alternative regulatory instruments or non-intervention policies);

– consulting with the main participants in the lawmaking process;

– placement of "road maps" of impact assessment and reports on the results of its conduct on a specially created web-page;

– the translation of concise reports on the impact assessment in all the official EU languages [24, c. 18].

In Ukraine such functions are performed by the General Scientific and Expert Directorate of the Verkhovna Rada of Ukraine. This body performs a general scientific functional examination of the draft laws submitted for the first reading. Thus, according to Part 19 of the Regulations on the procedure of work in the Verkhovna Rada of Ukraine with the draft laws, resolutions, and other acts of the Verkhovna Rada of Ukraine of 22.05.2006 No. 428, approved by the Resolutions of the Chairman of the Verkhovna Rada of Ukraine of May 22, 2006 No. 428 "... registered and included in the agenda of the session, the draft law, when preparing for the first reading, is compulsorily sent for conducting scientific expertise to the General Scientific and Expert Directorate of the Verkhovna Rada of Ukraine apparatus ... "[25]. However, as it shows practice, the conclusions provided by this institution as a rule contain general scientific recommendations related to the compliance to the proposed draft laws of the Constitution of Ukraine, general scientific requirements to the law and, last but not least, the appropriateness of the adoption of the act. At the same time, the specified legal act does not oblige the committees of the Verkhovna Rada of Ukraine, where the conclusions of the General Scientific and Expert Directorate of the Verkhovna Rada of Ukraine (hereinafter – GSEU VRU) are sent, to be guided by the provisions of the conclusions of the latter, these conclusions are advisory and consultative.

We believe that peculiarities of the examination of the legislative draft mentioned above create an atmosphere of intellectual nihilism, when the expert

opinion of the GSEU of the VRU is not of binding character. In our opinion, the Regulations on the procedure of work in the Verkhovna Rada of Ukraine with the draft laws, resolutions, and other acts of the Verkhovna Rada of Ukraine of May 22, 2006 No. 428, approved by the Resolution of the Chairman of the Verkhovna Rada of Ukraine of 22.05.2006 ą 428, should be supplemented with Part 191 to read as follows: "The norm act of the conclusions to draft legislation submitted by the apparatus of the General Scientific and Expert Department of the Verkhovna Rada of Ukraine shall be necessarily taken into account when revising the draft legislative act in the profile committee (committees) the Verkhovna Rada of Ukraine, to which such a conclusion is directed. In case of failure of taking into account the opinion issued by the General Scientific and Expert Department, the Committee (committees) of the Verkhovna Rada of Ukraine should, on the basis of the results of the re-examination, provide a motivated answer-conclusion covering the deviation of the opinions and proposals of the General Scientific and Expert Directorate of the Verkhovna Rada Apparatus Council of Ukraine with relevant references to norms and acts of the current legislation and other solid arguments. Similarly, legislative consolidation requires binding on lawmakers to respond to the conclusions of the General Legal Department of the Verkhovna Rada of Ukraine.

It should be noted that control over the quality of legislative acts also needs to be complemented by another important function – parliamentary control over the state of regulatory effectiveness of laws and by-laws. This practice exists and works well in the United Kingdom where the government is involved in this process. According to researcher of foreign parliamentarism P. Silk, in the UK "... the government is preparing a memorandum on the effectiveness of each law and sends it to the relevant committee in Parliament three to five years after the adoption of the law. In most cases, the committee does not take any further action, but in some cases the committee decides to conduct a full analysis / check of how the law is implemented in practice (this is about 3-4 laws per year). The department for the analysis of the implementation of legislation includes experts, including lawyers who conduct a professional analysis "[26, c. 15]. We consider it expedient to introduce this practice in the Ukrainian lawmaking process.

In addition to the above, a sub-legislative legal act is required to be developed and adopted, which will clearly define the procedure for scientific and legal examination of draft laws, their content and structure of conclusions. In

this process, it is important to take into account the practice of "the impact assessment" functioning, to maximally adapt these mechanisms to the national peculiarities of the examination of draft laws.

The issues include the necessity of legal consolidation of the mandatory implementation of all stages of discussion, analysis, revision and approval of legislative projects. The need to resolve this problem in Ukrainian legal practice is explained primarily by the fact that, according to experts' estimates, for the period from November 27, 2014 to April 10, 2015 "... 115 draft laws passed by the Verkhovna Rada, 58% of the projects were approved as a whole during the first reading. 42% of the bills were adopted as a whole during the second reading, and no case of the third reading was recorded. It should be noted that out of the 48 laws passed in the second reading and in general, 16 passed their first reading even during the previous term, and therefore the current deputies did not need to "optimize" their time spend on the second reading in these cases. As a rule, the Verkhovna Rada considered the presidential bills as the most expeditious. About 75% of the bills submitted by the president of Ukraine were adopted as a whole immediately after the first reading. Almost 60% of the government and 52% of the bills of the people's deputies of Ukraine have avoided the second and third readings ... "[27], that speaks of a total violation of regulatory legislation and goes against the requirements of legislative procedures in European states.

A positive European experience in drafting legislation will also contribute to improving the above-mentioned procedures. We believe that in Ukraine, legislative acts largely regulate such social relations that require a settlement at the given moment. The process of legislative forecasting will provide an opportunity to anticipate public needs and apply preventive legislative measures to reduce the risks of social consequences in the drafting of legislation.

Legislative planning is linked to the second, in our opinion, important and hot-button issue that can be ensured by incorporating the EU legislation, is to provide a separate legal status to draft laws initiated by the government. As noted in the previous section, the tradition of prevalence of government legislative initiatives exists in a significant number of the EU states and it has affected the legislative process in the EU in such a way that this tradition formed the basis of legislative processualism in the supranational system of the EU lawmaking. This tradition is considered to have a positive effect on state policy as a whole, since the government (its structures), being the central executive body, formulates legislative initiatives that it actually considers socially useful and realistic

in relation to implementation. The government is drafting laws taking into account their own responsibility for their implementation, the practice of their potential implementation, using existing executive mechanisms, but it is not about giving absolute priority to government initiatives over the initiatives of individual parliamentarians or collective draft laws.

The European experience of the legal foundations of the legislative initiative of governments is not homogeneous. Scientists claim that, as a rule, in the states with a parliamentary form of government, the basic law clearly states that the government (and / or its individual members) has the right of legislative initiative (Greece, Estonia, Italy, Latvia, Germany, Slovakia, Hungary, Czech Republic) although there are exceptions (Ireland, where individual members of the Government may use such powers only following the instructions of the parliament). As for the further influence of the executive branch on the fate of the proposal, there is no single approach. More often than not, the government provides approval of laws with the help of the majority that formed it. However, separate constitutions provide for more specific mechanisms. In particular, one should highlight the right of the government to mark individual bills as urgent (Greece, Ireland, Germany, Czech Republic). The Greek Constitution provides that the Government can define individual bills very urgently. In this case, they are put to a vote after a brief discussion involving the Prime Minister or the competent minister, the leaders of the parties represented in the parliament and one representative from each of the parties. In addition, the Government may require that individual bills that are of special or urgent nature be considered during a certain number of plenary sessions, no more than three (although Parliament has the right to continue such a discussion for two more meetings at the request of not less than 1/10 of the total deputies in parliament) [28, p. 9 – 10]. Therefore, we consider the main areas to be used for Ukrainian practice: 1) the volume of the priority right for parliament to consider legislative initiatives of the government; 2) the right of the government to initiate urgent draft laws.

The extent of the priority right for parliament to consider legislative initiatives of the government consists in the parliament's duty to consider draft laws initiated by the government during a certain number of days of the parliamentary session. Given the unicamerality of the Ukrainian parliament and the lack of priority consideration of draft laws among parliamentary factions, government bills should be considered not less than 50% of the general normative time for the consideration of bills in plenary sessions. Given timeframe is due to the

need to increase the role of the government in lawmaking, since government structures play a major role in the implementation of state policy and carry the main responsibility for the implementation of legislation, state programs and other areas of foreign and domestic policy. This problem should be regulated at the level of regulatory legislation.

The government's right to urgent draft laws is to oblige the parliament to include government bills in the agenda on especially important issues of national importance, as well as on emergencies, threats to national security, etc. We believe that the determination of the urgency of such draft laws is carried out by submitting a separate resolution by the Prime Minister of Ukraine to the Chairman of the Verkhovna Rada of Ukraine. The law in question will allow the implementation of government draft laws regardless the existence of a priority right for parliament to consider legislative initiatives of the government in emergency situations. Provision of this right to the government should also be fixed at the level of regulatory legislation.

Conclusions to Section II

Thus, summing up the analysis of the prospects of the application of the lawmaking practices of the EU countries in the legal regulation of the legislative process of Ukraine, it is to be mentioned that the experience of the EU member-states is useful and isnecessary for incorporation into Ukrainian legislation. The significance of this experience is to improve the quality of legislation by means of the existing mechanisms for monitoring the quality of draft laws, increasing the role of legislative governmental initiatives and increasing the overall responsibility of members of parliament in the process of lawmaking. Promising directions of research are the formation of mechanisms for adapting national regulatory legislation to supranational EU institutions in the balance between national and supranational mechanisms of lawmaking, especially regarding the competence of the legislature of the national parliament in relation to supranational institutions, the extent of parliamentary responsibility in the process of passing legislative decisions and involving public in the legislative process.

Therefore, the study of the harmonization of the lawmaking process in Ukraine and the EU provided an opportunity to formulate conclusions and proposals that are to be found below.

First of all, the study of legal regulation of the lawmaking process in Ukraine and the EU has shown significant differences in the legislative procedures. The comparative analysis showed common and distinctive features of legal regulation of lawmaking in Ukraine and the EU, with particular features of legal regulation of the lawmaking process in Ukraine and the EU. Their common features include the existence of a basic legal act of regulating nature, normative definition of stages of the legislative process, etc. However, the differences are exceeding common features, e.g: the priorities of the legislative initiative include governmental structures, the consolidation of the rights of the opposition, minority of the parliamentarians, the priority of substantive bills of various social importance, the procedure for overcoming the right of veto and others. These and other characteristics have formed the main directions towards improvement of the Ukrainian legislation in the sphere of lawmaking in the context of harmonization with the relevant EU legislation.

Secondly, the search for harmonization and analysis of the importance of the lawmaking process of the EU countries to improve the legislative practice of Ukraine made it possible to make specific proposals to improve the current regulatory framework in Ukraine. The main areas of harmonization of Ukrainian lawmaking legislation and EU law in this area are: 1) legal consolidation of quality assurance of legislative drafts; 2) the legal consolidation of the Parliament's duty to review legislative governmental drafts and its structures in the amount of 50% of the total plenary sessions; 3) the adaptation of the national regulatory legislation to the supranational legislative institutions of the EU.

It is to be noted that the prospective direction of improving the harmonization of the lawmaking process in Ukraine and the EU is the necessity to codify the Ukrainian regulatory legislation that should be implemented in a single comprehensive legislative act.

The implementation of the directions towards improvement of legislation in Ukraine covered in this paper, will allow to raise the quality of legislative acts in general and bring the legislative process closer to the procedural foundations of legislation in the EU.

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SECTION III

“QUASI CORPORATIONS” AND EURO-INTEGRATION

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Annotation

The article deals with the legal problems of the existence of the phenomenon of “quasi-corporations”, which are becoming widespread in the information society in the conditions of integration processes. It is suggested to understand that quasi-corporations are “virtual organizations” and similar phenomena (startup, etc.). It is analyzed the concepts and types of virtual organizations. It is characterized the “virtual office”. The conditions and order of their creation are considered. As a kind of quasi-corporations that arises under certain conditions, the startup is also explored. Features of startups, stages of their existence, etc. are described.

It is drawn attention to the lack of legal framework for quasi-corporations in national law. It is concluded that the principles of legal regulation in the relevant field in the context of integration processes should be determined by international agreements, which are part of the integration (integrative) law.

Preface

The realization of the European integration aspirations of Ukraine requires, among other things, the appropriate legal framework, which is impossible without a proper theoretical substantiation.

Integration processes in general and in the field of law, in particular, necessitate a coherent understanding of such basic concepts as "integration", "integration right", etc., as well as the diligent attention of researchers to legal phenomena that have emerged and evolve under the new conditions of integration processes. Of particular interest are the legal phenomena associated with the information society and information technologies, which, by their very nature, are a prerequisite, a means of securing or the result of integration processes (in particular, such as "virtual organizations", startups, etc.).

To some extentthe relevant issues were the subject of scientific research, but a significant number of issues in this area remain unexplored. Suffice it to say, that the term "integration" is polysemantic and has about ten different meanings. In particular, this term refers to: 1) the combination, interpenetration: the process of uniting any elements (parts) into one whole, the process of mutual convergence and the formation of interrelations; 2) unification of political, economic, state and public structures within the region, country and the world; 3) economic integration – the process of internationalization of economic life, convergence, the unification of economies in a number of countries; 4) social integration – the existence of orderly relations between individuals, groups, organizations, states; 5) cultural integration – the assimilation of heterogeneous elements of culture into a single culture; 6) integration of languages – the process of language evolution, consisting in convergence of different dialects and languages up to their merger; 7) integration in biology – the process of organizing, harmonizing and combining structures and functions in the whole organism, characteristic of living systems at each level of their organization; 8) integration in physiology – a functional combination of individual physiological mechanisms in the complex coordinated adaptive activity of the whole organism. In addition, the term "integration" is used to characterize the process of rapprochement and communication of sciences, etc. [1].

Therefore, first of all, we need to find out the concept and essence of the categories "integration", "integration law", "integrative law", "integrated right", and therefore, in the appropriate context, consider the dynamics of the phenomenon of "quasi-corporations", which herein means as the"virtual organizations" and similar phenomena (start-ups, etc.), which are becoming widespread in the information society in the context of integration processes.

The consideration of the relevant issue is the task of the authors of this article, and the purpose is the identification of the peculiarities of the "quasi-corporations"phenomenonand the principles of legal regulation in the relevant field in the context of integration processes.

§ 1. European integration and integration law

On this basis, European integration can be defined as a process of political, legal, economic (in some cases – social and cultural) unification, association of European states, the content of which is the establishment of their close cooperation. This integration is one of manifestations of the determining trend of contemporary historical development – the strengthening of the full states'interdependence, primarily in the economic sphere, and the further convergence of civilizationally related national communities [2].

The integration processes that take place in the EU area involve deepening of the interconnection and strengthening of the states' interdependence that are part of it, which necessitates adequate legal regulation. Thusarose a problem of determining of the normative array essence that is formedin so doing. Most often it is called "integration right".

However, using this term, we mean that it is used in different meanings, moreover, with respect to both domestic and international law.

Thus, before the intensification of regional and world integration processes, the term "integration law" was meant, first of all, the complex branches of internal law [3, p. 112], that is has been said about internal integration processes in the law within the limits of one legal system.

Such a position, formed within the legal sense of the 70s of the last century, exists now. In particular, it is proposed to consider the integration law as a complex industry, which is formed taking into account the legal norms of other branches of law and legal norms established by special integration legislation. The subject of integration law is the integration relations and their legal regulation by the main and other complex branches of law and special integration legislation. The complex nature of the integration law and the complexity of its method determine the presence in the integral right of elements of both private and public law [4].

Of course, such a position has the right to exist, but only within the framework of assessing the tendencies of the "internal" development of the national legal systems.

At the same time, the understanding of "integration law" in the third millennium is shifted toward assessing its significance in the context of international integration processes, in particular, the creation of integration associations.

Thus, D.A. Kerimov drew attention to the fact that integration associations, depending on their legal status, are usually divided into two groups: international intergovernmental organizations (European Union, Council of Europe, etc.) and unions of states, which are not international organizations. In this, the processes of international integration are the subject of legal regulation of not only international treaties, which are the basis of these integration associations, but also international treaties regulating the processes of international integration (agreements on the establishment of free trade zones, agreements on cooperation between states in various spheres, aimed at consolidating the goals of integration, etc.). In addition, there are made decisions on issues of international integration by international intergovernmental organizations agreements of which concluded with States or with each other [5, p. 44, 92].

It can be concluded that all normative arrays regulating the processes of international integration are covered by the reference of integration law. In this, these normative arrays, that is "integration law", are considered as "external" to the national legal systems factor [6, p. 181]. From the same angleis also considered the "integration legislation", the main purpose of which is the creation and implementation of the consolidation of the legal systems of states on the basis of common legal principles, goals, standards, methods and means of legal regulation in a consolidated (to a greater or lesser extent) legal system [7, p. 9].

At the same time, the literature expresses the idea of the existence of integration law in the field of internal (constitutional) law, which is characterized as a set of legal norms governing the relations that arise in the internal legal order in relation to the constitutional provision of state participation in the processes of intergovernmental integration, having the basis of constitutional principles of foreign policy [8, p. 293-300].

Thus, we have two approaches to the vision of the essence of the "integration law", the essential difference between which is to look at it as an "external" or "internal" factor in relation to national legal systems.

This state of affairs predetermines the need to resolve the conflict, when "integration law" is sometimes understood as a means of ensuring integration processes, and sometimes – as their result. All this is complemented by the uncertainty of the concept of "integration law", which requires a separate study. As a result, in fact, there is no sufficiently clear position of domestic jurisprudence regarding the principles of understanding the concept of "integration law" and related categories.

The solution to the current situation is seen in the characterization of the integration law and related categories, as concepts, that is, verbally expressed ideas, representations, sensations that reflect the perception of man by the world and the world of man. Therefore, we proceed from the fact that when describing the law (including the right of integration) as a phenomenon of culture, "the concept" should be understood as a set of representations, concepts, knowledge, associations, emotions that arise in connection with the use of the term "law" (integration law), accompany and characterize it.

Based on this understanding of the essence of legal concepts, we must note the need to overcome a typical phenomenon of jurisprudence ignoring features of the lexical meaning used to denote the legal phenomena of terms.

The general principles of the usage in the sphere of interest to us, determine the need to take into account the fact that the term "integration" is associated with the adjective "integrative – integration" and the verb adjective "integrated – integrative", which have different meanings and different lexical accents. Although the words "integrative", "integration" are not always differentiated, the result of which was what could be, for example, the "integration process" and the "integrative process", but modern linguistic practice confirms the distinction of these words, and hence the development of a characteristic and excellent for each of them lexical compatibility.

"Integration" is used in the sense of "unification of parts in the whole" and in phrases: the integration process, integration group, etc.

The word "integrative"is recorded in dictionaries since the 90s of the twentieth century, and stands for "solid, integral subject or phenomenon": integrative consciousness, integrative function, integrative information, etc.

The devotional adjective "integrated" means "integrated; the one that is based on the association", which means that it was integrated, which was subjected to integration. It is used in terms of: integrated management system, integrated method, integrated training, integrated summary, etc.

The adjective “integrating” more often refers to those phenomena that “themselves integrate, act as combining factors”. This word is new and still has no tradition of using in the literary language. However, his model is in accordance with the laws of the Ukrainian language, a language practice testifies to the birth of a somewhat different lexical meaning, which ultimately is considered the main hallmark of the word’s life [9].

Extrapolation of the above provisions to the legal background gives the following results.

The term “integration law”, which is based on the consideration of the meaning of “unification of parts in the whole”, it is expedient to denote a set of principles, norms and rules that mediate integration processes.

The closed to him term “integrative law”, which has the basis for the interpretation of “a solid, coherent subject or phenomenon”, is justified in the context of our study of the law of the European Union, which is the result of the process of European integration.

There are indications to consider “integrated law” asa national law of the member-states of integration, which has undergone integration in the process of acculturation, legal approximation, legal transplants, etc.

With regard to the term “integration law”, it is worth mentioning those legal rules that, in accordance with the principles of integration law, provide solutions to specific problems arising in the process of integration in front of its members and their associations.

It should be noted, that prototypes of the proposed system of categories related to legal integration have already been repeatedly encountered in European history.

The most interesting case of the creation in the process of integration of a new legal system of a fundamentally different, higher quality is the formation of Roman private law, which took place in ancient Rome two millennia ago, becoming a prototype of legal integration in modern Europe.

Prerequisite for the integration processes was the growth of Rome at the time of Octavian August from the ancient city-state to the “Roman world” (Pax Romana), which, in fact, has become the prototype of an integrated Europe [10]. In the process of the mentioned civilization integration, as its component and integration in the field of law, takes place due to the fact that the national Roman law (jus civile) no longer meets the needs of another not only on the extent, but also on the quality of social formation.

Changes in law take place both in the process and as a result of integration of civilization. The basis of the integration process – the integration law – became jus naturale (natural law) and jus gentium (“the right of peoples”). The first of them serves as a source of legal regulation, and its model. Thanks to its inherent supranational nature, jus naturale has the necessary properties for the integration process of universality, “comprehensiveness”. Instead, jus gentium by its very nature was borrowed from other national legal systems, which generally did not have such properties, but served as the source material for the integration law in those parts that had an integration potential.

With regard to the national legal systems that were part of the influence of Pax Romana, they, as well as the national law of ancient Rome, jus civile, because of the integration of significant transformations, became an “integrated law”. At the same time, these national legal systems, acquiring new qualities, retained their decisive properties, which could continue to refer to “Athenian”, “Jewish”, “Phoenician”, and so on. At the same time, the slightest changes occurred in those parts of the national law that reflected the peculiarities of the mentality, historical, cultural and national development of a certain people, ethnic group, community (right of a person, family and inheritance law).

An important element of integration in the field of law and its instrument (“integral law”) was “praetorian law” (jus praetorium), andthrough it, has been formed a private law (jus privatum), as a system of legal ideas, principles, legal doctrine, norms and rules that reflect the holistic view of the legal status of a private person, the fundamentals of protecting his property rights and ensuring the participation in trade.

Private law that is essentially an “integrative law”, has become a civilization phenomenon of a high level of generalization – a legal concept that has become widespread in all legal systems where the reception of Roman law took place, ensuring their assimilation of many concepts, including such as “corporations”, which became the prototype of “virtual”subjects of law. At that time, in the process of creating an integrative private law at its essence, it was formulated the principle that was decisive in the era of European integration and the formation of the European law: “Per liberam personam nihil nobis adquiri potest”, and which became the basis for the creation by people organizations of an unknown earlier type, including – virtual.

§ 2. Quasi-corporations as virtual organizations

Modern organizations have joined the sensational progress of humankind in less than two centuries, which is instantaneously in the overall scale of our time. None of the latest achievements in human history would have been possible without organizations [11, p. 25]. Throughout history, mankind was searching for new ways and forms of collaborative work, seeking to create new organizational models that are better than previous ones. As a result, today we have such organizational forms, which, it would seem, can meet the needs of any subjects of social activity.

In particular, in the legal field in Ukraine, the following organizational forms of implementation of diverse activities are currently used: individuals, entrepreneurs and legal entities.

A legal entity, in accordance with Art. 80 of the Civil Code of Ukraine, is an organization created and registered in accordance with the procedure established by law. A legal entity can be created by combining persons and / or property (Article 81 of the Civil Code of Ukraine). Depending on the order of creation, distinguish legal entities of private law and legal entities of public law. A legal entity of private law is created on the basis of constituent documents in accordance with the provisions of Art. 87 of the Civil Code of Ukraine, and a legal person of public law is created by the decree of the President of Ukraine, the state authority, local self-government.

Legal entities may have the organizational and legal form of companies, institutions, and other forms established by law.

An economic society is a legal entity, the equity (compounded) capital of which is divided into stakes between the parties. Economic societies are created on the basis of the agreement by legal entities and citizens by combining their property and business activities in order to receive profit.

Economic societiesinclude: joint-stock companies, limited liability companies, partnerships with subsidiaries, full and limited partnerships.

The general principles of the establishment and operation of economic societies are determined, in particular, by the Civil Code of Ukraine, Economic Code of Ukraine, the Laws of Ukraine "On Economic societies" and "On Joint Stock Companies". Aside from economic societies, as mentioned, there are other forms that can be used in any activity.

At the same time, existing organizational forms are not always suitable for answering the challenges of a new, digital era, and therefore there are new types of companies that are more adapted to the realities of the present.

The need for them has predetermined, in particular, the emergence of so-called virtual organizations. This is due to the "virtualization" of many spheres of public life.

The virtualization space of organizations is conventionally divided into three main categories of events: the virtual market, virtual reality, virtual organizational forms.

The virtual market is a market of goods and services that exists on the basis of communication and information capabilities of global computer networks (Internet).

A virtual reality is a reflection and simulation of real objects and processes in cybernetic space.

There are different definitions of virtual organizations in the literature. In particular, the virtual organization is characterized as a network organizational form. This refers sometimes to a "virtual enterprise", which is often identified with a "virtual organization". The virtual enterprise, in particular, defines as a community of territorially separated firms or employees who exchange products of their work and communicate exclusively with electronic means with minimal or completely absent personal contact [12]. Taking into account the peculiarities of the practical functioning of such structures, a virtual organization is defined as a temporary cooperative network of enterprises (organizations, individual teams) that have key competencies for the best execution of a market order based on a single information system. It is characterized as the most advanced form of a modern enterprise, which is an association of a network of organizations with its nodes and communications with information and technical means [13, p. 47].

It is worth noting to the fact that the term "virtual organization" is used in a dual sense. In an abstract sense, a virtual organization means the most advanced and effective form of organization, which is the best in terms of the available technical and new economic conditions. In a more concrete sense, a virtual organization is understood as a network, computer-mediated structure of the company, consisting of heterogeneous parts, located in different places. In some works, virtual organizations or enterprises denote other terms: "network organizations", "virtual enterprises" [14], etc. Typically, it refers to network

partners (enterprises, organizations, individual teams), which jointly carry out activities for the development, production and marketing of certain products, the provision of services of various types.

Legal experts also madeattempts to define virtual organizations. In particular, virtual organizations define as those that exist in the virtual space, economic entities, which include natural and legal persons having an internal structure, division of duties and regulation of relations between the participants. The key feature of such organizations is the fact that the basis of the association of individuals and legal entities is modern information or communication technologies [15].

In our opinion, the proposed definition cannot be considered successful, because the basis of the association is either the union of individuals, or the pooling of capital. In this information technologies serve as technical means of providing activity in a certain space that have virtual nature.

Virtual organizations are also mentioned when describing Grid-technologies. In particular, access to such technologies requires membership in virtual organizations. Virtual organizations provide access to Grid's network technology by their own developed and approved rules, that is, they are engaged in providing services and local rulemaking [16]. In the Ukrainian National Grid (UNG) Regulation, a virtual organization is defined as a dynamic community of people and institutions that share the computing resources in accordance with the rules agreed between them and the owners of the rules governing access to all types of means, including computers, software and data [17].

Virtual organizations have a number of distinctive features that distinguish them from organizations in the real sector of the economy. Thus, virtual organizations are more fragmented and volatile, focusing on new ideas, innovations, and rapid response to emerging market needs. In this case, virtual organizations have new opportunities that arise from the latest information technologies. Since virtual organizations essentially is the unification of the efforts of partners, as a rule, such cooperation within the organization is of equal nature, it is more characterized by creative color. Thus, the building of the relationships is based on the ideas, competences and partnerships of the partners involved in the virtual organization.

Being the organizational form of the information society in the field of business, public communications, innovations, etc., global communication networks such as the Internet, contribute to the formation of business structures, the list of which features is reducing the deficit of information and increasing the

efficiency of its use, activation of accumulation processes and transfer of knowledge, establishment of high level of trust, intensification of cooperative relations between partner firms, etc. Such business structures, due to their flexibility, can quickly adapt to market changes and transform into new structures, creating the level of competence that is necessary for the organization of production of goods and services, depending on market needs.

Unlike a regular organization, a virtual organization can solve a problem that has arisen without the involvement of significant material resources by finding and engaging new partners with the appropriate resources, knowledge and capabilities for joint organization and implementation of the relevant activities. Typically, such a partnership is temporary, limited by a certain period, or the achievement of the goal set by the partners.

New types of organizational structures are characterized by openness, flexibility, autonomy, the priority of horizontal ties, the availability of resource-saving technologies.

Among the main features of such organizations are also called: unstable nature of functioning; implementation of communications and management actions on the basis of integrated and local information systems and telecommunications; the relationship with all partner and other interested organizations through the conclusion of a series of contracts and mutual ownership of the property; creation of temporary alliances of organizations in related fields of activity; partial integration with the parent company and the preservation of joint ownership relations as long as it is considered advantageous; contractual relations of employees with administration at all levels [18].

Virtual organizations are fully reflective of the digital environment, such as the Internet, with all its drawbacks and advantages.

As the researchers rightly emphasize, the novelty of the Internet is not even in virtuality, but in the liberation of ideas from the general limitations of space, time, matter and censorship. The element of the Internet is innovation and communication, not material things [19, p. 87]. The non-hierarchical structure of the Internet is an ideal environment for the growth and development of contractual and technological culture, it is the center of the world economy and a major factor in rapid innovation development.

As it follows from the foregoing, considering virtual organizations from the point of view of law, we can speak of unstable "organizational formations" of a contractual type without a legal entity status (quasi-corporations) created

for the purpose of realization of innovative projects on the basis of mutual use of resources, reduction of expenses and expansion market opportunities that operate on the basis of self-government.

Virtual organizations are classified according to different reasons.

Thus, depending on the organizational form (the nature of corporate ties between the participants), it is distinguished a virtual organization, a virtual enterprise, a virtual corporation.

A virtual organization is a broader concept and covers all types of entities existing in the virtual space. At the same time, "enterprise"under the Civil Code of Ukraine is the only property complex used for business purposes (Article 191 of the Civil Code of Ukraine) and is not the subject of legal relations. However, "virtual enterprise" is considered as a joint operation of the activity of independent enterprises of various industry affiliates, forms and sizes of ownership. Such an enterprise is created on a temporary basis without the formation of a legal entity for the purpose of mutual use of resources, reducing costs and expanding market opportunities [13, p. 48].

The virtual corporation is an electronic association of capital (resources) of various types – financial, technological, human (in particular, intellectual) in the interests of implementing complex and unique projects for creating world-class products and maximally satisfying customer requirements [18].

It contributes to solving two fundamental problems of a market economy: 1) raising capital for the implementation of unique projects or the distribution of business processes in order to increase the competitiveness of products; 2) risk sharing in investment projects.

The main foreign economic goal of creating virtual corporations is the pooling of key technologies and experience of partners from different countries for more effective actions on the world market. The virtual corporation is characterized by a certain independence from the participants (the possibility of easy change of partners) by the presence of an indirect management mechanism (delegation of authority), the transition from the individual to the collective responsibility of the partners. It provides contractual relationships between all the nodes of the organizational network and the formation of their joint ownership. Often, a virtual corporation is formed in the form of a parent virtual enterprise with a network of subsidiaries virtual branches and so on.

A virtual corporation is created from a variety of enterprises on a contractual basis, does not have a single legal organizational structure, but has a general

communication and information structure, which ensures the integration of the efforts of partners in the execution of a project. It is a complex system, formed from remote groups of people (virtual teams), which are united on the basis of symbiosis of leading network and intellectual technologies, such as the Internet, and provided knowledge management. An artificial community that exists and evolves in a virtual space is formed electronically. On the one hand, there is a merger of network and intellectual technologies because the network as one of the most important forms of collective intelligence is closely linked with the processes of self-organization of the spontaneous emergence of new structures. On the other hand, we are talking about the formation of a unified system of support for communicative processes [18].

There are three types of virtual enterprises:

Depending on the type of management within a virtual organization, are distinguished: virtual organizations with a centralized type of management (in which coordinating functions are transferred to the "main" enterprise, and knowledge and resources are available to all "agents"); virtual organizations with a distributed type of management (where knowledge and resources are distributed among "agents" but the general body of command management that makes decisions in conflict situations is kept); virtual organizations with a decentralized type of management (in which all managerial processes are carried out only through local interactions between "agents") [18].

Depending on the purpose of generating revenue, virtual organizations may be commercial or non-commercial.

Depending on the extent of production (provision of services), virtual organizations can be small, medium, major (large).

Depending on the purpose of their creation, they are divided into innovation and others (e-commerce, provision of various services, etc.).

Depending on the time on that the virtual organization is created, it can be permanent or temporary.

There may be other classifications of virtual organizations.

In addition to virtual organizations, recently appeared such a concept as a "virtual office". It is a term used to designate office services of collective use, which often include the business address of the organization for receiving correspondence, mail forwarding services, virtual telephone number, fax reception, as well as secretarial services provided, web hosting and rental of conference rooms and conference rooms for business meetings. The Virtual Office is also

a generic term for describing the environment, which allows the team of employees to effectively conduct business using exclusively Internet communication capabilities. That is, the virtual office is an online resource (site) that allows geographically distant employees of the company to interact (exchange, process and transmit information) by means of electronic communications [20].

It should be emphasized that at present the situation of virtual organizations and their activities in the vast majority of cases are not regulated by national laws of European countries. Such an approach, in our opinion, is justified in the information society in terms of integration, since the principles of legal regulation in the relevant field must be determined by international agreements, forming part of the integration (integrative) law.

§ 3. Startup as a form of innovative entrepreneurship

Activation of innovation processes is also associated with the use of the startup as a form of innovative entrepreneurship, which is relatively new, but is already a very common phenomenon around the world.

Speaking of a startup, it should be noted, that this term was first applied to a commercial project in 1939 in the United States. At that time, almost all companies engaged in innovation and high technology were based in the San Francisco area. Several Stanford students, creating a new business based on a fundamentally new idea, called their business startups (from English start-up – launch). It was this business that subsequently took shape in a successful and profitable company in the field of information technology called Hewlett-Packard or Eich-Pi (HP). [21]

There is no term of "startup" in Ukrainian legislation, but in the scientific literature, there are beingattempts made to determine it. Thus, in the opinion V.S. Pikul, a startup is a just created company (maybe not even a legal entity) that is in the development stage and builds its business on the ground of new innovative ideas or on the ground of newly emerging technologies. Often, the characteristic features of the startup are the lack of finance and the unstable "partisan"firm's position on the market [22].

O.V. Kornukh and L.V. Mahan'ko characterize the startup as a progressive form of innovation entrepreneurship [23, p. 26-30]. A startup or startup company is also defined as a company or project that has a short history of profit-seeking activities [24].

In any case, the startup is an innovative project related to the development and promotion of new ideas, based on the risky activities of small groups of people who created it. Startup may be a legal entity, but may not have this status. The startup is characterized by temporality, since it is created specifically for the search and implementation of a new business model, which then begins to live its life. Classic startups combine the fact that they have a unique (original, exclusive) idea. The real startup never copies already well-known commercial projects, but is something fundamentally new. Most startups are completely new projects and even those that are only under development. As the information technology sphere is the most innovative area that has significant promising commercial potential, most startups are created in it and are applied to Internet projects.

In order to identify the concept of startup, it is necessary to establish the characteristics that distinguish startups from other forms of doing business.

First, it is a newly created company or organization (sometimes not even legalized), which builds on innovative ideas or new technologies that have not yet started to be mass-produced.

Secondly, the startup is a small business, which is the driving force behind innovation entrepreneurship.

Thirdly, as a rule, startups are created as Internet projects and IT projects. Although they can exist in industries outside the IT sphere. However, in this case, they are still associated with innovative ideas in areas of a forward-looking nature (for example, energy-saving technologies) or technologies that can solve existing problems in society (water purification, garbage recycling, environmental technologies, medical equipment, biopharmaceuticals, etc.).

Fourthly, startups, as a rule, do not have a financial base and exist at the expense of investments.

Fifth, the idea underlying the startup should be attractive to investors so that it outweighs all the risks associated with its implementation.

Sixth, startups have mobility in the implementation of new ideas into practice, which makes them able to compete with large corporations.

Seventh, the core of a startup as a project is always a team whose members generate ideas, translate them into an innovative product, develop ideas for startup development and manage it, and decide on funding issues.

Eighth, start-ups, as temporary, short-lived projects, are in their development certain stages, which are typical for them.

In the ninth, startups are designed for the prompt realization of the idea behind them.

Based on the analysis of the characteristics of the startup, it can be characterized as a newly formed structure (which may or may not be a legal entity, and often is a "quasi-corporation") in the sphere of small business, which is in the stage of development and builds its business on the basis of new innovative ideas, or on the basis of newly emerging technologies, in order to solve a specific problem by attracting investment.

Startups in their development go through the following stages.

1. "Pre-Seed Stage". At this stage, we are looking for ideas and developing technical ways to implement it. The initiative group carries out market analysis, forms a business plan and prepares a technical task. Then it is created a prototype of the product, testing its versions, studying the demand and finding sources of funding. If no funding is available, the startup will gradually cease its activity. This is the case with most startups.

2. At the second stage, in the case of finding funds, there is a so-called Launch (Startup Stage) of the product on the market. Once in the market, the product must prove its superiority over analogues. This is the most risky stage of the existence of the startup, because it must overcome the resistance of competitors through creative thinking, creativity, perseverance and business qualities. At this stage, you should be interested in the target audience.

3. The stage of growth (Growth Stage) is characterized by promotion of the product in the market, increasing demand for it. It is important at this stage a steady occupation of its "niche", which will allow the startup to reach the level of break-even and even receive at least some profit investors.

4. The "expansion" phase (Expansion Stage), where the product is moving on new markets. The company's positions are no longer threatened by competition, other risks are small. Products are in demand and profits are growing steadily.

5. The stage of "exit" (Exit Stage). When the company reaches the peak of its development, and the investors who funded the project, refuse their luck business and sell it to more powerful partners. It gives them such a profit for which they financed this project. Although individual investors can save their share and use it as a permanent profit [25].

Startups are classified according to different reasons. So, depending on the science-intensive nature of the startups, based on high technologies and traditional start-ups. Startups are also distinguished depending on the markets and types of products, the possibility of creating a "business incubator", etc.

In any case, at the present stage of the development of information technology, startups are the most progressive innovative form of small business and the promotion of new ideas.

Among the most successful startups are Wikipedia (the largest and most popular online encyclopedia), U-tube videos base, Skype and other online communication services, Microsoft, Apple, Google. All of them belong to the IT sphere, although, as noted, startups can be created outside of it. Thus, as an example is the Israeli startup Emefcy that has developed and implemented technology that allows cheaply and safely to clean sewage with bacteria.

Since start-ups carry out innovative activities, their creation and activities are possible in Ukraine (in the absence of special legislation) in accordance with the Law of Ukraine "On Investment Activity"of 18.09.1991, which defines the general legal, economic and social conditions of investment activity in Ukraine; Law of Ukraine "On the regime of foreign investment" dated March 19, 1996, which establishes the features of the regime of foreign investment in the territory of Ukraine, based on the purposes, principles and provisions of the legislation of Ukraine; Law of Ukraine "On Innovation Activity" dated July 4, 2002; The Law of Ukraine "On Science Parks" dated June 25, 2009, regulating the legal, economic, organizational relations associated with the creation and functioning of scientific parks, and is aimed at intensifying the processes of developing, implementing, producing innovative products and innovative products at the domestic and foreign markets.

In addition, since in the process of activity of startups the objects of intellectual property (inventions, know-how, original technologies, works of science, art, signs for goods and services, etc.) are created, the provisions of the Law of Ukraine "On Copyright and related rights" of 23.12.1993; The Law of Ukraine "On Protection of Rights to Inventions and Utility Models" of 15.12.1993; The Law of Ukraine "On the Protection of Rights to Trademarks for Goods and Services" of 15.12.1993; The Law of Ukraine "On Protection of Personal Data" dated 1.06.2010. Depending on the sphere in which the startup is operating (energy saving technologies, ecology, commerce, information technologies, etc.), they must comply with the norms of the special regulations in the respective branches. At the same time, it should be emphasized that, since startups, as well as virtual organizations, are the product of the information society under the

conditions of integration, the principles of their emergence and activities must be determined by international agreements, being part of the integration (integrative) law.

Conclusions to Section III

Consideration of the problems associated with the existence of "quasi-corporations" allows us to draw the following conclusions.

The integration processes that take place in the EU area involve deepening the interconnection and strengthening the interdependence of the states that are part of it, which necessitates adequate legal regulation. Then there is a problem of determining the essence of the normative array that is formed at the same time, which is often referred to as the "law of integration". The term "integration law" proposes to designate a set of principles, norms and rules that mediate integration processes. The term "integrative law" in the context of our study justifies the law of the European Union, which is the result of the process of European integration.

The analysis of national law shows that the organizational forms that exist at present are not always suitable for responding to the challenges of the information society, and therefore new organizational forms (in particular, virtual organizations) are emerging, more adapted to the realities of the present.

Considering virtual organizations from the point of view of law, one can define them as unstable "organizational formations" of a contractual type without the status of a legal entity (quasi-corporation) created for the purpose of realization of innovative projects on the basis of mutual use of resources, reduction of expenses and expansion of market opportunities acting on basis of self-government. Since the situation of virtual organizations and their activities in the vast majority of cases are not regulated by the national legislation of European countries, the definition of the principles of legal regulation in this area by international agreements, which is an integral part of integration (integrative) law, is of great importance in the information society in the context of integration.

Based on the analysis of the characteristics of the startup, it can be characterized as a newly formed structure (which may or may not be a legal entity, and often is a "quasi-corporation") in the sphere of small business, which is in the stage of development and builds its business on the basis of new innovative

ideas, or on the basis of newly emerging technologies, in order to solve a specific problem by attracting investment.

However, since startups, as well as virtual organizations in general, are the product of an information society in terms of integration, the principles of their emergence and activities must be determined by international agreements, being part of the integration (integrative) law.

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SECTION IV

UKRAINIAN COMPETITION LEGISLATION AND LAW DEVELOPMENT UNDER EUROPEAN INTEGRATION CONDITIONS

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Annotation

The European Union competition law has a real impact on the competitive legislation of countries of emerging economies, with Ukraine being among them. Since its creation, the competition legislation and law of Ukraine have been formed taking into account modern trends in the development of legal regulation of economic competition relations both in the EU and throughout the world. At different times, the advantages have been given to adapting the experience of the USA, the EU, Germany, Japan and Australia as for determination of priorities and trends in the development of legislation and institutional transformations in the activities of Ukrainian antitrust authorities of Ukraine. The OECD and UNCTAD had a significant impact on the development of Ukrainian competition legislation and practices. The Association Agreement conclusion between Ukraine and the European Union provides for a qualitatively new level of cooperation between its parties. This requires harmonization of Ukrainian competition legislation with the EU competition legislation. Taking into account the tendency of gradual growth of the European Union role in the modern world, the study of both competition rules and the processes of its adaptation in Ukraine is gaining not only a theoretical but also a practical importance.

Preface

The history of competition law formation and development in various countries has its essential differences related to the need to take into account national peculiarities of the competition development, peculiarities of competition legislative protection, traditions and customs of business turnover, administrative and judicial practice of law enforcement bodies. It is worth noting that

there is no single position regarding the definition of the content and structure of competition legislation and law in the theory of contemporary Ukrainian law science. Most researchers use different definition structures to determine a set of legal norms ensuring conditions for honest and fair competition. There are also no common approaches to determining the detailed content of the competition legislation. Some scholars point out that the competition legislation covers only the norms aimed at preventing unfair competition [1, p. 6], others – at all norms of the current legislation, regulating all relations in the field of economic competition [2, p. 79; 3, p. 26; 3, p. 24].

Studying peculiarities of the development of economic competition legislative regulation in Ukraine, it should be considered that, on the one hand, competition law sources are regulatory acts, international agreements, judicial precedents or business practices connected with termination of unfair competition, on the other hand, they are connected with protection against manifestations of monopolistic activity, regulation of natural monopoly subjects' activity, control over the processes of granting and using state aid to business entities and ensuring competition grounds in public procurement.

§ 1. The formation of competitive legislation and law: European in fluence and Ukrainian realities

The competitive legislation of Ukraine is formed according to the functional principle and it is aimed at comprehensive legislative regulation of relations in the field of economic competition. The more or less strict division of norms of two main institutions of the competition law may do serious harm to the main objective of legislative regulation of competition – the formation of conditions for honest and fair competition development that should become the basis for the economic renovation of Ukraine. More over, it is a comprehensive approach to regulating relations in the field of economic competition that is the basis for developing and improving the current organizational and legal mechanism for economic competition protection and it provides an opportunity to balance private interests of both entrepreneurs and consumers with public and state interests. In particular, an antimonopoly regulation institute is a vivid example of limiting private interests of individual business entities in favor of public interests of the state and society. The purpose of legislative protection against unfair competition is, on the contrary, the protection of the private interest of

a competitor in obtaining competitive advantages through his intellectual, creative and entrepreneurial skills and efforts, the protection of intellectual property rights, realization of the private interests of consumers for obtaining original goods and obtaining honest and fair information about goods, work and services acquired by them. However, if distribution of misleading information can be harmful not only to an individual entrepreneur, but also to consumers, then, by protecting against displays of misleading information, the antitrust authorities protect both private and public interests.

The availability of certain ideas about good and evil in competition, about good faith and unfairness of competitive behavior is an essential factor in ensuring the fairness of competition. Honest, good practices, customs of business turnover, corporate and business ethics rules formed in the society that take into account historical, social and mental peculiarities of perception and evaluation of the phenomena of objective reality by representatives of Ukrainian nation have significant influence on the formation of competition culture in economic activity.

It should be noted that the competition legislation in developed countries was developed together with the development of market relations in such countries. With its emergence at the end of the nineteenth century it was reformed constantly, adapting to the relevant market situation in a particular country. However, the competitive law common feature in developed countries was the fact that it was formed under market conditions in the presence of competitive relations and, generally, contained restrictive norms, namely, the norms aimed at preventing destruction of competition and development of fair business practices.

Over the period of Soviet power, the whole economic system of Ukraine was built on purely monopolistic principles and rigid planning. It should be highlighted that competition was seen as a phenomenon incompatible with the socialist system. Lack of competition led to stagnation in production and almost completely paralyzed the country's economy. Seeking to correct the economic situation somehow, in the middle of 60's of the twentieth century a socialist competition was started. The analysis of socialist competition principles allows stating that during consolidation of these principles, the principles of competition were taken into account [5]. Thus, it can be said that the legislation of the USSR before the beginning of the 80's of the twentieth century had purely anticompetitive nature. The economy was built on the basis of rigid planning and state monopoly led to a general economic and social crisis at the beginning of

80's. In 1985, economic and social transformations began in the state. Under the influence of these changes, a number of new laws regulating the economic life of the country were introduced, with the Law of the USSR "On State Enterprise in the USSR" being one of them, which for the first time provided a definition of monopolistic trends, and the Law of the USSR "On Cooperation in the USSR" definitively consolidated the importance of the competition development [4, p. 56].

The course of economic reforms on market orientation defined in the Declaration on State Sovereignty of Ukraine and the Law "On Economic Independence of the Ukrainian SSR" proclaimed at the state level was the impulse for the creation of a national system for regulating and protecting competition in Ukraine.

The state faced the problem of the legal support of reforms in both economic and social areas. The adoption of the Laws of Ukraine "On Property" and "On Entrepreneurship", which laid the basis for competitiveness of entrepreneurs on the market, namely, the diversity and equality of all forms of ownership, legally recognized freedom of entrepreneurial activity etc. [4, p. 16] was of great importance to ensure conditions for the formation and development of market mechanisms in the Ukrainian economy.

The first special law aimed at development and support of competitive environment in Ukraine was the Law of Ukraine "On Restriction of Monopoly and Prevention of Unfair Competition in Entrepreneurial Activity" on 18.02.1992, which laid the legal basis for the restriction and prevention of monopoly, prevention of unfair competition in entrepreneurial activity and state control over observance of antitrust legislation. It should be emphasized that the first competitive law of Ukraine was of complex nature. It defined the main concepts and categories of competition legislation, main types of breach in the field of competition, organizational and procedural principles of antitrust activities.

It was in the Ukrainian Law, where for the first time (unlike the corresponding Law of the USSR) the unfair competition was recognized as infringement. The law did not define the concept of the "unfair competition", but only listed those actions that were recognized as unfair competition and were prohibited.

The law also provided that the state control over observance of antitrust legislation, protection of the interests of entrepreneurs from abuse of monopoly position and unfair competition was carried out by the Antimonopoly Committee of Ukraine in accordance with its competence. Most articles of the Law were dedicated to the issues of creating and ensuring the functioning of the Antimonopoly Committee of Ukraine. However, the specificity of tasks and functions entrusted to the Antimonopoly Committee of Ukraine led to the need for a special regulatory act, namely, the Law of Ukraine "On the Antimonopoly Committee of Ukraine". The law defined the main tasks, competences and powers of the Antimonopoly Committee of Ukraine, legal status of its officials and territorial units, and resolved the issues of material and technical and socio-economic support of its activities.

An important thing for competitive legislation development was to confirm the need to create favorable conditions for the effective functioning and protection of fair competition at the constitutional level (Article 42 of the Constitution of Ukraine) by providing guarantees from the state regarding the protection of competition in entrepreneurial activity and recognition of prohibition of the activity aimed at monopolization and unfair competition.

Together with the improvement of antitrust regulation of entrepreneurial relations, growth of the number of newly created, as well as corporatized and privatized enterprises, the priorities of state regulation of entrepreneurial activity have been changed. It should be highlighted that it is precisely unfair methods of competitive struggle that cause the greatest harm to competition due to the fact that they are aimed mainly at unfair use of intellectual property objects or at breach of contractual relations and disclosure of commercial secrets. At the same time, it is impossible to provide effective protection against unfair competition only based on the provisions of Article 7 of the Law of Ukraine "On Restriction of Monopoly and Prevention of Unfair Competition in Entrepreneurial Activity". Therefore, on June 7, 1996, the Verkhovna Rada of Ukraine adopted the Law "On Protection against Unfair Competition". The Law provides a general definition of "unfair competition", as well as a list of actions that are recognized as unfair competition.

A feature of the Law of Ukraine "On Protection against Unfair Competition" was also the fact that the Law recognized the protection of both business entities and consumers from unfair competition as its objective. The law provided that the state control over observance of competition legislation by business entities is carried out by the Antimonopoly Committee of Ukraine. However, the Law did not establish procedural basis for protection against unfair competition and contained only the blanket norm, referring to the procedural norms contained in the Law of Ukraine "On Restriction of Monopoly and Prevention of Unfair Competition in Entrepreneurial Activity".

The tasks of the state competition policy include implementation of a complex of measures to create an effective competitive environment, reduce a share of the monopoly sector in Ukrainian economy, improve the competition rules, introduce modern methods of state regulation of the activity of natural monopolies, reduce the share of the monopoly sector in the gross domestic product to 10-12%, protect and support competition, develop its institutional support [6, p. 111].

The improvement of competition legislation has become one of the leading areas of competition policy. To that end, on January 11, 2001, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Protection of Economic Competition", defined the legal basis for support and protection of economic competition, the restriction of monopoly in economic activity, ensuring conditions for the effective functioning of the Ukrainian economy on the basis of competitive relation development. Thus, the Law contains a legal presumption of the positive effect of competition between entrepreneurs on the economy as a whole, and competition is declared as a fundamental factor of economic development. In this context, the formation of culture of competition, fair business practices in entrepreneurial activity becomes one of the priorities of state competition policy, one of the main functions of the competition legislation, with this Law being a key act. An important point is that the development of the Law of Ukraine "On the Protection of Economic Competition" was preceded by a thorough study of a large number of similar laws of Eastern, Central and Western Europe countries, legislation of the CIS member states. More than one hundred years experience in the application of competition laws of the United States and fifty years experience of Germany were studied. In addition, during the Law development, the EU legislation on competition protection was analyzed as well as practice of its use by the Fourth General Directorate and EU courts [6, p. 16]. The Law of Ukraine "On Protection of Economic Competition" has complex nature. The provisions of this Law are aimed at ensuring the conditions for the creation and development of competition on commodity markets, fair competition development, control over the processes of monopolization and economic concentration in Ukraine, preventing monopolistic violations and improving the state protection of economic competition in Ukraine. It is worth noting that the Law is based on qualitatively new principles of state regulation and protection of economic competition for Ukraine. The basis of such regulation was a creative combination of the principles of prohibition and control in the field of economic competition. According to the principle of prohibition, the Law prohibits the abuse of

a monopoly position, anticompetitive actions of the authorities, local self-government bodies, bodies of administrative and economic management and control, restrictive and discriminatory activity of business entities and associations, and certain anti-competitive concerted actions.

However, as O. L. Chernelevska notes, the role of competition legislation is not limited to the application of antimonopoly restrictions to business entities abusing the market power. Competition may be weakened as a result of state policy measures, and the market power of individual market players may be reinforced by various methods of state intervention in market relations. Therefore, competition law should determine the broad participation of antitrust authorities in the development of the state policy as a whole or, at least, those areas that may directly affect the competitive structure of the market, business practice, and economic activity of enterprises [7, p. 23]. In view of this, according to the control principle, the Law defines a list of concerted actions that may be allowed if their participants prove that these actions are aimed at improving production, technical and technological development, economic development, etc. According to S. S. Valitov, one of the main features of the above mentioned Law is creation of the legal mechanism to ensure harmonization of competitive and industrial policy. At the same time, the Law, unlike the previous legislation, is aimed at observance of national interests, consideration of which is the highest criterion when making decisions by state authorities, in particular, with regard to the establishment of monopoly entities, when it is necessary, for example, to increase the level of defense, national security, innovation, development of high-tech or science-intensive industries. So, any decision taken by the Cabinet of Ministers of Ukraine or the Antimonopoly Committee of Ukraine in accordance with this Law may not contradict national interests [8, p. 84-85]. In this Law, the procedural basis of the antitrust authority activity concerning termination of breach of legislation on the economic competition protection has been determined for the first time at the legislative level, specific forms of operational work of the antitrust authorities have been determined, as well as grounds and types of liability for breach of the legislation on the economic competition protection, and others. It is worth noting that the public interest – functioning of effective competition in the markets, entrepreneurs' economic freedom is the main object of legal protection of competition by bodies of the Antimonopoly Committee of Ukraine. Thus, the bodies of the Antimonopoly Committee of Ukraine direct activities to protect the rights of market participants in cases where

a public interest becomes the object of protection – competition in the market, the common interest of market participants, and not only a single private interest. The bodies of the Antimonopoly Committee of Ukraine may take into consideration the case of violations of business entity private interests by other market participants, however, the violations declared must be assessed in the view of seriousness of the consequences not only for the applicant's interests, but also in view of the disputed behavior or economic agreement impact on the relevant the market as a whole [9, p. 22].

The innovation of the Law of Ukraine "On Protection of Economic Competition" was the harmonization of competition law norms in the field of detection and termination of anticompetitive concerted actions and abuses of a monopoly position in accordance with Art. 81, 82 of the Treaty on the European Union establishment, as well as establishment of cases of exemptions from the scope of legislation norms on protection of economic competition, concerted actions of small and medium entrepreneurs (Article 7), concerted actions regarding supply and use of goods, if these actions do not lead to a significant restriction of competition (Article 8), concerted actions in relation to intellectual property rights (Article 9) at the legislative level.

The possibility of obtaining permit for actions prohibited by the Antimonopoly Committee of Ukraine from the Cabinet of Ministers of Ukraine has become a qualitatively new mechanism for concerted actions and economic concentration control. In fact, the legislator limited the "monopoly" of antitrust authorities for making decisions in the field of economic competition. On the other hand, the practice of issuing permit on concentration or concerted action, while prohibiting such actions by the Antimonopoly Committee of Ukraine, creates the basis for corruption development in this area and restricts possibilities to monitor compliance with competition legislation. The Law has expanded the range of the possibilities of business entities to protect own rights and interests in the field of economic competition. The adoption of the Law of Ukraine "On Protection of Economic Competition" has identified two main areas of state policy in the field of economic competition: support and development of competition (including means of restricting monopoly) and ensuring equal rights and opportunities for entrepreneurs in Ukraine in the field of protection of economic competition [9, p. 9]. It is worth mentioning that legislative consolidation of competition law norms in the Law of Ukraine "On Protection of Economic Competition" has contributed to the formation of a pro-European culture

of competition on commodity markets of Ukraine and implementation of fair competition principles in the economy of the country.

The adoption of the Civil and Commercial Codes of Ukraine in 2003 had a significant influence on the development of the entire legal system of Ukraine. Most scholars studying the problems of legal regulation of competitive relations point to the crucial importance of the norms of the Commercial Code of Ukraine for the development of not only competition but also the entire system of economic management in Ukraine. As G. L. Znamensky appropriately noted, economic activity under the market conditions is transformed in many of its elements. It becomes free within the broader boundaries defined by the general "market rules" and laws. Its basis is economic initiative, entrepreneurship, commercial approach and risk. The specific function of economic legislation is to ensure the interest of business entities in improving the efficiency of production, stimulating entrepreneurship and initiative. Certain norms and their combinations should be aimed at a new motivation in the actions of business entities both in horizontal and vertical relations, while civil law must acquire a "humanitarian" orientation, by ensuring material and spiritual interests of man and citizen [10, p. 300]. All this led to the need for a parallel, but separate codification of civil and commercial law norms. The peculiarity of the regulation of competitive relations was the fact that certain norms aimed at ensuring fair competition were enshrined in the Civil Code of Ukraine and others in the Commercial Code of Ukraine.

The objective of the Commercial Code of Ukraine was to ensure the growth of economic activity of business entities, development of entrepreneurship and, on this basis, increase of efficiency of social production, its social orientation in accordance with the requirements of the Constitution of Ukraine, the establishment of social economic order in the economic system of Ukraine, promotion of its harmonization with other economic systems.

In accordance with Articles 5 and 6 of the Commercial Code of Ukraine, the provision of state protection of competition was recognized as the constitutional basis of economic order in Ukraine, and ensuring fair competition is a general principle of economic management. In accordance with Article 18 of the Commercial Code of Ukraine the state carries out antitrust and competition policy on the basis of national programs approved by the Verkhovna Rada of Ukraine, which should also take into account the peculiarities of antitrust and competition policy implementation and development of competition in the public sector of the economy (Clause 8, Article 22 of the Commercial Code of

Ukraine). Moreover, unlawful interference of bodies and officials of local self-government in the economic activities of business entities is prohibited (Clause 4, Article 23 of the Commercial Code of Ukraine). At the same time, strict state regulation of the economic activity is complemented by self-regulation. In particular, trade and industrial chambers may be established as voluntary associations of entrepreneurs and organizations in accordance with Art. 21 of the Commercial Code of Ukraine in order to promote the development of the national economy, its integration into the world economy, as well as creation of favorable conditions for entrepreneurial activity in Ukraine.

Thus, political, economic, social and legal principles for the development of fair competition on the market are laid down in the Commercial Code of Ukraine. At the same time, the adoption of the Commercial Code of Ukraine led to significant conflicts in law enforcement due to significant differences in the legal regulation of competitive relations in the laws of Ukraine "On Protection of Economic Competition" and "On Protection against Unfair Competition" and the Commercial Code of Ukraine. The problem was that the provisions of Chapter 3 and 28, as well as a number of basic concepts of the current Commercial Code of Ukraine, reproduce the norms of the Law of Ukraine "On Restriction of Monopoly and Prevention of Unfair Competition in Entrepreneurial Activity", which became void in connection with the adoption and entry into force of the Law of Ukraine "On Protection of Economic Competition". Despite the fact that these conflicts were repeatedly pointed out by scholars [8, p. 86-87; 7, p. 137-154], as well as by lawyers-practitioners, the issue of unification of competition law norms has not been resolved yet, that significantly affects the law enforcement practice and limits the possibility of protecting the rights and legitimate interests of individual business entities and society as a whole, taints the image of antitrust authorities and courts significantly. In our opinion, the resolution of this complex and ambiguous problem is possible on the basis of the theoretically justified and methodologically well-thought-out unification of norms of the Commercial Code of Ukraine. Taking into account that the norms of the Commercial Code of Ukraine are more general in nature than the provisions of the laws of Ukraine "On Protection of Economic Competition", "On Protection against Unfair Competition", the Commercial Code of Ukraine should only reflect the norms that establish common rules of competition, promote the formation of fair competition behavior of business entities and the market, as well as general prohibitions (general torts) of the main forms of monopolistic activity

and unfair competition, methods of responsibility applied to violators. However, these norms should be defined broadly enough to provide the direct applicability of the norms of current economic legislation in rapid competitive legal relationship. All the peculiarities and nuances of providing fair competition should be integrated in the special norms of the competition law, which are the provisions of the laws of Ukraine "On Protection of Economic Competition" and "On Protection against Unfair Competition", etc.

In many cases the effectiveness of legislative regulation of fair competition is evaluated taking into account the effectiveness of the application of measures of public enforcement to violators of the competition. In particular, the special norms for the application of administrative liability are contained in the Code of Administrative Offenses. According to Articles 164^3, 166^1 – 166^4 of the Code of Administrative Offenses, administrative fines can be applied to violators of the competition. Article 255 of the Code of Administrative Offenses grants the right to authorized officials of the bodies of the Antimonopoly Committee of Ukraine to make reports on administrative violations defined in Articles 164^3, 166^1, 166^2, 166^3, 166^4. At the same time, the officials of the Committee can not consider cases concerning such violations. These reports are submitted to the court. According to Article 221 of the Code, cases on administrative offenses provided by the above-mentioned articles are considered by judges of district (city) courts. Consequently, the reports made by the officials of the Antimonopoly Committee of Ukraine are sent to the relevant court. It is important to observe and do not miss the term during which the specified sanction may be imposed. In accordance with Article 38 of the Code, administrative penalty may be imposed not later than 2 months from the date of the violation, and in case of a continuing violation – 2 months from the date of its detection. It should be mentioned that the bodies of the Antimonopoly Committee of Ukraine, in order to clarify the circumstances of the case comprehensively, are obliged to investigate regional and national markets, receive written and oral explanations from the parties, make submissions with preliminary conclusions and submit them to the authorities or officials to which the case is subordinated. In some cases, an expert examination is carried out to clarify the circumstances relevant to the case and require specialist knowledge. As a rule, all these measures can not be implemented within two months, as established by the Code [11, p. 116]. As a result, administrative sanctions for competitive offenses are imposed by courts extremely rarely compared with the number of violations detected [4, p. 260].

The Criminal Code of Ukraine provides for criminal liability for unfair competition in the form of illegal use of the mark for goods and services, brand name, qualified indication of the origin of goods (Article 229), illegal collection for the purpose of using or using information constituting commercial or banking secrets (Art. 231), disclosure of commercial or banking secrets (Article 232).

The norms of the laws of Ukraine "On Advertising" and "On Consumer Rights Protection" are essential for the development of competition in Ukraine. An important area in the competition law development is the creation of legislative framework for the development and protection of fair competition in foreign economic activity. The main task of regulating the competition processes in foreign economic activity is to preserve and protect good reputation of Ukrainian goods on foreign markets and protect the domestic producer against unfair practices by importers. Legal protection against unfair competition in foreign economic activity is carried out on the basis of the Law of Ukraine "On Foreign Economic Activity", as well as the Laws of Ukraine "On the Protection of the National Producer against Dumped Import", "On Protection of the National Producer against Subsidized Import". According to Article 31 of the Law of Ukraine "On Foreign Economic Activity" unfair competition in foreign economic activity includes dumped import to which anti-dumping measures are applied; subsidized import to which compensatory measures are applied; other actions that are considered unfair competition by the laws of Ukraine.

Competition legislation of Ukraine is constantly developing; the system and institutional structure of antitrust authorities are improving, the application area of competition legislation and law is expanding, new norms and institutes of competition law are forming. The first decade of the 21st century has significantly changed approaches to regulating relations in the field of competition. The economy of Ukraine has ceased to be closed, the process of accelerated globalization of economic and social relations has begun and led to the need in improvement of the Ukrainian legislation on the control of agreements and conspiracy between entrepreneurs, in particular, regarding hidden cartels, the exchange of information between business entities, control of economic concentration processes, state regulation in the field of public procurement and state aid.

The processes of globalization of economic and social life have led to the fact that at present the problem of creating an effective mechanism to protect competition from any restrictions moves on a qualitatively new international

level. Today, the areas of further competition law development are determined at an international level.

Ukraine's accession to the WTO on May 16, 2008 stipulated the necessity of taking into account the principles of fair competition acting within the WTO. It is worth noting that a gradual institutionalization of various aspects of competition policy is observed at the global level. Today, the basic rules of fair competition are contained in the following agreements: Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – Art. 22 (Protection of geographical indications), Art. 39 (Protection of undisclosed information), Art. 40 (On means that may be applied by WTO member states in response to anti-competitive misuse of intellectual property rights); General Agreement on Trade of Services (GATS) – Art. VIII (On the impossibility of abusive market power by monopolies and exclusive service providers), IX (On Interstate Consulting Concerning Business Practices preventing competition) and XIV (General Exemptions); Agreement on Trade-Related Investment Measures (TRIMS) – Art. 5 (Communications and Transitional Measures) and 9 (On the Council on Trade in Goods as the body considering the need to supplement the Agreement with the provisions of competition policy).

At the same time, the strategy for development of competition legislation and law was formed taking into account the expert assessments of leading economic organizations in the world, in particular, the OECD and UNCTAD. It is worth noting that the main areas of improving the current legislation were identified in the OECD (2008 and 2016) and UNCTAD (2013) expert opinions and recommendations.

Some provisions of these recommendations have already been implemented, and a number of them are in the process of implementation.

§ 2. EU-Ukraine Association Agreement – new horizons in the development of competition legislation and law of Ukraine

The Agreement on the association between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, concluded on July 26, 2014 [12], recognizes and identifies ways of eliminating legal gaps in the implementation of competition law norms in the national legislation of Ukraine. Moreover, the text of the Agreement contains specific references to EU legal acts that have to be incorporated

into Ukrainian legislation [13, p. 35-40]. At the same time, it should be mentioned that the norms to be implemented in the current competition legislation of Ukraine are contained not only in Section X Competition, but also in other parts of the Agreement, in particular, provision of conditions for the development of competition in the energy and gas sector, improvement of legal regulation in the field of public (state) procurement (ensuring compliance of the current legislation of Ukraine with the requirements of the Directive 2004/18/EC), protection of intellectual property rights, in particular in the field of legal protection of geographical indications, etc. [14].

The main gaps to be eliminated in the process of implementation of the Association Agreement should be divided into the improvement of substantive and procedural law norms [13, p. 35]. The main requirements for the adaptation and implementation of EU competition rules in the Ukrainian competition legislation can be grouped according to the scope of legal regulation into: the legal regime of anti-competitive concerted actions, control over concentration, activity of state monopolies and state aid.

The first condition for improving the substantive norms of Ukrainian legislation is its adjustment in the field of regulating the regime of exemptions from anticompetitive vertical agreements. Article 256 of the Association Agreement provides for the implementation of Regulation № 303/2010 of April 20, 2010 [15]. The said Regulation contains requirements according to which a vertical agreement between enterprises may be exempted from the general prohibition. In particular, these are vertical agreements on purchase or sale of goods or services concluded between non-competitive enterprises, between certain competitors or certain associations of goods retailers. It also includes vertical agreements containing supporting provisions for transfer of intellectual property rights or their use. In Ukrainian legislation, Article 10 of the Law of Ukraine "On Protection of Economic Competition" contains general requirements for concerted actions that may be permitted. Ukrainian legislation did not contain individual requirements and criteria for exemption from obtaining permits of the Antimonopoly Committee of Ukraine for certain types of transactions for a long time. Regulation № 330/2010 of April 20, 2010 provides for the block exemption from the general authorization procedure of vertical agreements, which may contribute to increasing the economic efficiency in the production or distribution chain by facilitating coordination between enterprises participating in them. In particular, they may lead to a decrease in the operating costs of the parties

and to the optimization and distribution of its sales and the level of investment. There is a possibility that such an increase of effectiveness outweighs the anti-competitive effects due to the restrictions contained in vertical agreements and depends on the scale of the market power of the parties and, thus, on the extent to which these obligations of a competitor are considered from the side of other suppliers of goods or services by their customers on the basis of a mutual substitution change or due to their characteristics, prices and purpose.

The Association Agreement emphasizes the need to fill the gap in the Ukrainian legislation on the legal regulation of block exemptions for agreements for the transfer of technology. In particular, Regulation № 316/2014 specifies that the agreements for the transfer of technology relate to the transfer of rights protected by a license [16]. Such agreements, as a rule, contribute to improving economic effectiveness and increasing the competitiveness of business entities, as they can reduce duplication of research and development, increase incentives for research and development onset, stimulate innovation, promote and create conditions for the development of competition on the commodity market. The provisions of the Regulation cover only the transfer of technology between a licensor and a licensee. Even if such agreements apply to more than one level of trade, the Regulation contains special conditions for obtaining exemption regime from the prohibition which is not exceeding 20% of the market share for vertical agreements and not exceeding 30% of the market share for horizontal agreements (Art. 3 of the Regulation) [13, p. 35; 17; 18].

In the Ukrainian legislation, the field of technology transfer regulation is a new one. However, the special Law of Ukraine "On state regulation of activities in the field of technology transfer" does not regulate the relevant issues of technology transfer, except for the transfer of property rights to technology, created at the expense of budget funds (Article 11). Therefore, we consider it necessary to harmonize the current legislation with the EU requirements and standards or by improving the current Law or developing a new one. It is worth noting that the Association Agreement provides for a three-year transitional period on this aspect which has already expired.

Another area of improving the substantive and procedural norms of the competition law, as defined by the Agreement, is to improve the mechanism of control over the concentration of business entities.

The Association Agreement contains additional requirements for improving the regulatory control over concentrations. Thus, Article 256 (Clause 2) of

the Agreement contains references to certain articles of Regulation 139/2004 of January 20, 2004 (in particular, Articles 1 and 5 (I) and (2)), which should be implemented in national legislation within three years from the date of entry into force of this Agreement.

It should be noted that the practice of the Antimonopoly Committee of Ukraine on the basis of Art. 22 and 24 of the Law of Ukraine "On Protection of Economic Competition" was significantly different from the practice of the European Commission as for control over concentrations. In the EU, the criterion for determining the jurisdiction of the EU Regulation on merger is the circulation of at least two participants on the domestic market. The extension of the jurisdiction of Ukrainian rules of control over a large number of international transactions, in the absence and substantial link of direct participants of concentration with the national market, was critically perceived by both practitioners and international organizations, including the OECD [19].

On January 26, 2016, the Law of Ukraine "On Protection of Economic Competition" was amended. The current version of the Law of Ukraine "On Protection of Economic Competition" states that the concentration may be carried out only under condition of prior approval of the AMC of Ukraine, if: – the aggregate value of assets or the aggregate volume of sales of the participants of concentration exceeds 30 million euros in the last year; and at the same time, the value of assets or volume of sales in Ukraine of at least two participants of concentration exceeds 4 million euros per person, or – the aggregate value of assets or the aggregate volume of sales of goods in Ukraine in a business entity over which control is gained or at least one of the founders of the business entity being created in the past year exceeds 8 million euros, while the volume of sales of at least one other party to the concentration, for the last year, including abroad, exceeds 150 million euros. Also, in a new version of the Law of Ukraine "On Protection of Economic Competition", simplified procedure for considering applications for the grant of a concentration permit appears.

On August 19, 2016, a new version of the Regulation on concentration was introduced, including, in particular, the following: – the volume of requested information and the number of documents being irrelevant for consideration of the application were reduced; – the requirements for the application submitted under simplified procedure are specified; – the approach to the economic substantiation, provided as part of the application consideration under the general procedure is changed; – a consultation procedure upon the request of concentration participants is initiated. Thus, in 2016 about 500 consultations with applicants were conducted in telephone mode and during working meetings with state officials of the Committee [21, p. 43].

The other responsibility of Ukraine is the implementation of the EU Council Regulation № 1/2003 of December 16, 2002. The main changes proposed are that the business entities being the parties to the contract will have to make sure personally that the contract is in compliance with competition legislation. It seems that it is too early to implement such a "decentralized" provision in Ukraine as well as to determine the criteria for contract compliance with the requirements of competition legislation independently [17].

Article 258 of the Agreement contains obligations to coordinate the activities of state monopolies engaged in economic activity, with the principle of nondiscrimination in accordance with the conditions of fair competition of goods and business entities within 5 years from the date of its entry into force [18].

The most vulnerable area has been the legal regulation of state aid for a long time. The Association Agreement pays the greatest attention to the obligation to fill gaps in the Ukrainian legislation in the field of state aid. Art. 262 of the Association Agreement contains the general rule in accordance with which "any assistance provided by Ukraine or EU member states through state resources that distorts or threatens to distort competition by creating advantages to certain enterprises or industries is incompatible with the effective functioning of the Agreement to the extent that it may affect trade between the parties." A significant breakthrough in this area was the adoption of the Law of Ukraine "On State Aid to Business Entities" in 2014. According to its provisions, the law will come into force in full only on August 2, 2017 and will have been fully implemented by 2020. Thus, the question arises about the development of regulatory acts that will ensure its effective action. A number of such documents have already been developed and implemented, while some are awaiting their adoption. At the same time, the issues of special legal regimes and block exemptions for certain types of state aid remain unregulated by the current legislation [20].

One of the tasks of improving current competitive legislation to the requirements of the Association Agreement is to ensure transparency and predictability of decisions of antitrust authorities. The increase of transparency of the AMC of Ukraine is ensured by the publication of decisions taken by the antitrust authority. Since spring 2016, an antitrust body, in connection with the

Parliament's submission of relevant legislative changes, must publish decisions within 10 days after their adoption, providing all information, except for the information with limited access. This step has substantially improved the "perception" of the AMC by both national and international experts, having opened the activity of the authority for society.

Improvement of the procedure for calculating and imposing fines by the antimonopoly authorities of Ukraine is one of the factors providing the transparency of antitrust authority decisions. Today, in the Verkhovna Rada there is a draft Law of Ukraine "On Amendments and Additions to the Law of Ukraine "On Protection of Economic Competition" providing for appropriate amendments, in particular, determination of the amount of the fine for violating competition law. The relevant draft law has not been adopted yet, but the Antimonopoly Committee of Ukraine approved the Recommendation clarifications on the application of the provisions of the second, fifth and sixth parts of Article 52 of the Law of Ukraine "On Protection of Economic Competition", Parts 1 and 2 Article 21 of the Law of Ukraine "On Protection against Unfair Competition", relating to the calculation of fines. The changes are about the following, in particular: – the approach to calculating the basic fine for violation of the most serious, serious and moderate severity. Thus, for its determination, the coefficients taking into account the impact of violations on adjacent markets, the social significance of goods, as well as the level of profitability of the activity related to the violation are applied to the initial amount of the fine; – the possibility for the violator to reasonably calculate the amount of undue benefit and/or loss (damage) of the person(s) whose rights have been violated as a result of the relevant violations of legislation on protection of economic competition, in order to calculate the basic amount of the fine.

Conclusions to Section IV

Analyzing the competition law norms, one can not but emphasize their complex nature. Competitive legislation of Ukraine contains the norms, categories and institutions of several branches of law that regulate relations different in their content, using the norms of substantive and procedural law. The peculiarity of the competition legislation is a combination of creative, stimulating and regulatory functions, due to the availability of a whole range of regulatory, protective, defensive and specific norms in the legislation.

Ukraine has already achieved a lot to fulfill its obligations under the Association Agreement with the EU. The legal and organizational principles of the Antimonopoly Committee of Ukraine activity have undergone changes; it has become more open to business, a number of EU acts on competition have been implemented, value indicators of control over concentrations have been increased, and changes to the legislation have been developed. However, the process of adaptation and harmonization of the current competition law has not been completed.

Under modern conditions, Ukrainian competitive legislation is the mechanism of reconciliation and interaction between the public and the private sector of the economy. The integrity of competition legislation and law, the balance between self-regulation and state regulation, which are characteristic of competition legislation, may become the basis for the effective system of legal regulation in the modern economy [21, p. 53]. Today, the development of one mutually agreed system of regulation of competitive relations, taking into account modern European trends, is a prerequisite for the effective functioning and development of the market economy in Ukraine.

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SECTION V

LEGAL REGULATION OF THE ACTIVITY OF ON-LINE COLLABORATIVE PLATFORMS IN THE EU

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Annotation

This article deals with the researching of legal regulation of activity of on-line collaborative platforms in the EU. It analyzes some approaches to the legal regulation of the activity of online platforms in the EU.They are applied in the sphere of information service regulation, i.e. e-commerce and distance contracts. The activity of on-line collaborative platform are regulated by the Directive of the European Parliament and of the Council, which can be added to the legislation of Community states used in the sphere of information services. Some obstacles on the way of effective on-line platform functioning were found. Furthermore, some ideas to remove them are proposed: solving collisions in the legislation of the EU MemberStates,specifying legal concepts needed for effective functioning of the internal market of the Community.The proposals on the ways of improving the legal regulation of on-line collaborative platforms in the EU are developed and substantiated: access to the market of service providers; protection of the rights of service consumers of such platforms; the range of collaborative economy providers and their legal status; guarantees of the rights of employees of on-line platforms; common system of value added tax; protection of the rights and interests of service consumersof on-line platforms.

Preface

Modern challenges of economic development form new requirements [1, p. 32]. Due to the development of Internet technologies, the usual way of exchanging goods and services has changed and will be changing dynamically

in the future.The EU experience shows that there are some significant innovations based on business models. They contribute to strengthening competitiveness and sustainable economic growth.One of the models is the "sharing economy". The European Commission explains this phenomenon as a business model where the parties cooperate through on-line platforms that create an open market of supply and demand where individuals buy and sell services provided in the short term [2].

According to the research carried by Pricewaterhouse Coopers, there are five main sectors of the economy, such aspeer-to-peer finance, online staffing, peer-to-peer accommodation, peer-to-peer transportation (carsharing), on-demand household services and on-demand professional services. They have the potential to increase global revenues from about 13 billion euros to 300 billion euros by 2025 [3]. In 2015, the gross revenue of joint platforms and suppliers in the EU was estimated at 28 billion euros.In 2016, the revenues of the five key sectors of the EU economy – hotel; passenger transport; household services; professional and technical services; co-financing – doubled in comparison with the previous year. In 2017, the trend of rapid growth continued. In general, starting in 2013, the acceleration of growth is due to the fact that large platforms have made significant investments in expanding their European operations. According to some experts, the sharing economy can add to the EU economy from 160 to 572 billion euros, which opens up new opportunities for new enterprises to strengthen their positions in a rapidly expanding market [3].

One of the conditions for the development of the sharing economy is the legal regulation of on-line platforms. Taking into account the Treaty establishing the European Community [4], the European Parliament andthe Council of Europe adopted the Directive on electronic commerce(The e-Commerce Directive 2000/31/EC) of 8 June 2000 [5], Directive 2002/65/EC of 23 September 2002 on distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC [6], Directive 97/7/EC on the protection of consumers in respect of distance contracts from May 20, 1997 [7], the Council of the EU adopted Directive 2006/112/EC on a common system of value added tax of November 28, 2006 [8] and others. These EU directives are essential to regulate the activities of on-line collaborative platforms. However, there remain issues that need further clarification or definition.

It is well known that certain gaps in the EU legislation are hampered by the development of the respective relations [9, p. 113]. At the same time, it is necessary to distinguish the gaps from the absence of regulations on social relations, which are outside the scope of legal regulation. G. Shershenevych notes: "There are no gaps here – it is simply legally empty space that surrounds the legal environment," while in the case of gaps in positive law there is an absence of the answer to a question that needs a legal solution [10, p. 55].

The necessity to study legal regulation of on-line collaborativeplatforms in the EU is due to urgent social needs. Some aspects of the problem were described in the writings ofF. Bonsiou, A. K. Balgar, H. Bush, T. Davulis, D. Jiradin, O. Lobel, A. Strovel, H. Schultz-Nolke andothers, but there are no individual comprehensive work on the legal regulation of on-line collaborative platforms in the EU.

Taking into account the mentioned above, the study of legal regulation of on-line collaborative platforms in the EU is relevant and expedient.

The purpose of this study is to elaborate and substantiate proposals for improving the legal regulation of on-line collaborative platforms in the EU.

§ 1. Legal regulation of activities of on-line platforms is a challenge for the EU, EU Member States and third countries

The activity of on-line platforms are a serious challenge for not only business entities, service providers and consumers of such platforms, but primarily for the EU, EU member statesand third countries.

It is well known that for the purpose of unhindered effective development of on-line collaborative platforms, the legal system should be clear, simple, predictable, and consistent with the norms applicable at the international level in such a way that their application neither have a negative impact on the competitiveness of European industry nor prevent innovation in this area.The e-Commerce Directive states that in order to empower citizens and operators in European countries with the ability, in spite of the borders, to take full advantage of the benefits of on-line platforms, the legislation and the characteristics of the EU law and order are vital.

If the market actually operates by means of electronic means in the context of globalization, firstly,the European Union and the main non-European areas need consultations with one another in order to harmonize laws and procedures. Secondly, cooperation with third countries in the area of e-commerce will change. In particular, this applies to EU cooperation with: 1) the countries

that have applied for EU membership; 2) developed countries; 3) other EU trade partners [5].

At the same time, the development of on-line collaborative platforms within the Community impedes a number of legal barriers to the effective functioning of the internal market. They make the implementation of both the freedom of the organization and the freedom to provide services less attractive. These obstacles arise not only from differences in legislation, but also from the legal uncertainty about the choice of the norms of the national legislation, which should be applied precisely to such services. Although in this case the key role of the EU Court becomes important, however, there is a legal uncertainty as to the extent to which EU Member States can control the services provided by another EU Member State.

Taking into account the objectives of the Community, Art. 43 and 49 of the Treaty establishing the European Community [11] and the secondary law of the Community, these barriers should be abolished: 1) by coordinating certain national laws; 2) by clarifying the legal concepts at the Community level to the extent necessary for the effective functioning of the internal market.

With the aim to ensure a high level of legal integration of the Community's Member States in order to form a real area without internal frontiers for the exchange of information services, the European Parliament and the Council have adopted a Directive on electronic commerce. By regulating only certain issues that causeproblems for the internal market, this Directive is fully in line with the need to respect the subsidiarity principle as defined in Article 5 of the Treaty.In order to achieve legal certainty and ensure consumer confidence, the Directive establishes a clear and common framework for regulating the legal aspects of e-commerce on the domestic market. In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum necessary to achieve the effective functioning of the internal market [5].Thus, the Directive emphasizes the key importance of two principles: 1) the principle of subsidiarity as defined in Art. 5 of the Treaty establishing the European Community; 2) the principle of proportionality. It also stresses the need to respect these principles in order to ensure a high level of legal integration of the Community's Member States in order to form a real area without internal frontiers for on-line platforms.

§ 2. On-line collaborative platforms: market access requirements

As noted above, online platforms are a major challenge not only for the EU, EU Member States and third countries, but also for service providers and consumers. These platforms open up new opportunities for employment, flexible work schedules and new sources of income for them. For consumers the sharing economy creates new services, increases the supply and, consequently, reduces their cost. It is well known that it stimulates the sharing of assets and the more efficient use of resources, thereby contributing to sustainable development.

According to the E-commerce Directive, market access requirements may apply to online platforms solely in exceptional cases. In particular, the Directive refers to the following obligations of EU Member States: 1) do not require access to the activity of the information service provider to obtain a prior license; 2) eliminate obstacles to the use of electronic contracts (applying only to obstacles arising from legal requirements but not to practical obstacles arising out of impossibility of using electronic means) in certain cases.

O.S. Rudick emphasizes that, when applying market access requirements, the Member States of the European Union must take into account the specific features of the sharing economy without favoring any of the existing business models. They should distinguish, in particular: 1) collaborative platforms that provide basic services and only those that are intermediaries; 2) private providers of non-systematic services and providers of professional services [3].

Under the E-Commerce Directive, the service provider is any individual or legal person providing information services. The term "established service provider" means a service provider who effectively pursues an economic activity using a fixed establishment for an indefinite period. The presence and use of the technical means and technologies required to providethe services do not in themselves, constitute an establishment of the provider.

At the same time, the Directives of the European Parliament and the Council of the European Union do not define the place of establishment of the service provider. It is determined in accordance with the case law of the Court of Justice of the European Union. According to the concept of foundation, the actual implementation of economic activity should take place through a fixed establishment for an indefinite period. It is not an exception to creating a company for a certain period. The place of establishment of a company providing services

through the Internet website is not: 1) the location of technologies that give website support; 2) the place from which the website is available.

The place where the company provides services via the Internet site is the place where the company carries out its collaborative economic activities. Sometimes the supplier has several places to set up a company. In this case, it is necessary to determine which of them provide the relevant services. If it is difficult to determine from which of these places of establishment a particular service is provided, it should be the location of the company's business center that is relevant to this particular service.

At the same time, in order to enhance mutual trust among EU Member States, the E-Commerce Directive clearly emphasizes the responsibility of the Member State of the EU from which services are provided. Moreover, in order to guarantee the freedom to provide services and legal certainty for providers and recipients of services, the provision of such information services should be subject to the legislation of the Member State of the EU where the provider of the service is located. The EU Court has repeatedly ruled that a Member State retains the right to take measures against a service provider established in the territory of another EU Member State. But whose activities are wholly or mainly directed to the territory of the first Member State, if the choice of place of establishment was made in order to evade the legislation that would apply to the supplier in the event that his institution was established in the territory of the first EU Member State. At the same time, this Directive does not apply to services provided by a service provider established in a third country.

Another issue that needs to be solved is the starting point when the individual provision of services on irregular basis becomes professional within the sharing economy. The EU law does not resolve it right now. Scientists point out that some EU Member States have set limits to distinguish between an irregular citizen and a service provider who operates on a professional basis. These thresholds are often developed for each particular sector, taking into account the frequency of service provision and the amount of revenue that it generates. For example, in the hotel sector, some cities allow short-term rentals and peer-to-peer accommodation services without prior permits or registration requirements, such services are provided for a certain number of days per year (say, a maximum of 30 or 60 days). Other cities distinguish the main place of residence of a citizen from other property, based on the assumption that the main residence of a citizen can be leased only on an irregular basis [3].

Another issue that needs to be solved is the legal status of individuals who offer services on the on-line platform in a non-systematic manner and service providers that operate on a professional basis. In the context of the sharing economy, the EU Court's definition of an employee is based on three main criteria for establishing the existence of labor relations. They are: 1) whether it operates under the leadership of the platform (that is, the platform defines the choice of activity, remuneration and working conditions); 2) the nature of the work (for example, genuine, effective and regular); 3) whether the work will be paid [12]. However, EU Member States define status in accordance with national rules and can extend the definitionof the term employee that do not fall under the EU definition. The existence of labor relations should be established in each casebased on the three criteria mentionedabove. The Commission's communication contains benchmarks that Member States can use to decide when the people who provide services on the collaborative platform will be considered as employees of this platform (the relation of platform subordination, the nature of work, remuneration) [3; 12].

O.M. Rudick emphasizes that EU labor law applies to people who are in employment. In the case of such relations, labor and social legislation of the EU establishes minimum standards. These include: 1) health and safety requirements, in particular the limitation of working time; 2) the right to annual leave, daily and weekly rest; 3) protection in case of work at night; 4) information on individual working conditions; 5) the prohibition of discrimination of employees of non-standard forms of employment (e.g., part-time, fixed-term contracts or employment in temporary establishments); 6) protection in case of insolvency of the employer, collective redundancies, transfer of enterprises or cross-border mergers [3].

It is obvious that for business models that the parties cooperate through on-line platforms that create an open market for supply and demand where individuals buy and sell services provided in the short term. In this case it is necessary to analyze to which extend the national legislation of the EU Member States regulates the labor relations of all employees and self-employed persons, corresponds to the peculiarities of the sharing economy. Thus, the Commission urged EU member states in 2016 to assess the rules of law in the sources of national law, which are the form of their expression, on how effectively they govern the above-mentioned social relations. In addition, EU Member States should develop draft guidelines for national employment regulations that would be applied to the services of the collaborative economy.

At the same time, the European Commission emphasizes that Member States should strive for a balanced approach that, on the one hand, would ensure a high level of protection of users from unfair commercial practices and, on the other, allowed to avoid imposing disproportionate obligations of private persons who are not traders but provide services on an irregular basis [3].

§ 3. On-line collaborative platform: protecting consumer rights

In the context of consumer rights protection, the distinction between the concepts of "recipient of services" and "consumer" is relevant. In accordance with the E-Commerce Directive, the definition of "recipient of services" means any natural or legal person who, for professional ends or otherwise, uses information society services, in particularfor the purpose of seeking information or making it accessible. The term "consumer" means any natural person whois acting for the purposes,which are outside of his/her commercial, professional activity. Thus, the term "recipient of services" covers all uses of information society services as persons providing information within open networks, such as the Internet, and individuals who seek information on the Internet for private or professional purposes.

EU consumer protection legislation applies when platforms and service providers act as traders (that is, when their actions relate to their business) [3]. The Council of the European Union, in its Resolution of 19 January 1999 on the Consumer Dimension of the Information Society, emphasizes that the issue of consumer protection deserves special attention. The Commission explores areas, in which protection is not adequately provided in the context of the development of the information society and defines, where appropriate, the shortcomings of legislation and those issues that require additional measures.

The E-Commerce Directive states that, in order to eliminate obstacles to the development of cross-border services within the Community that professionals can offer on the Internet, it is necessary to ensure at Community level compliance with professional standards aimed, in particular, at protecting consumers or the health of citizens. Member States and the Commission should encourage the development of codes of conduct. At the same time, the Directive contains a reservation that it is inappropriate to degrade the voluntary nature of such codes and the possibility of free decision by the parties concerned, or to comply with the provisions of such codes.

At the same time, the E-Commerce Directive states that there should be no discrepancy between the legislation of the Member States and the case law on the liability of direct service providers and service providers acting as intermediaries. It is well known that divergences hinder the stable functioning of the internal market, in particular, by weakening the development of cross-border services and creating imbalances in competition.

The activities of service providers under certain conditions should be aimed at preventing or stopping illegal activities. The E-Commerce Directive itself is the basis for developing fast and reliable procedures for removing and disabling access to illicit information. Such mechanisms can be developed on the basis of voluntary agreements between all stakeholders and should be encouraged by the Member States. The provisions of this Directive concerning liability should not create obstacles to the development of the various stakeholders and the effective functioning of the technical protection and identification systems and technical control facilities that have become possible through the development of digital technologies within the limits provided for by the Directives 95/46/EC on the protection of individuals in the processing of personal data and on the free movement of such data from October 24, 1995 [13] and 97/66/EC concerning the processing of personal data and the protection of the right to non-interference in private life in the telecommunication sector of December 15, 1997 [14].

The effective realization of freedoms in the internal market needs to ensure victims to have effective access to dispute resolution. The harm, which can be inflicted through information services, is characterized by both the rate of application and its geographical distribution. This particular nature of the damage and the need to prevent public authorities from establishing mutual trust among themselves, the E-Commerce Directive contains a request to EU Member States on the availability of relevant lawsuits [5]. Directive 98/27/EC, applicable to information services, provides for a litigation ban to protect collective interests of consumers. Such a mechanism facilitates the free movement of information services by ensuring a high level of consumer protection. Moreover, the limitation of the liability of the intermediary in the supply of services provided for in this Directive does not affect the possibility of judicial injunctions of various kinds, such as orders from courts or administrative bodies requiring the prevention of any violation, including the transfer of legitimate information or the disconnection of access to it.

The sanctions provided for in this Directive shall apply without interference to any other sanctions or remedies provided for by national law. The Member States are not obliged to provide for criminal sanctions for breach of the provisions of national law adopted pursuant to this Directive.

§ 4. Providers of online collaborative platform services: a common system of value added tax

Providers of on-line collaborative platforms must pay taxes as well as other economic actors. Relevant taxes include: 1) personal income tax; 2) income tax; 3) value added tax.

In June 2017, the European Parliament adopted a resolution calling on the European Commission to regulate the activities of companies that operate in the framework of a "sharing economy" in order to tax themfully and properly. "We agree unanimously that taxation of this activity will not be easy, which is why we cannot do this without understanding the best approach for taxing the digital economy," said spokesman for the European Commission, Spokesperson for Financial Services and Capital Markets Union, Taxation and CustomsVanessa Mock [2].

Achieving the goal of creating an internal market involves the application in the Member States of the legislation on turnover taxes that does not distort the conditions of competition and does not interfere with the free movement of goods and services. It is not an exception to the provision of services on on-line collaborative platforms. In view of this, it is necessary to achieve such harmonization of the legislation on turnover taxes by introducing a system of value added tax that eliminates, as far as possible, factors, which may lead to distortions of competition either at the national level, or at Community level [8].

As a Council Directive on a common system of VAT noted that the VAT system provides increased simplicity and neutrality when the tax is levied in the most general way and apply not only to all stages of production and distribution but delivery services. Consequently, the introduction of a common system, which also applies to on-line platforms for joint participation, is in the interests of the internal market and the Member States. At the same time, it is necessary to distinguish between services provided by collaborative platforms that provide basic services and those that are only intermediaries; private individuals offering services in a non-systematic way, and providers of services that operate on a professional basis.

In addition, during the transitional period, intra-Community acquisitions of certain amounts of exempted taxable persons or legal persons other than taxpayers should be subject to certain intra-Community sales or exempted transactions for private individuals. It can also exempt from tax persons or non-taxable persons who were also taxed in the Member State of destination at rates and on the terms established by the Member State of the EU to the extent that such transactions, in the absence of special s provisions may lead to significant distortions of competition between Member States of the EU.

Since tax collection is the national competence of the EU Member States, public authorities should strive to provide clear information on the taxation of participants in the sharing economy. The Commission believes that the Member States should apply functionally similar tax obligations to enterprises that provide comparable services within their territories and take further steps to reduce the administrative burden associated with tax collection. The European Commission recommends the Member States to establish close cooperation between national tax authorities and joint participation platforms (for example, to improve tax compliance and tax collection) as they can help to ensure the transparency of taxable economic activity. The Commission proposes that Member States evaluate their tax rules in order to create a level playing field by providing comparable levels of services within national territories [3; 12].

The Commission's announcement states that there is no reason to treat the sharing economy in terms of the collection of value added tax other than traditional services. At the same time, as regards the common system of value added tax, there is a need for a clear definition of the term of "taxpayer" and "taxable transaction".

Thus, in accordance with Council Directive 2006/112/EC on the common system of value added tax from 28 November 2006 to enhance the non-discriminatory nature of the tax, the term "taxable person" is defined in such a way that the Member States can use it to personswho carry out certain operations from time to time. The term "taxable transaction" may refer to difficulties, in particular, with regard to transactions that are considered taxable. For example, the transport operation within the territory of a Member State is considered transporting goods within the Community if it is directly related to the transport operation carried out between the Member States of the EU. In order to simplify not only the principles and provisions on the taxation of such internal transport services, but also rules relating to additional services and intermediary services involved in the delivery of various services.

Consequently, the terms “taxpayer” and “taxable transaction” require a clear definition.

Equally relevant is the issue of determining the place where transactions are taxed. It is not unanimously that leads to disputes over jurisdiction between EU Member States. An example of such disputes is disputes over the supply of services. Although, in accordance with Council Directive 2006/112 / EC on a common system of value added tax, the place where the supply of services is carried out, should, in principle, be considered as a place of business by the supplier of the business. It must be defined as being located in the Member State of the customer, in particular, in the case ofcertain services supplying between taxpayers if the cost of services is included in the price of the goods.

In the case of rental of movable tangible property, the general ruleapplies. The supply of services is taxed in the Member State in which the supplier carries on business and it may lead to a significant distortion of competition if the lessor and the lessee are registered in different Member States, and the tax rates in these States differ from each other.

Consequently, the place of delivery of the service is: 1) the place of registration of the customer as a business entity; 2) a fixed place of business for which the supply of services is carried out; 3) place of permanent or usual residence (in the absence of the place of registration of the customer as a business entity or a fixed place of business for which the delivery of services is carried out).

At the same time, in accordance with the above-mentioned directive, in the case of rental of vehicles, it is expedient, for reasons of control, to strictly adhere to the general rule, and therefore consider the place of delivery of the place of registration of the customer as a business entity.

In accordance with Council Directive 2006/112/EC on a common system of value added tax, the Member States should be able, in specified cases, to identify the recipient of the goods or services supplied as the person responsible for paying VAT. It should assist the Member States in simplifying the rules and in counteracting tax evasion and tax evasion in certain sectors and in certain types of transactions. A special scheme is established to ensure that fiscal requirements are complied with by operators.They provide electronic delivery services, which neither are registered for VAT purposes nor need to be identified for VAT purposes in the Community. This scheme provides for the possibility for any operator who supplies such services in electronic form to non-taxable persons within the Community if he/she is not identified for VAT purposes within

the Community in another way, the possibility of obtaining identification in the same State members.

At the same time, many providers of services in sharing economy will not be obliged to pay VAT, since their annual turnover is lower than the threshold of registration. The Commission is working on several initiatives to strengthen the capacity of tax administrations and to promote cross-border activities within the framework of the VAT Action Plan [3]. These initiatives relate to expanding the single window system of VAT payment for electronic goods delivery services, launching a pilot project to improve cooperation between tax administrations of Member States, and publishing guidelines for cooperation between tax authorities and enterprises in e-commerce [3].

Therefore, it is necessary to define the terms of “taxpayer” and “taxable transaction” clearly; determination of the place where the transactions as subject to taxation are carried out; the criteria for determining the recipient of goods or services supplied as the person responsible for VAT payment are specified; establish a special scheme for identifying VAT payers in the sharing economy.

Conclusions to Section V

1. It has been established that in the EU the legal regulation of online collaborative platforms is carried out using the approaches applied to the regulation of information services, including e-commerce, as well as distance contracts. It has been substantiated that the activities of on-line platforms for joint participation should be regulated by a separate directive of the European Parliament and of the Council, which would complement the laws of the Community states applicable to information services.

2. It is argued that for the purpose of unhindered effective development of online platforms, the legal system should be clear, simple, foreseeable, and consistent with the norms applicable at the international level.It should be done in such a way that their application neither has a negative impact on the competitiveness of European industry nor prevents innovation in this area.

It is concluded that since the market actually operates through electronic means in the context of globalization, the European Union and the main non-European zones need consultations with each other in order to harmonize the relevant laws and procedures.

The following barriers to the effective functioning of collaborative platforms in the EU are found: divergences in the legislation of the EU member states; legal uncertainty about the choice of the norms of the national legislation that should be applied to such services. Although in this case the key role of the EU Court becomes important, however, there is a legal uncertainty as to the extent to which the EU Member States can control the services provided by another EU Member State.

3. It has been argued that the key to ensuring a high level of legal integration of the Community's Member States and the formation of an area without internal frontiers for on-line platforms and which include, among others, the following two principles: the principle of subsidiarity as defined in Art. 5 of the Treaty establishing the European Community and the principle of proportionality.

4. It has been established that the Directives of the European Parliament and the Council of the European Union do not specify some provisions.For example, the place where the service provider is established in general, and on-line collaborative platforms in particular; a reference point when the individual provision of services on an irregular basis becomes a professional within the collaborative economy; the legal status of individuals who offer services on an on-line platform in a non-systematic way, and service providers operating on a professional basis; the term of "recipient of services" and "consumer"; "taxpayer" and "taxable transaction"; the place where the transactions as subjects to taxation are carried out; a special scheme for identifying the VAT payer of serviceproviders of sharing economy; need to specify the criteria for determining the recipient of the goods or services supplied as the person responsible for paying VAT; the mechanism for filing legal injunctions aimed at protecting the collective interests of on-line service consumers on the platform.

It is substantiated that for business models, where the parties cooperate through online platforms that create an open market of supply and demand; where individuals buy and sell services provided in the short term, it is necessary to resolve the mentioned above issues.

The following directions of improvement of legal regulation of on-line collaborative platforms in EU are revealed. They are: access to the market of service providers; protection of the rights of consumers of services of such platforms; the wide range of providers and their legal status; guarantees of the rights of employees of on-line platforms for joint participation; joint system of value added tax; protection of the rights and interests ofconsumers of collaborative economy services.

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SECTION VI

EUROPEAN STANDARDS OF ANTI-CORRUPTION PUBLIC ADMINISTRATION

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Preface

Corruption remains one of the most dangerous threats to the foundations of democracy, the state of protection of human rights, guaranteeing the rule of law, fairness and social justice, it hinders economic development and threatens the proper and fair functioning of the country, has a negative image consequences for citizens, enterprises, institutions, organizations and the state as a whole.

Clearly defined responsibilities at the legislative level, the shortcomings of the legislation clearly formulated rules allow for the appropriation of property belonging to society. In addition, lack of development and oformlenist civil society, NGOs, political parties and groups representing different interests, means no vital force that is able to balance the state power. In this context it should also emphasize the low political culture, the discrepancy declared its democratic system [1, p. 73].

Corruption offenses as a specific category is one of the most dangerous events in the country that infringes on human rights, rule of law, a negative image consequences for citizens, enterprises, institutions, organizations and the state in general. And state politicians have in their arsenal is quite a significant amount of public authority on political decision-making, which is not among the powers of state officials, which is a breeding ground for various abuses.

§ 1. Fundamentals prevent corruption by European standards

European society has long positioned itself as a society free from corruption. Of course, the facts of corruption sometimes happen and there, but they are largely relates to the highest echelons of power. The so-called “domestic cor-

ruption" with which to live ordinary Ukrainian have long been overcome and to stop any manifestations of European society worked out a number of mechanisms. Ukraine is part of Europe, and therefore those guidelines and algorithms that are tied themselves European states must adopt and confidence.

A key organization that exists to continuously monitor the state anti-corruption activities in Europe – Group of States against Corruption (GRECO). The purpose of this organization – to increase the effectiveness of its members in combating corruption through mutual evaluation states and the influence of other States Parties, as well as compliance with the commitments in this field; enforcing guidelines on combating corruption adopted by the Committee of Ministers 6 November 1997 [2];

To this end, the Group of States against Corruption may:

1. Carry out effective measures to prevent corruption and, in this connection, to raise public understanding and promotion of ethical behavior.

2. Ensure recognition of national and international corruption offense.

3. Ensure that those responsible for the prevention, investigation, prosecution and trial of corruption cases have independence and autonomy appropriate to their functions free from influence and have effective means in order to gather evidence, protecting the persons who help authorities in combating corruption and preserving the confidentiality of investigations.

4. Provide appropriate measures for the confiscation and deprivation of income as a result of corruption.

5. Provide appropriate action to prevent pressure on the lawyers involved in cases of corruption.

6. Limiting immunity from investigation, prosecution or trial of cases of corruption to the extent necessary in a democratic society.

7. Promote the specialization of persons or bodies responsible for fighting corruption and to provide them with appropriate means and training to perform their tasks.

8. Ensure that the financial legislation and authorities responsible for implementing this, contribute to the fight against corruption effectively and in a coordinated manner, especially denying the possibility of tax cuts, according to the law regarding bribes or other expenses related to corruption.

9. Ensure that the organization, functioning and decision-making by public administrations take into account the need to combat corruption, particularly by ensuring transparency, consistent with the need to achieve efficiency.

10. Ensure that the rules relating to the rights and duties of officials, including requirements to combat corruption and ensure appropriate and effective disciplinary measures; promote further specification of the behavior expected from public officials by appropriate means, such as codes of conduct.

11. Ensure that appropriate audit procedures directed the actions of the civil service and public sector.

12. confirm the role that audit procedures can play in preventing and detecting corruption outside the administration.

13. To ensure that the system of social responsibility takes into account the consequences of corrupt behavior of public officials.

14. take appropriate transparent procedures for social contracts that embody fair competition and hinder corruption.

15. Encourage the adoption of codes of conduct for elected representatives and promote policies on financing of political parties and election campaigns that deter corruption.

16. Ensure that the media are free to receive impart information on corruption and are subject only to such limitations as are necessary in a democratic society.

17. Ensure that civil law takes into account the need to combat corruption and, in particular, provides effective remedies and rights of those whose interests are affected by corruption.

18. Encourage research on corruption.

19. To ensure that every aspect of the fight against corruption, taking into account possible links with organized crime and money laundering.

20. To develop the highest possible degree of international co-operation in all areas of the fight against corruption.

Keeping these principles Ukraine as a young European state would have much chance of successfully overcoming corruption. But what motivates employees of public administration, having fairly broad powers and opportunities for participation in corrupt schemes? The answer is to give as scientists from different disciplines (political scientists, sociologists, lawyers, managers) and practice.

The Ministry of Justice of Ukraine 12.04.2011 g. Was given explanations on allocation of corruption risks in public servants. Since civil servants are the kind of public administration officials, take as a basis chosen by the Ministry of corruption factors that influence the supply of life antisocial phenomenon such as corruption. Among these states: nedobrochesnist civil servants; conflicts of interest; lack of control by management; availability of discretion. [3]

The moral and ethical aspect of the individual employees of public administration plays a significant role in the performance of official duties. This is because in making certain administrative decisions, defining policy in a particular area or field officers primarily to their own professional and life experience, the internal perception of their own position and positioning itself in public administration. Not the least role in this process is the level of consciousness, which sometimes influences social and financial situation of public administration employees and his family. Among the derivatives of these features one of the employees is important, particularly such a moral trait as integrity (honesty, morality, integrity).

Describing the basic human errors in the public service of the Soviet period, LV Romaniuk said: "The professional qualities, moral and ethical lines, organizational skills persons were minor and first occupied their political appeal. The ideology of one party justified and promoted highly politicized national human activities, involvement of employees in public administration, regardless of their suitability, competence, education. Such measures effectively blocked the attempts of Soviet scientists to establish the scientific and legal bases framing the Soviet state apparatus "[4].

At first glance, the position of the author refers purely civil servants – apolitical, impartial, totally objective in decision-making. And what it considers to negative public servant – his appointment, especially for "political appeal", for instance, modern state politician is not mandatory criterion for election to office. But we must admit that the political appeal and political consistency – these are two different states of justice, moral and ethical aspects of public administration employee. In the first case it is purely about the politicization of identity, reflected in blindly following the instructions of the party leadership without any manifestation of their political will. Under these conditions, the existence of the real status of a public political figure as a subject of policy making in a specific area is possible. But at that time referred to in the study LV Romaniuk, this need not be. Quite another matter of political consistency in public administration. The process of policy making should be based on the principle of the pyramid, where all future policy decisions arising and are based on preliminary, basic solutions appropriate higher authority. Only in this case holds the balance between unity of command policy-making politician separate state and unity of the state policy that prevent the onset of political and administrative crisis in the absence of coordination between different government bodies.

The result is strong enough to managerial perspective officer. So his appointment or election to a position must be provided not only and not political expediency and appeal. In particular, Article 8 of the United Nations Convention against Corruption, which is a requirement for the development and adoption of countries – participants of codes of conduct for public officials, as well as a recommendation on the introduction of measures and systems that:

– contribute to public officials reported to appropriate authorities of corruption of which they become aware in the exercise of their functions;

– requiring public officials to the relevant authorities a declaration, inter alia, on pozasluzhbovu activities, employment, investments, assets and substantial gifts or of profits in respect of which a conflict of interest may arise in relation to their functions as public officials;

– establish the liability of public officials who violate the codes or standards.

Recommendation of the Organization for Economic Cooperation and Development to improve ethics in public service, 23/04/1998 p. Stipulates that ethical standards for public service should be clear and understandable. Public servants need to know the basic principles and rules which they have posluhovuvatysya in their daily work and the boundaries of acceptable behavior.

This can be achieved through constant communication and presentation of these ethical rules and principles of public service. In particular, this Code of Ethics, which will help to achieve a common understanding of the principles and norms of how all levels of government and wider circles of society. After all, "it is among the high command, not often used on the front art of camouflage, and here it reaches its peaks. All management generally disguised as a result of tireless work of many journalists so far away that we can take them ... Napoleon Napoleon Move this is impossible, no matter how low their qualifications – because of the huge public support, created by them using masking their failures and exaggerating or inventing success "[5, p. 231].

Ethical standards should be reflected in the legal system that is the basis for proving the minimum mandatory standards and principles of behavior to the attention of every public servant. Laws and regulations can and should create a basis for guidance, investigation, disciplinary action and prosecution.

The Cabinet of Ministers approved the recommendations of the European countries "on a code of conduct for public officials," according to which the Committee of Ministers, being sure that the focus of society and enhance ethi-

cal values are important tools in preventing corruption, recommends that governments of all countries to promote the adoption of national codes of conduct guided by the model code of conduct for public servants.

According to the requirements of the Model Code of public officials on duty must, in particular:

– faithfully perform their duties, take the initiative and creativity, to constantly improve professional skills and improve the organization of work;

– perform their duties fairly, impartially, not to give any advantage and not showing preference to certain individuals and entities, political parties strongly oppose anti displays and the forces that threaten the order in society or security of citizens;

– faithfully perform their duties, adhere to high culture of dialogue, respectful citizens, managers and employees and other persons with whom he has a relationship while performing their duties;

– avoid actions or behavior that may harm the interests of society and state, or adversely affect its reputation.

The Committee of Ministers instructed the Group of States against Corruption (GRECO) to monitor the implementation of this recommendation. In turn, the Group of States against Corruption by the Joint First and Second Round Evaluation, Ukraine recommended to create a new model code of conduct / ethics for public officials to enhance their training to fulfill their respective commitments associated with compliance with certain behaviors according to their service, in particular with respect to reporting suspected corruption, conflicts of interest and fraudulent public service.

These are the basics of management ethics include the qualities necessary for the success of senior public officials and providing at the same time, the formation of corporate culture of individual categories of public servants. The existence of a corporate culture aimed at recruitment and professional development of senior managers in government that can provide strategic (political) management and performance of their obligations to provide paramount importance, referring to the background their own interests.

In view of the rules of conduct (ethics) for public employees, establishing their rights and obligations is necessary edge as allow you to maximize the efficiency of their operations.

Meeting these conditions will minimize this factor of corruption as nedobrochesnist, moral and ethical immaturity of political officials.

Conflicts of interest, ie the presence of real or issued real, conflicts between the private interests of individual and his official powers, that could affect the objectivity or impartiality of decision-making, and the commission is not acting in the execution granted him official nemaloznachnym authority is also a factor of corruption.

Today the orders of the Main Department of Civil Service of Ukraine from 04.08.2010 g. Number 214 registered with the Ministry of Justice of Ukraine from 11.11.2010 g. By number 1089/18384, approved by the general rules of conduct of civil servant, to be followed by civil servants. According to the general rule, a mandatory component for conflict of interest is precisely the control of the management. In turn, the lack of control (lack of control) from management corruption risk.

It should be noted that due to the lack of control by management may have other corruption risks. In particular, such a conflict of interest nedobrochesnist civil servants.

Conflict of interest is in conflict of public and private interests subject Ethics, if there is a subject that does not fulfill or improperly fulfills its powers (under the private interest of the subject Ethics recognized the possibility of obtaining any tangible or intangible benefits it personally, his close relatives or others associated with his legal or natural persons) [6, p. 62]. Therefore, to avoid (prevention) occurrence of corruption risk such as lack of control by management, control is direct supervision should be carried out: – systematically, that is to have a regular basis, or permanently; – comprehensively, that most cover all issues and areas of work; – by testing not only those employees who have weak results, but those with good results; – objective, ie to exclude bias; – transparent, ie inspection results should be known to those who were subject to control; – effectively (efficiently), which is based on test results have taken appropriate measures. At best, the management control should contain all of the categories, so that is fixed conditions for the emergence of corruption risks [7].

From 1 July 2010 the Ministry of Justice of Ukraine introduced under legal examination examination draft regulations for the corruption standards.

According to the Ministry of Justice for the period from 1 July to 31 December 2010 in 213 projects regulations found corruptogenic factors, of which 52 projects of existing inadequate definition of the functions, rights and obligations of public authorities and local governments.

Produced, separate methodology of anti-corruption expertise of legal acts:

"1. Excessive demands of the law as a factor of corruption. To perform this kind of norms for the recipient is forced to spend too many resources, which gives him the desire to "pay off" from execution. This category includes both physical law that require an entity very costly (eg excessive fine) and procedural rules that the complexity procedures involve numerous wasted time and effort.

2. The discretionary powers of officials as the factor of corruption. Such law giving official opportunity to choose between different behaviors on your own, without having to install (eg from good intentions to allow full consideration of the situation), in which case the official is obliged to choose one or another variant behavior.

3. blanket standards as factor of corruption. Such law confer official or agency the right to develop and adopt regulations or refer it to solve any issue other current legal documents. In this case, there is a risk that corrupt government officials intentionally host (in its office lobby) such subordinate legislation that maximize opportunities for corruption "[8].

Thus anti-corruption expertise helps eliminate corruption factors at the stage of rule-making that results exclude the negative impact of possible abuse of discretion. This is a very important and positive step in preventing corruption.

Thus, eliminating corruption risks in public administration employees eliminate the possibility of their violation of the law of Ukraine, positive impact on improving the work of public authorities and will enhance their credibility.

§ 2. Principles of the discretionary powers of public administration bodies

Article 6 of the Constitution of Ukraine clearly stated that "the legislative, executive and judicial power exercise their authority as prescribed by the Constitution and according to the laws of Ukraine." But we must accept that "rule of law in advance is not possible to predict all cases and circumstances of life. So it leaves a space that has filled body, which uses normal. Moreover, this authority should take into account the general view of the importance of certain concepts aim, which he has achieved, and finally to the principles of common sense" [9, p. 480].

Actually, to take account of this "common sense" and provided global and national practice consolidation of public administration bodies and their officials discretion.

In the current legislation there is a legal definition of discretion. Thus, n. 2 Methodology for anti-corruption expertise of draft legal acts (which was approved by the Cabinet of Ministers of Ukraine of 08.12.2009 p. Number 1346) determined that discretion – a set of rights and responsibilities of state bodies, their officials and those that enable discretion to determine all or part or content of the decision to choose one of several options for making decisions act by the project.

Signs of discretion:

1) discretionary powers of government politicians and civil servants are given only by law, because the law authorizes them to rule-making and enforcement activities and establishes some form of political activity;

2) implementation of some of the powers of state politicians and civil servants is characterized by a certain margin (discretion – that is free, political, administrative, discretion) in the assessment and actions to choose one of the options making and legal implications;

3) the procedure for implementing discretion consists of a series of proceedings, collecting evidence on the merits, political and legal description of the data collected, the implementation of selecting one of several options to address the issue, the final decision;

4) discretion always implemented in a combination of law, justice, political expediency and efficiency of administrative regulation.

Implementation of discretion is very important and responsible part of the status of state politicians and civil servants. However, it is for state politicians discretionary povnovadzhennya most characteristic compared with governmental officials. Implementation of state politics political figures closely connected with the adoption of management decisions based on their own discretion considering the many economic, political and social factors to the extent permitted by law. This is a feature of the legal status of state political leaders.

Like any public activity implementation discretion must meet basic requirements put forward to them. These requirements are basic principles.

Close enough to outline the principles of public service is offered in the recommendations of the Committee of Ministers on March 11, 1980 r. № R (80) 2 Principles on the exercise of discretionary powers by administrative authorities. Of course, the position of the document directed to civil servants as representatives of "administrative bodies", but with certain reservations and additions can be used for outlining the principles of political discretion. Thus, the principles of discretionary powers in accordance with that document include

compliance objective of giving discretionary powers; objectivity and impartiality; equality before the law; proportionality; reasonable time; application instructions; openness instructions; deviation from the instructions; character control; the administrative authority of the action; the powers of supervisory bodies for information.

Discarding of purely administrative principles, we have the basis for those that are unique to government politicians with their specific legal status.

*The purpose of discretionary powers.*Any prescription legal act, including the empowered bodies of public administration, pursuing a legally meaningful purpose. Usually, it is caused directly or disposition article, which is granted powers or functions directly follows from an organ.

To establish the correctness of this principle requires a combination of two factors:

1. A clear implementation of the provisions of the Constitution of Ukraine, according to which public authorities, their officers and officials should act only to the extent and in the manner prescribed by law.

2. The combination of the correspondence principle purpose of granting discretionary powers to the principle of appropriateness and proportionality (which will be discussed below).

The principle of objectivity and impartiality in business administration publichnoh most problematic during its execution. Butthis principle is discretionary nayvyznachalnishym the legality of their activities. There is actually a measure of the legality of their activities and preserves the meaning of discretion for consumers politico-administrative services.

We must accept that objectivity as such – rather complex and multifaceted phenomenon associated not only with legal factors, many with psychological, social and cultural qualities sluzhbvtsya. Of course, we do not deny mandatory following the norms of legislation, but quite often, and especially in the implementation of discretionary powers is necessary to fully take account of objective, procedurally important factors that are not legal. And at this stage official public administration is reasonably and properly come before a final decision on the basis of so-called objective truth.

Objective truth (sometimes referred to as the principle of objectivity) – is expressed in the legal requirements under which decisions enforcement agency must fully and accurately reflect objective reality. [10, p. 321] Truth in application of the law – a reliable knowledge of the circumstances that meet the objective reality and approved by the competent authority using specially defined in the law procedures and knowledge [11, p. 12].

Ukrainian administratyvisty under the principle of impartiality understand the complete exclusion from the process of manifestation sub`yektyvizmu, one-sided action in analyzing subjects; it is intended to ensure the establishment and evaluation of the facts relevant for making reasoned decisions in a particular administrative case [12, p. 30].

For employees of public administration, this principle is important when deciding during performance of their state functions. All existing weighting factors (political, administrative or social) should be a guarantee of the impartiality of the decision.

Generally impartiality in procedural law understood as the absence of official self-interest, that is, its impartiality in the decision under administrative discretion.

*The principle of equality before the law.*This principle is the most common subjects for all administrative and legal relations. The source of this principle is the Constitution of Ukraine, which has provided a number of articles alignment of rights, freedoms and legal interests. In particular, Art. 13 has determined that the state protects the rights of all subjects of property rights and economic, social orientation of the economy. All subjects of property rights equal before the law; Art. 21 states that all people are free and equal in dignity and rights; according to Art. 24 citizens have equal constitutional rights and freedoms and are equal before the law. Article 36 determined that all trade unions have equal rights and all associations of citizens are equal before the law. A centuries. 129 established the equality of all participants in a trial before the law and the courts. Due to this fact, there can be no privileges or restrictions based on race, color, political, religious and other beliefs, sex, ethnic or social origin, property, residence, language and other characteristics.

However, there are several caveats to implement this principle:

1) if you examine the following list, we understand that the provisions of the Constitution of Ukraine concerning mainly individuals (used or restrictive category of “citizens” or generalization “all men”). When it comes to legal entities, the legislator is limited to the so-called situational equality: all trial participants (including legal entities) level – but it is only during the trial; all subjects of property rights (including legal entities) are equal before the law – but in property relations and so on. And the principle of equality should apply to any-

one in the state, regardless of the subject. Therefore proposed an understanding of this principle is followed by fixing it to the Law of Ukraine "On civil service". The principle of equality before the law – a uniform application of natural and legal persons of the law in regulating relationships qualitatively identical homogeneous groups of subjects;

2) talk about the absolute equality of all before the law impossible. Realize the principle of equality is purely one category of subjects that are related by common traits.

Confirmation of this position is the position of Recommendation № (80) 2 of the Committee of Ministers concerning the exercise of discretionary powers by administrative authorities if the difference of treatment based on the fair grounds which may be objectively proven, given the goal, the principle of equality is not violated. Unfair discrimination exists only when the difference in treatment is not objectively justified considering the purpose and effects of the measures foreseen.

*It is one of the variations of the principle of equality before the law is the principle of non-discrimination (*Eng. non-discrimination), which means that such things do not consider differently if there is no objective reason for differentiation [13, p. 68].

The aim of this principle is to eliminate all manifestations of injustice and discriminatory treatment of the individual and the need to ensure equality both formally and practically. Actually equality rests directly on state politicians in the discharge of discretionary power.

*The principle of proportionality*employee activity in public administration acts as a sort of balance or acceptable for all subjects of legal compromise during its public activities. By definition in the scientific literature, the principle of proportionality is to reach the proportions between all elements of managed and control processes [14]. That balance human interests with the interests of society, the state and relevant bodies of public administration, which represents the employee.

The principle of proportionality is the concept of "appropriate physical process of law", which comes from US constitutional law and the basic idea of natural law about the reasonableness of positive law. As noted by US Chief Justice D. Marshall: "If the purpose is legitimate if it is in the Constitution, and all means to achieve this are allowed, regarding it not prohibited, but the spirit and letter of the Constitution, then they are constitutional "[15, p. 86].

A more modern basis of this principle is the practice of the European Court of Human Rights. Thus, in the case "against the United Kingdom Sorin'» ("Soering v. United Kingdom») in its judgment of 7 July 1989 p. The Court noted that the Convention on Human Rights and Fundamental Freedoms of 1950 "aimed at finding the relation between the needs associated with the interests of society as a whole, and the requirements of the protection of fundamental human rights." In the case of "Rees v United Kingdom» ("Rees v. United Kingdom») in its judgment of 17 October 1986 this Court noted that, finding out whether there is a positive obligation of the State concerning human "refers consider fair balance that must be established between the interests of society and the interests of the individual."

The national law also maintains the world practice use of the principle of proportionality. In particular, according to ch. 2, Art. 64 of the Constitution of Ukraine some temporary restrictions of rights and freedoms can be established under martial law or state of emergency, except for the rights and freedoms under Art. 24, 25, 27-29, 40, 47, 51, 52, 55-63 of the Constitution of Ukraine. It should also be noted that such restrictions as it directly arising from ch. 2, Art. 64 of the Constitution of Ukraine, first of all, can only act within a specific period and, secondly, to be "separate", ie not affect the whole system of constitutional rights and freedoms of man and citizen and not the full scope and content of certain rights and freedoms .

The principle of expediency indicates the need to subordinate organizational, procedural and other components of public service employees and activities of the public administration of general policy and management goals.

Dictionaries define "appropriateness" as that responsible deliberately goals. In this sense it appears common characteristic of specific human activity, where the objective causation includes a conscious goal, which determines the direction and content of the process. As always appropriate in the sense of the people may be inappropriate in terms of the needs of the progressive development of society and the ultimate socially important purposes. In a broad and somehow the conventional sense – the objective characteristics of reaching prespecified (no matter how) outcome [16].

Content specifying the decision taken on the basis of administrative discretion, not in all cases arising directly from regulatory requirements. This objective leads to the existence of the principle that facilitates finding an authorized entity the right decision. About the feasibility of enforcement, he, like the

law, inherent physical, procedural and substantive procedural points. For the first time of characteristics, given to him VM Kartashov. Among all possible solutions in the application of this law must select (through regulation), which would provide the most complete and accurate goal rule. This option allows for solutions, protects, fulfills well-defined interests, unlike general administrative expediency, where a decision must take into account numerous interests without observing them directly. But this is not necessary because all management objects do not necessarily consult, besides it is not possible [17].

The principle of reasonable time is decisive in terms of a clear, focused and operational work of public administration officials in the performance of their duties.

By "reasonable time" in this case should be understood sufficient time that depends on several factors: the complexity of the issue; number of subjects involved in the case; urgency solutions verify the facts on which the resolution of the issue; the need for political consultations and more. Sometimes it is impossible to establish clearly defined time frame the issue or sale of any authority as difficult to consider all possible factors (political, economic, and sometimes physical) that affect the period of implementation of discretionary powers. World practice is by determining the "reasonable time" in the work of officials and public authorities as follows: under paragraph. "C" chapter. 1 Recommendation number Rec (2003) 16 of the Committee of Ministers to the States Parties "On execution of administrative decisions and judgments in administrative law" "this power should be exercised by individuals within a reasonable time, not to create without having obstacles to the activities of administrative bodies and ensure legal authenticity "or in accordance with Clause." and "Ch. Recommendation 2 of the same "if the decision concerning an individual subject to enforcement, then that person should be allowed to comply with the judgment within a reasonable time, unless duly justified urgent cases" [18].

But these provisions, as can be noted regarding individuals and entities that are not public authorities. But the Administrative Code of Ukraine sets a reasonable time period as short address and resolve the administrative case, sufficient to provide timely (without undue delay) judicial protection of violated rights, freedoms and interests in public relations.

The principle of publicity. This principle involves two areas of its implementation:

1. In the case of government agenciesthe content of this principle is that any legally authorized supervisory authority has the right to access information that was the basis for the decision, and the state politician – is obliged to provide such information. This information should be submitted in accordance with applicable laws (including regulations on the use of restricted information (special) access). The essence of this case lies in a clear, consistent, and complete presentation of all the circumstances and conditions of the case, revealing the internal communication solutions for specific situations.

2. With respect to persons who are not public authorities. APublichnist about this category of individuals anchored in ch. 2, Art. 3, ch. 2, Art. 6, ch. 2, Art. 19, para. 2 h. 1 tbsp. 121, p. 124, 129 of the Constitution of Ukraine. According to ch. 2, Art. 3 of the Constitution of Ukraine human rights and freedoms and their guarantees determine the content and direction of the state. The state is responsible to the people for their activities. To affirm and ensure human rights and freedoms is the main duty of the state.

Ensure this principle is the access of non-public authorities to public information. Moreover, such information should be as complete and accessible to the perception and understanding of the recipient of that information. On this occasion interesting is the fact that in bioethics crucial role also played by the so-called „principle of publicity" – for which no expert judgment can not be an argument bioethical discussion of the problem if it is not granted to „man in the street" [19, p. 75]. In our view, a very apt definition of the essence of the principle of publicity.

The way of the principle of publicity can be both published and the statutory announcement follows the decision and bring a personal note to the subject, who directed the action act (decision), such as in the case of mandatory assignments members of the Cabinet of Ministers of Ukraine under applicable law. For decisions to adopt within the discretionary powers of implementation, in our view, appropriate to the requirement of defining factors, motives and reasons that influenced the final decision state politician. The most convenient form such an explanation can be used for a long time in the office practice of „explanatory notes".

The value of respect for this principle is the real possibility of effective, full and proper compliance officers in the application of discretionary powers, the provisions of regulations and all of the above principles such activities as much as possible will help protect the rights and freedoms of citizens of Ukraine.

The principle of maintaining the image and credibility of the government. Public Administration Public purpose is to ensure the effective implementation of the tasks and functions of the state through conscientious performance of duties assigned to employees.

Employees must take care of a positive image and authority represented by them and the public service in general, to take care of their own dignity, value representative status of the state.

The behavior of public administration employee must meet the expectations of the public and ensure the public trust and public power and government, to promote the rights and freedoms of man and citizen determined by the Constitution and laws of Ukraine.

The employee must, with due respect for the rights and legitimate interests of citizens, associations and legal persons not manifest arbitrariness or indifference to their lawful action or requirements prevent manifestations of bureaucracy, vidomchosti, restraint in statements or otherwise behave in a manner that discredits the authorities.

The principle of accountability. This principle is the latest in our list, but it takes almost the first place in importance in all political and administrative activity of public administration employee. Lack of control in any field, let alone in public administration is detrimental to the entire state and its citizens. Talking about the implementation of all other principles without real control simply does not make sense. The principle of equality, fairness and all others will only declarations worthless for ordinary citizens. Therefore it is extremely important not only to consolidate but the real implementation of continuous, consistent control of all activities of public authorities in the country, let alone on such subjective discretionary activities.

Using administrative achievements of science in the field of research monitoring activities, can distinguish the general and targeted control [21] the activities of employees of public administration.

General– is the control exercised by authorized bodies on all activities controlled entity. Depending on the type of employee of the public administration, it may be the Verkhovna Rada of Ukraine, President of Ukraine, the Accounting Chamber of Ukraine, the Security Service of Ukraine, the system of organs like.

Trust– is the control exercised directly on individual work. In this case the implementation of public administration officer discretion. Among the entities

targeted monitoring could be called the Constitutional Court of Ukraine and administrative courts that examine the decisions of public administration employees for their constitutionality and legality.

The scientific literature is proposed to allocate procedural control (with due respect for the principle of legality in the decision) and quality control solution that is matched by its situational circumstances and arguments that characterize the feasibility of its adoption.

Summarizing analysis discretion of public administration employees must confirm their priority in the implementation of their status. Harakteryzuyuchys number of features due to the status of employees of public administration, discretion can play both positive and negative role in government. Use discretion when making an array of political and administrative decisions is always a danger factor for law enforcement. However, balanced, pravosvidomyy approach to securing these powers and their use will minimize the possibility of any abuse. Use this as a special law basic principles is the best way of regulatory discretion of public administration employees.

Conclusions to Section VI

Eliminating corruption risks in public administration employees, eliminate the possibility of their violation of the law of Ukraine, positive impact on improving the work of public authorities and will enhance their credibility.

The discretionary powers despite their inalienability of the status of employees of public administration, if the violation bounds of discretion provoke the emergence of a special type of corruption – political. A definition of political corruption and given the range of subjects of misconduct. Political corruption – isillegal activity, which is to use person endowed with state-of authority in the field of public policy, such powers and related opportunities to meet their own material or non-material interests or interests of third parties.

Terms and conditions of implementation of discretionary powers of state politicians: first, objectivity and impartiality in the work that must be understood as the adoption of a balanced and objective decision of public administration employees through a combination of their impartiality and political interest; Second, equality before the law – a uniform application of natural and legal persons of the law in regulating relationships between qualitatively identical homogeneous groups of subjects; Thirdly, in the proportion of state-political figure

that acts as a balance or acceptable for all subjects of legal compromise in the process of political activity; Fourth, this expediency in making decisions using discretionary powers. At the same time stressed that the opposition appropriateness and legality is unacceptable.

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SECTION VII

ADVANCED ISSUES OF LEGAL ADJUSTMENT OF ANTI-CORRUPTION ACTIVITY IN UKRAINE

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Annotation

The current status of counteraction and prevention of corruption in Ukraine at the level of legislation and institutional support of anti-corruption activity are studied.It is noted that during the years of independence in Ukraine, corruption has become one of the threats of national security and democratic governance, and the fight against it is recognized as one of the priorities of the national authorities.For the present, the anti-corruption legislation of Ukraine is presented by the Law of Ukraine «On Prevention of Corruption», as well as relevant articles of the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses. They are up to the requirements of the European legal field in form, but there are some problems with theirpractical application, which is mainly due to the lack of political willpower of legislators. The process of institutionalization of anti-corruption activities in Ukraine is continuing, which manifests itself in the creation and functioning of special bodies– the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU), the Special Anti-corruption Prosecutor's Office (SAP). Currently they have started to work at creation the legal and regulatory environment for Special Anti-corruption Court.

Preface

Corruption today is fairly consideredas one of the main problems of governance at all levels of public life. Corruption is a global phenomenon, which is inherent in all societies, regardless of the level of development and geographical location, but in each country the success of its struggle with its own. This, on the one hand, determines the global nature of the fight against corruption as a socio-legal phenomenon and, on the other hand, intends a certain locality, that means a national scenario of combating corruption in each country which takes

into account the level of political and legal consciousness, historical traditions, the economic state of society, etc.

Corruption in Ukraine has long historical roots.The first mention of corruption is given in «The Tale of Igor's Regiment» in the form of the opportunity to pay off the tribute or reduce its size if you give a bribe to the Polovtsian collector of gold. Bribery took place whilst collecting tribute under the Tatar-Mongolian yoke, when the conquered Slavic lands had to pay tribute to the Khan, and if personally was giving the bribe to the servant with silver rubles, he reduced the amount of the tax on the crop.Thepractice was preserved in the times of the Cossacks. So all the traders, merchants and servants had to make a certain payment to the military treasury, and in order not to pay, they gave a bribe to a military officer, a scribe or an osavul.

In Soviet times there were economic crimes such as looting of public property, clandestine entrepreneurial activities, production of uncultivated products, unofficial provision of services, speculation, criminal delicts, bribery, and so on.

Corruption began to spread markedly during the period named «perestroika», when the massive looting of public property, budget money laundering had started with the help of corrupt officials and servants.Since the independence period has started the corruptionstimulate the development of the shadow economy and as a worm was eating Ukraine. Mostly the reason of it was a fact that the commercialization of the national economy revealed the urgent need for various types of permits and licenses, which became a peculiar commodity with its user-value and price. All attempts to overcome corruption in independent Ukraine were unsuccessful. This has become one of the reasons for the 2014 Revolution of Dignity. P. Poroshenko in his inaugural speech called the first and the main task for Ukraine is to eliminate corruption that absorbed the entire country.

Corruption today confuses investors, complicates financing, people are losing a confidence in a corrupt country. Corruption is one of the historical arguments against a rapprochement with Ukraine because foreigners often say that this country is unstable and unreliable.

About corruption can be said in three aspects: political, socio-economic and legal. Proponents of the political aspect define corruption as abuse of authority, official position and administrative capacity in order to receive material repayment.Thus, it causes material and moral damage to the structure of state, the reputation of political power, and the prestige of the country on the international area.

Corruption is one of the functions of corporate governance based on an economic basis, therefore, the economic approach supporters tend to regard it as a form of official abuse, in which a direct or veiled deceptive purposes always insist. Corruption is considered as a complex social and legal phenomenon associated with the bribery of persons who are on the state or public position, with the gaining of additional incomes, benefits and welfares for doing intentional misconducts or being inactiveagainst to the interests of the state and society.

The third approach sees in corruption a purely legal structure as the primary basis for unlawful activity or inactivity. Socio-economic and political factors of corruption are secondary or superstructures over its legal basis.

The fourth approach is also has a right to exist, whose supporters believe that the concept of corruption is complex and includes the political, economic, social, legal and moral spheres of social relations.Corruption is not a specific socially dangerous act, as it is inherent in any component of the crime, but may takes various forms – criminal, administrative, civil, disciplinary and other [Look.: 1].

§ 1. Problems of institutionalization of anti-corruption activities in Ukraine

In order to identify the ways on corruption prevention in modern states, it is necessary to choose a certain model of its development. Scientists (V. Adrianov, B. Baluyev, O. Busol and others) outline several basic models of corruption development, according to the conditional geographical names or customs of a particular country. In particular, the following models are known:

1. *Asian (traditional) model.* According to this model, not only any service, but even a simple performance of official duties by public person is impossible without appropriate remuneration. Inability or unwillingness to give a proper bribe is perceived in such a society as an attribute of a person's inability to solve his problems. In this case, corruption in the eyes of the masses is not a crime [2, p. 37].In such countries an unrelated posts appetites are punished by demonstrative «purges», which are perceived by the public consciousness as the renewal of legality. All this as a result contributes to the stability of the authority vertical because the change of players does not change the rules of the game.

2. *The African model*is characterized by the fact that the authority in such states is sold to a group of main economic clans that have agreed with each

other, and ensure the reliability of their existence by political ways. According to O. Busol, the transition to this model is possible under the following conditions: the political power in the country remains unconsolidated; financial and bureaucratic groups squeeze their existence under the influence of self-preservation instinct and negotiate; an oligarchic consensus is formed between the consolidated financial-bureaucratic groups and a part of the political elite [2, p. 38]. For the country it means the rollback of democracy and the monopolization of the economy [3, p. 10].

3. *Latin American model.* The admissibility of corruption allows the shadow and criminalized sectors of the economy to achieve power that can be compared to the state. Authorities are often drawn into a rigid confrontation with the mafia, which creates a «state in the state». The economic welfare becomes a task which is not only unachievable, but even secondary to other problems [3, p. 11]. However, the political instability that is characteristic of such countries increases the chances of establishing a dictatorship on the warp of fighting corruption, which in turn leads to the threat of transition to an African model.

4. The *European model*is characterized by a relatively low level of corruption in the almost complete absence of grassroots corruption. This does not exclude the periodic origin of scandals related to the corruption of higher echelons. The low level of corruption in European countries is supported by a set of measures – institutional, organizational, legal, as well as the effective operation of tradition, culture and civil society institutions [2, c. 39].

5. *Corruption in the post-Soviet countries (corruption under a social contract).* In such countries employees who receive salaries from the budget receive inadequate monetary support. At the same time, the state puts a blind eye to receiving remuneration from consumers of administrative services.The danger is that even after a substantial increase in official salaries, the desire and habit of receiving gratitude from the recipients of services, as a rule, does not disappear. That is why the reform of the public system of government is delayed for years.

6. *The localized model* takes place in societies where most of the population does not give and take bribes. But there are some spheres of economic or political relations where a certain stratum of employees who have the right to sign documents, as well as businessmen who are interested in these decisions, try to find a common language with the help of monetary remuneration [2, p. 40].

There are five main models of the combating corruption are described in detail in the scientific papers of Ukrainian and foreign authors:

1. The *totalitarian model* for combating corruption, which prescribes the comprehensive state control over the officials' behavior and a rigorous response to any deviation from the norms they have made. The disadvantage of this approach is the violation of human rights, since the totalitarianism is fundamentally incompatible with their implementation.

2. The *authoritarian model* for combating corruption is characterized by selective implementation of responsibility in accordance with the guidance of a manager. This model motivates attempts to get into authorities for the reasons of own security and impunity in the struggle for privileges and full powers, therefore, the processes of power degradation and its gradual tampering are factored into it.

3. The *oligarchic model* of combating corruption assumes that the realization of responsibility is carried out in accordance with the clan approach – on the friend-or-foe principle.Since power is exercised by teams, they defend themselves from responsibility in all available ways, and in relation to strangers they collect juicy details and try to give them a way. Money in such a model is gaining weight, so it can easily be transformed into a criminal one. And the combating corruption itself becomes instrumental and looks as a mean of power struggle between the oligarchic clans. Lack of control generates amassive corruption at the grassroots level of public administration.

4. The *liberal anti-corruption model* means total irresponsibility, impunity and permissiveness. Such a state is observed during the periods of revolutions, when the new government has not yet taken over management functions or deliberately initiates destructive processes. Such a model is dynamic and sometimes there is a return to the authoritarian model.

5. *The legal democratic model*is largely embodied in the concept of the rule-of-law state. The realization of such ideas as the consistency of law and morality, the definition of a reasonable hierarchy of values protected by law, the equality of all before the law, the delegation of authority, etc. have the great importance here.

In the combating corruption, it is particularly important to ensure the equality of all before the law as one of the main principle of the rule-of-law state concept. In particular, this concerns the minimization of legal and factual immunities.

An analysis of the manifestations of corruption in different countries proves that there is a post-Soviet model of combating corruption is reinforced in Ukraine now, although we can talk about certain evidences of the presence of an oligarchic model as well.

Combating and prevention corruption as a socio-economic phenomenon are carried out during all years of independent Ukraine's existence. Until now, unfortunately, it was not possible to overcome it, despite the active work in this area of legislative, executive branches of public authority as well as the law-enforcement bodies.

The historical periods of combating corruption in Ukraine can be systematized in this way:

The first period – ideological (1991 – first half of 1994). At this time, the formation of the problem of combating corruption and putting it into a topical issue took place. At the same time, there were the processes of increasing corrupt in a supportive environment, that was formed as a result of the unreflective throwing into a market, the fictitious democracy, the total lawlessness, the political mob rule and slogans.Corruption as a socio-economic phenomenon was condemned by the members of the first democratic convocation for Verkhovna Rada of Ukraine (Parliament), such asVyacheslavChornovil, StepanKhmara, LarysaSkoryk, GrigoryOmelchenko, Ivan Bilas and others. Also these issues were covered in the speeches by the first president of independent Ukraine, Leonid Kravchuk. However, everything remained at the level of conversations and slogans. But it was also an example of struggle – the ideological one.

Under such favorable conditions, part of Ukrainian officials could not resist the temptation to become wealthy at public cost. The 25 billion UAH (according to current calculations) of state funds were ditected to shadow in 1993. In 1992, there were 1182 crimes were carried out in commercial structures, half of them – looting financial resources, and 163 cases of bribery [4]. In the first half of 1994, several bribe-takers were seized, but none of them was convicted.

The second period – a frontal attack on corruption (second half of 1994 – 1995). After his election, Leonid Kuchma made an important improvement of personal admitistration inthe Ministry of Internal Affairs of Ukraine. As a result, in the second half of 1994, nearly 200 police officers were arraigned on a criminal charge for crime affiliations.

Using the administrative-command methods on corruption prevention and combating it could be a best characteristic for this period. The President

of Ukraine signed the Decrees «On corruption prevention and other crimes in the sphere of economy», «On urgent measures to strengthen the fight against crime». The Law of Ukraine «On the Organizational and Legal Foundations of Fighting Organized Crime» was adopted. The challenge was shaken to the shadow authority, with an attempt to end corruption with one decree.

At the end of July 1994, 200 crime scene investigation teams were created from the employeesof the Prosecutor General's Office, the Ministry of Internal Affairs, and theSecurity Service of Ukraine to investigate particularly special economic crimes. However, as it turned out later, there were no reserves for their creation. In many districts of Ukraine was one employed investigator for 10-12 vacant places.

It should be noted that the Presidential decrees were directed to the past. That is, it was about well-known facts of bribery, abuse of official position, mafiosity and lobbying among Ukrainian officials. It was necessary to review all the suspended legal proceedings concerning MPs of different levels, the leadership of the ministries and departments because only among the MPs at that time there were about 500 law breakers.

Unfortunately, the frontal attack on corruption was unsuccessful. For large-scale work there were not enough reserves. On the proposal of the Ministry of Internal Affairs of Ukraine, the Cabinet of Ministers has allocated additional 22 thousand full-time employees. The tendency of the extensive way of combating corruption was determined: the number of law enforcers increased by increasing combating capacity.

In 1995, 6738 cases of looting, 828 cases of bribery, 4691 cases of illegal transactions with currency were expedited to the court [5].

An analysis of the combating corruption at this historical period showed that it was impossible to overcome it by individual measures; a comprehensive approach was needed, such as: adoption of sets of normative documents, restructuring of law enforcement agencies as well as the coordination of their activities at the state level. Such measures were distinguished at the following period of time.

The third period – coordination of efforts against corruption (1996-2000). During this period of time, a number of programmatic state normative acts were adopted: Laws of Ukraine «On Combating Corruption», «On the Concept of National Security of Ukraine», «On the National Program for Combating Corruption», «On the unsatisfactory state of implementation of measures to combat crime». They renovated the members of the Coordination Committee for Com-

bating Corruption and Organized Crime under the President of Ukraine, created special units for fighting organized crime in the system of the Ministry of Internal Affairs, the SSU (the «C»– department), the State Tax Administration, Tax Police and its special unit – the Anti-Corruption Department.

On April 24, 1997, the President of Ukraine signed the Decree «On the Establishment of the National Bureau of Investigation of Ukraine». NBIU was planned to be created to strengthen the fighting organized crime in all its manifestations, especially with the corruption of officials and mafia groups. However, the decree was not supported by the Verkhovna Rada of Ukraine and in the end did not come into force.

In 1997, the «clean hands» operation was conducted under the leadership of the President of Ukraine. But corruption has never been overcome. The fact that all these measures had commercial nature and mainly aimed at overcoming the consequences rather than the causes of corruption. Furthermore, the phenomenon of corruption was still not sufficiently studied.

YuriyKravchenko (the Minister of Internal Affairs of Ukraine at that time) pointed out the reasons for the development of corruption at the one of his meeting in June 1998. According to him, the Ministry of Internal Affairs of Ukraine had changed the ideology of combating crime. Law enforcers were trying to eliminate the economic basis of organized crime and corruption.

Since 1998 the complexity and application of the methodology of the system approach has been intensified on the corruption prevention.Every February the President of Ukraine maid a speech at the annual meetings of the Coordinating Committee on Combating Corruption. Plans for urgent coordinated actions of state and law enforcement agencies to strengthen the rule of law and order in the country were adopted. A Governmental Working Group was set up to track the shadowing of the economy and develop proposals for its termination. The legislative framework was being improved. The Government prepared a program of economic development of Ukraine. On the basis of it the Government started to combat the corrupt criminal links in state bodies. The legal basis for the combating was the Decree of the President of Ukraine №367 of April 24, 1998 «On the Concentration of the Combating Corruption for 1998-2005», Resolution of the Cabinet of Ministers of Ukraine of August 3, 2000 №1050 «On the Plan of Measures to Combat Corruption for the year 2000».

The mechanism of prosecution of civil servants for improper fulfillment of duties is being improved, which amends the Resolution of the Cabinet of

Ministers dated March 4, 1995 №160 «On Approval of the Procedure for Investigation». In November 1999, Ukraine, together with members of the Council of Europe, signed the Civil Convention against Corruption. In Ukraine, an interbranch organizational and legal hierarchical deterministic system of combating the shadow economy and corruption was being formed. However, in spite of the taken measures corruption hadn't been overcome.

The fourth period – pseudo-combating corruption (2001-2004). At this time, the class disintegration of society is clearly followed. Three classes were formed: very rich, middle class and poor. Very wealthy people have created their capital not always through the accumulation of property at the cost of profits from entrepreneurial activity. There are shadow revenues here, including corruption.

Let's remind, that the big capital in Ukraine in its development has passed several phases. Researchers of economic processes say that initially our enterprises in the conditions of the economic crisis and the weakness of the state system were shady in nature. Big money was earned on the basis of trader's activity (non-equivalent trade in energy resources and metal) and in bank capital (financial speculation). At the beginning of 2000 there were signs of corruption clans. Many entrepreneurs had a lot of money with which they could already bribe the top of the Ukrainian authorities and even the President of Ukraine. Therefore, the corrupt government made an impression of combating corruption, but in fact was corrupt itself.

The situation in Ukraine had a dangerous peculiarity, it strangled virtually all segments of the population and was oriented towards maximizing the opportunities for personal enrichment of corruption actors in cost of mistakes made during the reformation of the economy.Criminal elements had already become entrenched and began to occupy leading positions in the economy in order to move in the future to politics. The country had formed a stable corrupt system of power from the President of Ukraine to the head of the village council.

The fifth period – orange (2004-2013). This period of combating corruption is characterized by a number of loud statements at various levels of authority, in particular at the level of the President of Ukraine and the Cabinet of Ministers of Ukraine. There were significant personnel changes both in the center and in the local level. An administrative reform was initiated in Ukraine. The process of investigation of corruption cases of civil servants was carried out.

The sixth period is modern. Its beginning is associated with the Revolution of Dignity and the election of P. Poroshenko to the President of Ukraine.

This period is characterized by considerable attention to the fight against corruption. A new version of the Law of Ukraine «On Preventing Corruption» [6] is adopted, special independent bodies are created – the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU) [7],the Special Anti-corruption Prosecutor's Office (SAP), etc. In addition, the Law of Ukraine «On the Principles of Anticorruption Policy in Ukraine (Anticorruption Strategy) for 2014-2017» [8] is adopted. In accordance with this law all public institutions and subjects of public law have to develop their own anti-corruption activities (programs) and measures for their implementation.

Creation in Ukraine of special law enforcement agencies – the National Agency on Corruption Preventionand the Special Anti-Corruption Prosecutor, whose activities are regulated by law, in practice has not yet shown significant progress on combating corruption. On the contrary, their politicization and constant conflicts between themselves and other political institutions are observed. In particular, there is a constant conflict between NABU, NACP, SAP and the General Prosecutor's Office. The situation was aggravated by the creation in November 2017 of another institution –the National Bureau for Investigations – a special law enforcement agency to review criminal proceedings against crimes committed by high-ranking officials (category A).

In addition, discussions about the appropriateness of completing the institutional support of anti-corruption activities through the founding of the Anti-Corruption Court in Ukraine are not discontinued. In particular, the creation of such a structure in Ukraine is supported by the society, that is confirmed by constant street political actions and rallies, and by the international community, in particular by the Council of Europe and the United States.

§ 2. The system of current anti-corruption legislation in Ukraine

As the world experience shows, there are three main components of combating corruption are needed for its successful providing:

1) proper (perfect, adapted to the conditions of the country, stable) anti-corruption legislation;

2) its effective use by the relevant state authorities (law-enforcement activities);

3) the political willpower of the government onreal combating corruption in all spheres and at all levels of authority.

Each of these components plays a special role on the corruption prevention and combating, but the basic one is still the first one, since combating corruption in a legal democratic state is possible only on a legal basis – this applies to the law enforcement activities, to the expression of political willpower, and to all other measures, which are used in the field of combating corruption. The breaching the law for anti-corruption activities is a way to abuse official position, arbitrariness, in which combating corruption will be carried out by the same corrupt means.

Anti-corruption legislation is a conditional term to a certain extent due to the fact that the significant part of the current legislation (constitutional, civil, administrative, economic, etc.) is inherently anticorruption because it is aimed at establishing and regulating social relations, including in the sphere of public administration.

History knows examples when corruption prevention was not limited by the law, but was also carried out by offence methods and means. Thus, the Italian police operated during the reign of B. Mussolini, who strongly opposed the mafia. Police fought the mafia with its own weapons, including the use of violence against persons suspected of being in contact with mafia.

In the narrow sense of the word under the anticorruption legislation should be understood those laws and other regulations or their separate rules, which establishes special legislative provisions for the prevention of corruption, determines the responsibility for the commission of corruption offenses, regulates the activities of public authorities or their special units, whose competence is the combating or preventing corruption. In this paper, the anti-corruption legislation is consideratedin this sense.

The anti-corruption essence of legislation is mainly to:

firstly, to prevent a conflict of interests (personal and official), to define the legal framework of lawful and ethical behavior of a person authorized to perform public functions, to make corruption offenses a disadvantageous and risky thing, and eventually to achieve that person honestly and conscientiously fulfilled his official duties;

secondly, to identify clearly the characteristics of corruption crimes, to provide adequate measures of responsibility for their commission, to regulate properly the activities of public authorities and their separate units that directly prevent corruption [See: 3].

The analysis of current legislation of Ukraine shows that the legal and regulatory framework for combating corruption includes the relevant articles of

the Constitution of Ukraine, the laws of Ukraine, resolutions of the Verkhovna Rada of Ukraine, decrees and orders of the President of Ukraine, resolutions and instructions of the Cabinet of Ministers of Ukraine and other normative acts. In total in Ukraine there are about 100 legal act devoted to the solving the problems of combating corruption. Need to say that almost 80 acts passed by the Parliament, the President or the Government of Ukraine contain a direct reference to the term «corruption».

At the same time, the existence of such a number of legal anticorruption acts do not at all indicate that a perfect system of anti-corruption legislation has been created in our country.The indicated acts were adopted at different times, by different bodies, for different purposes, and most of them – in the absence of a single scientifically grounded concept of combating corruption. As for the latter, it was developed by experts only at the end of 1997 and approved by the Decree of the President of Ukraine on April 24, 1998. This actually violated the logic of the formation of an anti-corruption legislative framework, which should have been carried out according to the scheme: Concept – Program – Law – Subordinate acts. In Ukraine, on the contrary, it could not but affect the quality of anti-corruption legislation and the effectiveness of its application.

The direction and subject of regulation can divide the current anti-corruption legislation of Ukraine into three groups:

1) regulatory legal acts, that provide for general social and special criminological prevention of corruption by law;

2) regulatory legal acts, that define the elements of corruption offenses and establish liability for them;

3) normative legal acts, that regulate the activity of state bodies and their separate units on direct corruption prevention.

Such a division of anti-corruption legislation is quite formal because some laws at the same time contain both provisions on liability for corruption offenses and the provisions on the prevention of it and the activities of relevant state bodies.

To characterize the first group of regulatory legal acts it should be noted that the provisions of the preventive anticorruption direction are concentrated in many normative legal acts as a basic for all spheres of social life and for those ones, which regulate a separate branch of the national economy or a certain sphere of public relations.

First of all, we should study the relevant provisions of the Constitution of Ukraine. The Basic Law of our state contains a number of provisions that can be attributed to anti-corruption. In our opinion, the key provision is fixed in Art. 19: «The bodies of public administration and local authorities as well as their officials are obliged to act only on the basis, within the limits of authority and in the manner provided by the Constitution and laws of Ukraine» [9]. This article in principle defines the framework of lawful conduct of officials of public authorities at state and local levels. It fixes several important points in the anti-corruption meaning: firstly, it determines that the officials can act only in the manner determined by them, and secondly, the grounds, the way of their actions, as well as their responsibilities are determined by law only. Essentially Art. 19 of the Constitution of Ukraine can be defined as the fundamental anticorruption legal norm of our state, because it does not allow any deviations in the activities of officials of these authorities from the behavior determined by law.

A number of other articles of the Constitution of Ukraine specify these provisions or emphasize certain points related to the status of certain officials. Thus, Part 4 of Art. 103 of the Constitution stipulates that «the President of Ukraine may not have another representative mandate, hold a position in state authorities or associations of citizens, as well as engage in other paid or entrepreneurial activities, or to be part of the governing body or supervisory board of an enterprise having the purpose of making profits» [9].

The same kind of restrictions are set for other senior state officials. In accordance with Part 1 of Art. 120 of the Constitution of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central and local executive bodies shall not have the right to combine their official activities with other work, except for teaching, scientific and creative ones during off-working time, to be part of the governing body or supervisory board of an enterprise having the purpose of making profits. According to Part 2 of Art. 42 of the Constitution of Ukraine, entrepreneurial activity of deputies, officials of state and local authorities is limited by law. Certain limitations are set for judges who can not belong to political parties and trade unions, participate in any political activity, have a representative mandate, hold any other paid positions, perform other paid work, except for scientific, teaching and creative (Part 2 of Article 127 of the Constitution).

Article 78 (Part 2 and 3) of the Constitution of Ukraine establishes restrictions for Members of Parliament of Ukraine. It stipulates: «Deputies can not have another representative mandate or be in the public service. The require-

ments for the incompatibility of the parliamentary mandate with other activities are established by law» [9].In case of non-fulfillment of the requirement regarding the incompatibility of the deputy's mandate with other types of activities, the MP gets amotion by a court decision (Part 4 of Article 81 of the Basic Law).

It should be noted that after the entry into force of the Constitution of Ukraine, these constitutional provisions were ignored by many MPs, who at the same time held the mandate of a deputy and the senior positions in executive bodies, headed entrepreneurial structures, public institutions, banks, ect. Attempts to bring the status of parliamentarians in line with the Constitution, in spite of the legal certainty of the provision, succeeded in some cases only and after longstanding legal proceedings.

The Constitution of Ukraine contains a number of other provisions that can be regarded as anti-corruption. In particular, it concerns the requirements for the declaration of income and property (Article 67), the procedure for using funds from the state budget of Ukraine (Article 95).

The relevant general anti-corruption provisions that apply to certain requirements and restrictions related to the status of an official include the laws of Ukraine «On the Status of Member of the Parliament of Ukraine" (Article 3), «On the High Council of Justice» (Article 3), «On the National Bank of Ukraine»(Article 65), «On the Constitutional Court of Ukraine» (Article 16), «On the Prosecutor's Office»(Article 46), «On the National Police»(Article 18), «On Local State Administrations» (Article 12) and a number of other laws.

Certain anti-corruption safeguards were stipulated by the Law of Ukraine «On Public Service», specifying, in particular, certain restrictions related to the passage of the public service, ethical barriers to staying in the public service, an inadmissibility of abusing position, the violation of the Constitution and laws of Ukraine. the Law of Ukraine «On Service in Local Self-Government Bodies» includes the similar provisions.

The main regulatory act, which focuses on special preventive anti-corruption provisions, is the Law of Ukraine «On Prevention of Corruption» (2014) [6]. The characteristics of this Law should be further elaborated, since its provisions are of certain interest in the context of the issues under consideration, and not only for Ukraine.

The existence of this Law refers Ukraine to the few countries established in the former Soviet Union, in which there is a special anti-corruption law, which provides for special restrictions for persons authorized to perform the

functions of the state, provides for other requirements to them, defines signs of corruption offenses and establishes responsibility for their committing (the law of direct action).

The undeniable positive moment of the adoption of the Law «On the Prevention of Corruption» is that it contains the ethical and legal foundations of moral and lawful conduct of public servants and other persons authorized to perform the state functions.Its prophylactic character is determined by two main points: firstly, it provides for certain restrictions for persons authorized to perform state functions, preventing the coming of corruption relations into existence; secondly, it establishes administrative and disciplinary responsibility for violating these restrictions and committing the corrupt acts determined by it, and it serves as a preventive measure for more dangerous corruption manifestations, primarily criminal.

The key section of the Law of Ukraine «On Prevention of Corruption» is the section «Prevention of corruption and corruption-related offenses», which contains special restrictions for public servants and other persons authorized to perform state functions aimed on preventing corruption.

The main purpose of all prohibitions and restrictions is to prevent the use of persons authorized to perform the functions of the state, their official powers and other opportunities provided to them by official status, for unlawful personal enrichment, which may be carried out by engaging in entrepreneurial activity, unlawful promotion or creation of artificial obstacles for the implementation of such activities by other persons. All these «compatibilities», «promotions», «refusals» and others from the officials with authority are nothing more than a favorable ground for all kinds of official misconduct.

The law also provides measures for financial control, first of all, obliges public servants to declare their property status and incomes. It should be emphasized that the fixation of the property status and income of citizens through declaring – is widely used instrument to control the income of each citizen, their source and lawfulness. At present, Ukraine does not legally foresee the mandatory to declare property and incomes for all Ukrainian citizens. Although in the Constitution of Ukraine (Article 67) it is written: «All citizens annually submit to the tax offices at their place of residence the declaration of their property status and income for the last year in accordance with the procedure established by law» [9].Analysis of the current legislation shows that at the legislative level the issue of declaration is regulated only for certain categories of citizens, in

particular, public servants, other persons authorized to perform functions of the state, persons who are applying for these positions as well.

The given legislative base on declaration of incomes and property does not solve the problem of financial control over incomes and expenditures of public servants. In circumstances when the country does not establish a general declaration of income and property for all citizens, it remains possibility for public servants to conceal their incomes and property.

The current legislation of Ukraine, depending on the nature of the offense, establishes criminal, administrative and disciplinary liability for corruption offenses. Criminal liability for corruption manifests itself in the cases provided for by the current Criminal Code of Ukraine (CCU). The most serious among them is illegal enrichment, committed by an official who is particularly responsible (Article 367.3 of the CCU), for which the current Criminal Code of Ukraine may be sentenced to imprisonment for a term of five to ten years with deprivation of liberty to occupy certain positions or engage in certain activities for up to three years with the confiscation of property.

For abuse of power or office (Article 364 of the CCU) and transgression of authority or office (Article 365 of the CCU) may be punished by being sentenced to imprisonment for a long term (from three to eight) with the deprivation of the right to hold certain positions or engage in certain activities for a term up to three years.

At the same time, the Criminal Code of Ukraine provides for criminal liability for those who give bribes. The Art. 369 of the Criminal Code provides that an offer or promise to an official to provide to him or a to the third person unlawful benefit, as well as the provision of such a benefit for the commission or non-commissioning of an official in the interests of the person who proposes, promises or give a benefits, or in the interests of a third person – any action using the authority or official status granted to it is punishable by a fine of five hundred to seven hundred and fifty non-taxable minimum incomes, or is sentenced to imprisonment for a term of two to four years, or by deprivation of liberty for the same term. In this case, if the unlawful benefit was given to a public servant who is in a responsible position or committed by a group of persons at the prior conspiracy, he shall be punished by imprisonment for a term of four to eight years, with or without the confiscation of property [10].

The analysis of sanctions of criminal law, which provides for liability for corruption manifestations of a criminal nature, shows that the current criminal

law establishes a fairly strict liability for such an act. In particular, it concerns sanctions on bribery that are unreasonably overestimated. In their definition, they came from the fact that the more severe the sanction, the more effective it is in terms of performing the functions of punishment. However, this is not quite as evidenced by the jurisprudence. Courts to ensure the implementation of the general principles of punishment are forced to go beyond the sanctions and impose a softer punishment than prescribed by law.

Administrative liability comes for the commission of all offenses established by the Law of Ukraine «On the Prevention of Corruption». The peculiarity of the sanctions of the norms of this law is that both an administrative and the disciplinary liabilities are provided for, and also establish for other perpetrators of acts of corruption other negative consequences of a legal nature.

Section 13-A of the Code of Ukraine on Administrative Offenses [11] clearly regulates administrative liability for the commission of corruption offenses. The most severe punishment is for the violation of the person's restrictions on engaging in other paid activities like an entrepreneurship in the form of imposing a fine from 300 to 500, and in the case of a repeated violation – up to 800 non-taxable minimum incomes of citizens with the confiscation of income from entrepreneurial activity or remuneration from work part-time with a deprivation of the right to occupy certain positions for one year.

Administrative and disciplinary liability for the commission of corruption offenses is stipulated by a number of other normative and legal acts, including the Code of Ukraine on Administrative Offenses, the Law of Ukraine «On Public Service», and the relevant disciplinary statutes.

Lately submission without a valid reason of a person authorized to perform functions of the state or local government entails imposing a fine of fifty to one hundred tax-free minimum incomes of citizens.

Failure to notify or late notification of the opening of a currency account in the institution of a non-resident bank or significant changes in the property situation entailsthe imposition of a fine of one hundred to two hundred non-taxable minimum incomes of citizens.

Acts committed by a person who was subject to administrative penalty for the same violations during the year entail the imposition of a fine of one hundred to three hundred tax-free minimum incomes of citizens with confiscation of income or remuneration and with the deprivation of the right to occupy certain positions or engage in certain activities for one year.

Perjury in the declaration of a person authorized to perform functions of the state or local government entails the imposition of a fine from one thousand to two thousand five hundred tax-free minimum incomes of citizens.

In addition to defining the provisions on the prevention of corruption and the establishment of liability for corruption offenses, during the independence period, a number of measures were taken in Ukraine aimed at improving the law enforcement system in the area of combating corruption.

Conclusions to SectionVII

The analysis of the legal regulation of anti-corruption activities in Ukraine proves that the main preconditions for the origin and spread of corruption in Ukrainian society are: political and economic instability in the country; the discrepancy of the income of most of the population with a real cost of living; imperfection of the system of public administration; delay in creating an effective system of work with personnel at all levels; lack of transparency, publicity in the activities of public authorities, lack of effective levers of public influence; low level of legal culture of the population, etc.

Corruption in every country has a certain national development model (Asian, African, post-Soviet, European, etc.), on the basis of which the national system of prevention and combating corruption is developed. The model of post-Soviet countries is now firmly establishedin Ukraine. This model includes some elements of the oligarchic model on combating corruption.

Ukraine has created a sufficient legal framework for effective prevention and combating corruption with a whole range of criminal, administrative, civil, legal, disciplinary and other measures. There have been some changes in the institutional provision of anti-corruption activities in Ukraine. In particular, the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU), the Special Anti-corruption Prosecutor's Office (SAP)and the State Investigation Bureau have already been created. In turn, the creation of the Anticorruption Court of Ukraine.

The world experience in combating corruption reveals that no legislative or administrative measures can be effective if the society does not have the political willpower for that. Therefore, in order to further improve the anti-corruption legislation in Ukraine, it is advisable to take the following measures:

– to cancel the practice of «blind» copying of the norms of foreign legislation, facile and slick application of the provisions and recommendations of international acts on combating corruption without taking into account historical, socio-economic, cultural and other peculiarities of Ukraine, the mentality of the population, forecasting the possible consequences of the introduction of those or other legal norms;

– to create an effective system of training, professional training and advanced training in the field of prevention and combating corruption for all subjects of public law in Ukraine;

– to complete the process of institutional provision of anti-corruption activities in Ukraine through the creation of the Anticorruption Court of Ukraine;

– to ensure cooperation between the main institutions of anti-corruption activity in Ukraine and so on.

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SECTION VIII

IMPROVEMENT OF CRIMINAL AND LEGAL PROTECTION OF THE BASIS OF NATIONAL SECURITY OF UKRAINE IN THE CONTEXT OF EURO INTEGRATION

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Annotation

The article deals with the complex special scientific research of crimes against the bases of national security of the state in which the author's concept for improving the current normative prescriptions was substantiated and the appropriate boundaries of criminal encroachments on the basis of national security of Ukraine were determined, taking into account the current geopolitical realities. The legal regulation of responsibility and regularities of taxonomy of considered crimes in the context of the current Ukrainian legislation is substantiated.

The author concept was developed in the part of perfection of the existing criminal legislation in the sphere of protection of the foundations of national security of Ukraine; established a specific list of crimes that undermine the foundations of Ukraine's national security.

It is emphasized that it is a question of absolutely "new" criminal-law regulations, as well as updated norms of the current criminal law. Taking into account the developed conceptual provisions, as well as taking into account the existing threats to the bases of national security of Ukraine, updated versions of Art. 109, 110, 111, 114 of the Criminal Code of Ukraine. The basis of such provisions was the conceptual development of authoritative domestic researchers in this field of knowledge (O. M. Kostenko, O. F. Bantysheva, O. V. Shamara, S. V. Djakova, etc.), including foreign experience in parts of the systematization and criminalization of socially dangerous encroachments on the basis of state security.

A system of socially dangerous encroachments that directly or indirectly encroaches on the foundations of national security of Ukraine is formulated, where such bases can serve as the main or additional object of such crimes.

§ 1. Topical issues of criminal-law policy in the sphere of national security of Ukraine

In the existing conditions at that time, in which threats to the constitutional system, sovereignty, territorial integrity and inviolability (taking into account recent events in the south-east of Ukraine) became more acute in Ukraine, an urgent objective need arises in the adequate counteraction of the state to such anti-state manifestations. In order to effectively address such problems, the state has a natural burden in developing a set of measures and means aimed at the localization of such crime. The main directions of such state activity are the content of its policy in the field of counteracting crime, which traditionally covered by the phenomenon of criminal policy widely provided in legal literature [1, p. 180]. It is not difficult to see that such a phenomenon is formed by the corresponding reaction of the state only on such antisocial phenomenon as a crime. A similar circumstance is explained by the fact that it is reflected in various types of normative prescriptions, which are directly aimed at counteracting socially dangerous acts in one or another sphere, that is, crimes. However, in the existing doctrine of domestic criminal law it is difficult to identify a comprehensive, unified concept of criminal policy, given that the need for its presence is more urgent than ever.

In this regard, it is rightly noted by P. L. Fris that the actual situation with the criminal law policy can today be characterized as anarchic. Proposed and often adopted anti-scientific, groundless laws on criminal liability, which contradict the postulates of criminal-law policy, the basics of the theory of criminal law [2, p. 34]. This circumstance is also explained by the fact that, in particular, the political foundations of the relevant areas of state activity in the field of public relations protection from criminal offenses have not yet been developed. Such a concept should become a fundamental legal basis for other types of such policies, among which a criminal law policy in the field of safeguarding the foundations of Ukraine's national security plays a special role.

In our opinion, the effectiveness and effectiveness of criminal policy in this area are determined not so much by the choice of a vector of conceptual development, but by the level of quality of content and the degree of productivity of the implementation of normative prescriptions of the current criminal law, which, taking into account the existing threats and political situation in Ukraine, is in need of cardinal change. It is at this time that it is obvious that

the current system of criminal law protection of the foundations of national security needs to be reconsidered, and accordingly, in some modification, which would allow adequately to counteract the existing and potential threats in this important sphere of vital activity of the state. In support of this, the testimony of VN Kubalsky shows that the current system of criminal law protection of state sovereignty must definitely cover all existing and possible significant threats to the state sovereignty of Ukraine [3, p. 378]. Consequently, the updated system of criminal legal measures to counter criminal offenses on the basis of Ukraine's national security must be in line with a fundamentally new level capable of neutralizing such attacks both at the present stage of defense of our statehood and in the future.

However, taking into account all of the above provisions, it should be noted that the necessary principles, criteria which allow to visually identify the limits of a range of socially dangerous encroachments that completely damage or can harm the fundamentals of national security of Ukraine have not yet been developed, in principle This is due to their impersonal proliferation. In this regard, within this unit, we will attempt to develop an author's concept for improving the existing norms and determine the appropriate boundaries of criminal encroachments on the basis of national security taking into account the current geopolitical realities, and therefore, the establishment of a specific list of crimes that undermine the foundations of national security Of Ukraine. The basis of the proposed concept will be based on the basic principles developed on the basis of the achievements of science of domestic criminal law.

In order to more effectively protect the foundations of national security, it is necessary to identify a range of socially dangerous encroachments that can directly or even indirectly damage the designated object of criminal law protection. Accordingly, the definition of the socio-legal essence, the legal nature of the object under consideration allows for a greater degree to be resolved by a similar problem. As Professor O. M. Kostenko rightly notes, "the more precise the signs of the object of a criminal offense (in this case, state sovereignty) will be determined, the more effective it will be its criminal law" [4, p. 232].

Accepting a similar axiom, LD Gauchman emphasizes that the value of the object of the attack lies in the fact that he: "1) corresponds to social relations that embody the essence of the socio-economic formation and state, which are favorable and desirable to the ruling class, the most valuable and important; 2) allows us to understand the socio-political and legal nature of the crime; 3) is

a criterion for the construction of the system of the Special Part of the Criminal Code; 4) defines in many ways the qualification of a crime; 5) provides for the delineation of crimes "[5, p. 78]. Consequently, such provisions indicate that the definition of a clear and, possibly, exhaustive range of crimes encroaching on the relevant object, is strictly dependent on the possibility of determining the essential characteristics and nature of such an object. In our case, this is a social relationship in the field of safeguarding the foundations of Ukraine's national security, as evidenced by the comprehensive and systematic scientific analysis of the nature of the object under consideration, which we conducted in the previous chapters of this study.

Thus, the definition of the range of specific socially dangerous encroachments on the basis of national security of Ukraine is explained by the natural need of criminal-law science and practice. This circumstance can reveal a systemic approach in the part of localization and counteraction to the most dangerous encroachment on the basis of national security of Ukraine. For this purpose, in the current criminal law, the Ukrainian legislator concentrated a group of similar homogeneous socially dangerous encroachments in Section I of the Special Part of the Criminal Code of Ukraine. However, taking into account already existing new challenges, the problem of filling this section of the Criminal Code of Ukraine with the relevant content, that is, the criminal-law requirements that correspond to modern threats, is no less acute and rather relevant.

In order to establish the probable range of such socially dangerous acts it is necessary to specify which objects of specific socially dangerous acts are the basis of national security of Ukraine, as well as which warehouses, contained in Section I of the Criminal Code of Ukraine, require additional comprehension, amendments or additions. As rightly pointed out by O. F. Bantishev and O. V. Shamara, a comprehensive analysis of a certain type or types of criminal activity and legal measures to combat them often indicates the need for the simultaneous improvement or design of other legal norms, their redeployment to other chapters of the Special Part The Criminal Code of Ukraine [6, p. 39].

In our opinion, such normative prescriptions, which provide criminal liability for the commission of the crimes in question, should be rules that contain signs of only those acts that actually constitute a corresponding threat to the fundamentals of national security of Ukraine. They can be as completely "new" criminal-law orders, and to some extent, updated, but still existing legislative provisions of Section I of the Special Part of the Criminal Code of Ukraine. In a

certain sense, such reformatted provisions, as in the part of systematization, and in the part of the restoration of the analyzed normative prescriptions, we have studied in more detail in the previous chapters, which seems equally useful in the formation of these conceptual provisions of the investigated sphere of criminal-legal knowledge.

It should be noted that the availability of an effective mechanism for the qualitative formation of such provisions seems extremely important, as it will allow to exclude in the legislative practice cases of hasty criminalization of potentially dangerous acts for the object under consideration, which as a result may lead to solid scientific discussions in relation to the establishment, which specific social relations (interest, good or social value) are damaged as a result of their implementation, which, in turn, promotes the activation of relevant problems as among scientific-theoretical classification of such acts and in the training of their practitioners.

In order to minimize the controversial provisions regarding the scientific differentiation of such crimes, it is necessary to precisely specify the immediate objects of the encroachments under investigation in order to avoid their expanded interpretation.

In our opinion, one of the main reasons for the lack of identical scientific systematization of crimes against the basis of Ukraine's national security is the ignoring by the legislator of the epistemological rules of legal technology due to the lack of an objective understanding of concrete social relations existing in the present day, interests or goods in need of proper criminal legal protection. Such manifestations are possible in cases where certain social phenomena are interpreted in legislative acts by means that are inappropriate to the basic linguistic guidelines, which as a result complicates or makes impossible the process of knowing the legal nature of the syllables of crimes contained in Section I of the Special Part of the Criminal Code of Ukraine. This circumstance may also be an inexplicable lack of the same understanding of the essential characteristics of the species object of the crimes in question, and, accordingly, the presence of all sorts of controversial interpretations of their scientific differentiation.

It should be noted that the number of types of investigated crimes, which have been developed by domestic scientists, depending on their species (group), does not have any independent scientific, theoretical or practical significance. As a rule, such systematization allows more substantively to understand the legal nature of each of them, and only if only if the social nature of the two or

more encountered encounters coincides, there is a real possibility for their scientific classification.

In each of the classifications provided in the scientific literature, in each individual group of such crimes, it is possible to identify complexes of direct objects, which are typical of each crime of a particular group. Such identification of direct objects in a similar system enables to appropriately establish a range of direct or alternative public relations, for which there is a real or potential threat of a corresponding socially dangerous encroachment. In other words, the existence of such homogeneous complexes of social relations is in direct dependence on the corresponding homogeneous sources of danger, which, in turn, forms such objects.

Consequently, such complexes of direct objects of each type of such crimes can be considered as the most important areas of the main interests of the state, which, as a result, must be taken by the state through the application of criminal law measures, in this case – the norms of the Special Part of the criminal law.

Thus, previously investigated scientific hypotheses on the classification of such crimes allow us to develop a scientifically based concept – a system of knowledge, which, in turn, allows us to establish as a legal algorithm for the distribution of the crimes under consideration for individual types and the range of criminal encroachments potentially dangerous for a specific ‘ the object of criminal law protection – the basis of national security of Ukraine.

As noted earlier, the system of crimes constituting Section I of the Special Part of the Criminal Code of Ukraine has a need for its qualitative modification, and some of its normative provisions – in a certain improvement. After all, the procedure for improving criminal law is the main direction in the development of the subject of criminal-law science. The science of criminal law, as M. I. Bazhanov rightly notes, studying criminal law and ascertaining its social purpose, the nature of all its institutes, their effectiveness, studying the practical significance of each norm, gaps in legal regulation, investigating problems of improving criminal law [7, p. 18].

It seems to us that certain improvements require a regulatory requirement stipulated in Art. 111 of the Criminal Code of Ukraine (“State treason”). This provision contains the main legal features of such a crime, but does not completely determine the legal nature, its legal nature, which may not correspond to those threats, those challenges that exist in the present-day objective reality. In connection with this, in order to more concretely clarify the essence and legal

content of treason, it seems necessary to reformat its legislative definition, taking into account the provisions that formed the basis for the formulation of such a crime that we have developed.

Thus, in the course of the earlier scientific analysis of the basic characteristics and conceptual categories of this crime, it was proposed to formulate it, containing a group of mandatory characteristics necessary for a complete and complete clarification of its essence and legal nature. Namely: state betrayal is committed intentionally, together with a foreign state, a foreign organization or their representatives, a socially dangerous act (act or omission) of a Ukrainian citizen who violates the sovereignty, territorial integrity and inviolability, defense, state, economic or informational security of Ukraine.

In the study of the subjective features of such a crime, we offer in the disposition of Art. 111 of the Criminal Code of Ukraine indicate the presence of a specific objective by analogy with such compositions of the considered section of the Criminal Code of Ukraine, as Art. 109, 110, 113 of the Criminal Code of Ukraine, which would exclude the possibility of indirect intent in such acts and would decide the existing in the science of criminal law contradiction in terms of establishing the nature of the intent of such a crime. A similar circumstance will allow, among other things, to resolve a lot of controversial issues that arise when qualifying such crimes by law enforcement agencies.

Consequently, the following version of the legislative provision, stipulated in Part 1 of Art. 111 of the Criminal Code of Ukraine:

“Article 111. State treason

State treachery, that is, an act committed intentionally by a Ukrainian citizen for the purpose of causing damage to the sovereignty, territorial integrity and inviolability, defense, state, economic or informational security of Ukraine, namely: the transition to the enemy’s side in conditions of martial law or during armed conflict, espionage, provision of assistance to a foreign state, a foreign organization or their representatives in carrying out subversive activities against Ukraine“.

No less acute is the problem of establishing the subject and separate forms of the objective side of the “State betrayal” (Article 111 of the Criminal Code of Ukraine) and “Espionage” (Article 114 of the Criminal Code of Ukraine). Moreover, in today’s conditions, the solution of such a problem becomes of the utmost importance and importance in the part of preventing and localization of increasingly frequent illegal encroachments on the basis of state security.

In accordance with the current criminal legislation, the subject of crimes provided for in Art. 111 of the Criminal Code of Ukraine ("State treason in the form of espionage") and 114 of the Criminal Code of Ukraine ("Espionage"), there may be only information that constitutes state secrets. However, it is not difficult at present to imagine such a situation when foreign intelligence or its representatives can obtain (obtain) and then use information that does not contain state secrets in the course of carrying out their hostile activities against Ukraine, but a substantive analysis and generalization of which may contribute to get the desired result. That is, it can be assumed that the use of such information can lead to no less severe consequences than the use of information containing state secrets. In this case, the so-called other information of the secret nature, which is not subject to state betrayal and espionage, may be referred to, but it is obtained, extracted, used in accordance with the tasks of a foreign state and its intelligence in order to use them to the detriment of our country's interests. So, it seems to us, at the legislative level, it is necessary to consolidate both the subject of the crimes under consideration and other information that is not a state secret.

Equally important is the question of the criminalization of some unlawful acts in the context of existing forms of the objective aspect of the crimes in question. Thus, we proposed a provision according to which, in the process of committing state betrayal in the form of espionage (Article 111 of the Criminal Code of Ukraine) and espionage (Article 114 of the Criminal Code of Ukraine), responsibility should come not only for the transmission and collection of classified information, but also for their preservation. It seems to us that the criminalization of the preservation of such information to some extent should help to neutralize the criminal activity of foreign intelligence services aimed at attracting our citizens to engage in hostile activities against Ukraine, while preserving classified information facilitates the secret of their hostile activity. This circumstance is an indisputable proof of the need for criminalization and the considered form of hostile activity.

In view of this and the previous provision, we propose the following wording of Part 1 of the article. 114 of the Criminal Code of Ukraine ("Espionage"):

"Transfer, collection or preservation of foreign intelligence information of information that does not contain state secrets to use them to the detriment of Ukraine's interests or to carry out the same actions for the purpose of transferring information to the foreign state, foreign organization or their representatives containing state secrets, if these an action was taken by a foreigner or stateless person – ".

Similar provisions are also characteristic of treason, taking into account the fact that espionage is one of the forms of its objective side, with the exception of some features of the subject of this form.

In the process of developing a modern domestic concept of criminal law protection of the basis of national security, the foreign experience of systematization and criminalization of socially dangerous encroachments in the criminal legislation of such states is equally important.

It should be noted that foreign criminal law also considers state crimes as one of the most dangerous, adversely affecting the constitutional order, sovereignty, territorial integrity and inviolability. This circumstance is explained, first of all, by the nature of the generic object of such crimes, which covers both the external and internal security of the state, as well as its most important interests. This is evidenced by the structure of criminal legislation of such states, where chapters containing state crimes are headed by special parts of such criminal codes, and the sanctions foreseen for committing such acts are the most severe in comparison with the normative requirements of other chapters. Such criminal laws can be considered appropriate parts of the criminal codes of Denmark [8, p. 73], China [9, p. 59], Norway [10, p. 108], Cuba [11, p. 92], FRG [12, p. 229], Republic of Korea [13, p. 82], Italy [14, p. 128], Turkey [15, p. 114], the Netherlands [16, p. 238], Bulgaria [17, p. 54], Belgium [18, p. 80] and other states.

In the Special Part of the Criminal Legislation of the Republic of Latvia [19, p. 118], Poland [20, p. 50], Uzbekistan [21, p. 135], Estonia [22, p. 88] and other countries, crimes committed are immediately after military crimes or crimes against peace and humanity.

In the Criminal Code of Belarus [23, p. 200], Austria [24, p. 43], Kazakhstan [25, p. 237], France [26, p. 6], Switzerland [27, p. 43], Spain [28, p. 59], the Russian Federation [29, p. 756], Georgia [30, p. 323], Moldova [31, p. 354], and a number of other countries, crimes against the life and health of the individual are prevalent. However, regardless of the political or ideological expediency that foreign lawmakers guided in systematizing their national legislation, a special place in them still occupies state crimes, as evidenced by the sanctions of such norms, which indicate their increased social danger. Moreover, it is noteworthy that often foreign lawmakers sometimes encounter different types of crimes that do not coincide in their own affiliation.

In the United States of America, the most dangerous are crimes against state security. This circumstance is due to the existence of sufficiently severe sanctions for their commission: for the commission of some such acts, life imprisonment or even execution is provided for.

Very interesting is the fact that in the Federal Criminal Code (Section 18 of the United States of America Code of Conduct, such acts are not traditionally concentrated in an independent section, but "scattered" in different sections of the criminal law, for example, Section 115 "Betrayal, call to revolt , subversion "implies responsibility for betrayal (§ 2381), concealment of betrayal (§ 2382), rebellion or rebellion (§ 2383), rebellion (§ 2384), and Section 37, Espionage and Censorship, governs the responsibility for the collection, transfer or loss of defense information (§ 793), the collection or transmission of information of a defensive nature to assist the foreign government (§ 794), photographing and sketching of constructions of a defensive meaning (§ 795), disclosure of classified information (§ 798) [32, pp. 189], etc. etc. Thus, all state crimes in the United States of America can be divided into two groups: 1) "Betrayal, call for revolt, subversion", and 2) "Separate types of spyware activities."

Current UK criminal law is covered by the 11th volume of the "Collection of English Laws." The most dangerous state crimes are generally recognized as "Crimes against the Crown and the Government" (various forms of betrayal, incitement to insurgency, attack on the king, etc.), as well as other state crimes: espionage, terrorism, disclosure of state secrets, etc.

English scholar-lawyer B. Hallbury identifies a separate group of crimes – against the government and society. To these, he considers appropriate 18 categories of crimes: against the royal power; against public calm (call for revolt and disobedience, the creation of illegal societies, the illegal wearing of military uniforms, etc.); illegal possession of firearms; disclosure of state secrets; crimes against: officials, justice, property and powers of royal power, foreign states, religion, marriage and family, honor and morals, public health and safety, trade unions and entrepreneurs, as well as vagrancy, etc. [33, p. 291].

In the 9th edition of the English course Cros and Jones, "Introduction to Criminal Law" (1980), published after the death of the authors of the editorship of Karda, an independent chapter "Political Crimes", which combines treachery, terrorism, incitement to rebellion, is singled out. and the disclosure of state secrets [34, p. 153]. According to the analysis of such provisions, it can be assumed that in the English criminal law, normative prescriptions which include

liability for state crimes consist of a group of "crimes against government and society", as well as other normative regulations dispersed in various legislative acts of a similar nature.

A special part of the Criminal Legislation of the Federal Republic of Germany is headed by the rules on criminal offenses against the interests of the state. The system of socially dangerous encroachments on the interests of the state consists of the following groups of crimes: betrayal of peace; high treason; a threat to a democratic, rule-of-law state; betrayal of the homeland and threat to external security; criminal acts against foreign states; criminal acts against constitutional bodies, as well as related to elections and voting; criminal acts directed against the country's defense; resistance to state authority.

Section 1 of the Special Part of the Criminal Code of the Federal Republic of Germany – an independent component of the general system of criminal law, constituting a group of crimes – "betrayal of peace, treason and the threat to a democratic state governed by the rule of law." Accordingly, this section of the Special Part consists of the following chapters: "Betrayal of Peace" (80-80a), "State Treason" (81-83a) and "The Threat to a Democratic Legal State." The law-protected blessing in Chapters I and II of Section I recognizes the territorial and constitutional integrity of the Federation and federal lands. These norms define the following criminal acts: the preparation of an aggressive war (80); incitement to an aggressive war (80a); state betrayal of the Federation (81); state betrayal of federal land (82); preparing for state betrayal (83) [33, p. 298].

Section II of the Special Part of the Criminal Code of the Federal Republic of Germany is entitled: "Betrayal of the Motherland and the threat to external security". The crimes of this section can be divided into such subtypes: crimes related to treacherous extradition and disclosure of state secrets, as well as similar actions (94-97b, 100a) with various forms of espionage associated with treason to the Motherland (98– 100). Protected by these norms the legal good is the external security and international relations of the Federal Republic of Germany with foreign states [33, p. 299].

Given the fact that crimes that directly encroach upon the state security of the Federal Republic of Germany, enshrined in the first two sections of the group of attacks against the interests of the state, as well as taking into account their species object, the crimes under consideration can be divided into "Crimes against Territorial and the constitutional integrity of the Federation

and the federal states "(Section I) and" Crimes against Foreign Security and International Relations of the Federal Republic of Germany with Foreign States "(Section II).

Italy's Criminal Law in Section I of the Special Part contains a system of crimes against the state, which are divided into separate types: crimes against foreign security, internal security of the state, political rights of a citizen, foreign states, their heads and representatives.

Crimes against external and internal security that directly encroach on state security can be divided into two groups. The first group (internal security) can be considered proper "Encroachment on the integrity, independence and unity of the state" (Article 241), "Espionage" (Article 257), "Collection of information relating to the security of the state and are secret" (Art. 256), "Extraction for the purpose of political or military espionage of information that according to the decision of the competent authority can not be disseminated" (Article 287 of the Criminal Code), "Secret penetration into places of military significance" (Article 260 of the Criminal Code) [14, p. 148].

The second group consists of crimes against foreign security in Italy: "Disclosure of state secrets" (Article 261), "Disclosure of information that can not be disseminated" (Article 262) [14, p. 149].

In the criminal law of France, responsibility for state crimes is provided for in Book IV "Crimes and Offenses Against the Nation, State and Public Rest". The chapter headed this book, which provides for responsibility for betrayal and espionage. The main difference between such crimes, as in the current criminal law of Ukraine, is in the subject. So, if a similar crime was committed by a citizen or serviceman of France, then it is a betrayal if any other person is espionage (Article 410^{1}).

The same chapter also provides for liability for such crimes as: establishing relations with a foreign state in order to cause military actions or acts of aggression against France (Article 411^{4} of the Criminal Code); providing a foreign state with funds for hostilities or acts of aggression against France (Article 411^{4} of the Criminal Code); sabotage (Article 411^{9} of the Criminal Code); providing false information to the civilian or military authorities of France in order to assist the foreign state, which can harm the basic interests of the nation (Article 411^{10} of the Criminal Code), and some others [26, p. 339-342].

In the chapter of the second book "Other attacks on the republican institutes of state power or the integrity of the national territory", there are the following types of state crimes, such as encroachment, conspiracy, participation in the uprising, etc.

State offenses also include attacks on the security of the French Armed Forces: incitement of French servicemen to transition to service in a foreign state, to disobedience, demoralization of the army, obstruction of the movement of personnel or military equipment, etc. It follows that certain types of state crimes in accordance with the French Criminal Code, in a sense, are related to crimes in the field of military service [33, p. 297].

Consequently, according to such chapters, all state crimes can be divided into "Particularly dangerous encroachments on state security" and "Other attacks on state security".

Analysis of foreign criminal law in the field of state security shows that in one way or another, criminal acts, as a rule, are various forms of treacherous actions and all kinds of manifestations of espionage. However, along with this, a special place is taken by anti-state crimes connected with the rebellion (rebellion): the call for rebellion, rebellion, rebellion, rebellion (the United States of America); incitement to rebellion, call for revolt (Great Britain); conspiracy, participation in the uprising (France), etc.

The above circumstance shows that in foreign criminal law the priority attention is paid to the protection of the foundations of the constitutional system and state power as an indispensable condition for ensuring political security. After all, crimes of this kind are, in a sense, encroachments on the legal and democratic foundations of the functioning of state power and the constitutional system. As a result of such attacks, the state may or may cease to exist, or it will contribute to the approval of the anti-democratic form of government, which basically interprets the increased public danger of such crimes.

Thus, in connection with the increasing trend towards globalization, – notes BD Leonov, – armed conflict has become an influential factor in international relations, which expanded the boundaries of the object of regulation of international law, the content of which is covered by relations between the state and a certain social group of the population , which, with the help of weapons, exerts influence in order to forcibly change or overthrow the constitutional order, seize state power or other political goals [35, p. 69].

A similar problem of counteraction to the existing state power, the state system existed even in earlier periods of development of our statehood (at the end of the XIX – the beginning of XX century), when in the struggle of demo-

cratic forces with the tsarist autocracy began to develop different tendencies: intellectuals and other progressive circles have already opposed existing power. So, on the one hand, "settled" utopian tendencies about the gradual modernization of the existing society, the enlightened monarch, following the path of European democratic states, freeing people from serfdom. On the other hand, there is hope for the enlightenment of the masses, for transforming them into an independent force that resolutely overthrows autocracy. And on the third hand, radical, extremist views that exclude peaceful and gradual solving of painful problems and their calculations under construction, on the activity of a narrow circle of justice fighters, able to seize state power and rebuild the society on its own plan [36, p. 207]. What has happened to such phenomena (in the historical context) has long been known ... In today's conditions, our state also has to face a similar dilemma: either to develop such "progressive" democratic processes or to use rigid means of law to withstand them.

At the same time, the problem of the validity and necessity of criminal law protection of a democratic form of government in the theory and philosophy of criminal law is a rather interesting discussion inasmuch as the presence of such criminal-legal prohibitions in the domestic legislation, on the one hand, is natural and sufficiently substantiated, and from the other – the material component of the acts considered is characterized by a greater degree of political than legal expediency.

Similar provisions are also characteristic of individual measures taken to localize and stop sabotage and terrorist activities. It is believed that one of the most rational methods of combating any manifestations of international terrorism and sabotage is the application of the conventional mechanism, that is, the results of individual conventions that have as their object the fight against each individual form of terrorist or sabotage activity. Thus, the results of the study of foreign experience in counteracting these socially dangerous phenomena have shown that in the main states there are two ways.

The first is characterized by the fact that most of them have separate rules of criminal legislation, which provide for responsibility for terrorism and sabotage.

The second indicates that in other states, the terrorist nature of the act is regarded as a qualifying attribute, which is the basis for increasing the punishment for crimes in this direction [37, p. 278-280].

§ 2. Ways to improve the criminal law protection of the foundations of national security

Of course, the problem of creating an active legal model in the field of ensuring the protection of democratic foundations of a lawful state is one of the most priority and at the same time unresolved problems of modern national science of criminal law. The question of the form in which such protection should be carried out – say Swiss scholars G. Statenwert and F. Bommer in the context of the legal description of "crimes against the existence and constitution of the state" – whether it criminal or legal means, leads to profound considerations [38, s. 262].

For example, in such a leading state of the European Union as Germany, along with criminal law, constitutional and legal liability is applied, which indicates the existence of a peculiar state doctrine in the field of the protection of democratic ideology. This circumstance is explained by the provisions of Art. 18 of the Basic Law of the Federal Republic of Germany dated 23 May 1949, according to which everyone who abuses the freedom of expression, in particular freedom of the press, freedom of teaching, freedom of assembly, freedom of association, the right to confidentiality of correspondence, postal, telegraph and telephone communications, the right to property or the right to shelter to fight against a free democratic system ("freiheitliche demokratische Grundordnung"), deprives such constitutional rights [39].

It should be noted that virtually no constitution of any democratic state is similar in its content of the provisions are not contained. This kind of success of German scholars in the protection of democratic institutions from all kinds of unlawful encroachments is largely due to the fact that Germany itself has suffered the consequences of the tragic events of the first half of the XX century. And in order to exclude the possibility of repetition, such German lawyers and political scientists first developed and implemented an appropriate mechanism of state legal policy in the field of the protection of democratic institutions. But in the process of forming such a doctrine, they had to solve a wide range of problems, including the question of determining the acceptable legal limits of the protection of democracy in an open society (the antipode of the non-democratic "closed societies" by him – offene Gesellschaft – the term introduced by him in 1945 by philosopher Karl R. Popper) and the question of how much the stated constitutional provision in essence does not contradict itself (that is, is it consistent with the concept of a free democratic system in general) [40, s. 493].

In this section, it should be noted that in the Federal Republic of Germany, at the federal and regional levels, there are special government structures for the protection of the constitution (German-Verfassungsschutzbehöden), which, according to Schiller Kylitz, make a significant contribution to the protection of democracy [41, s. 214].

Thus, the presence of such practice gives to some extent a certain idea of the essence of the constitutional and legal protection of a democratic law-governed state, which makes it possible to compare the constitutional-legal and criminal-legal mechanisms of such protection. This, in turn, helps to identify the main differences between them, which are determined not only by their belonging to different types of legal responsibility, but also by the differences in the approach itself, the choice of a strategy to neutralize potential threats to the investigated object of criminal law protection.

In particular, if one considers the criminal law protection of the state as the full content, according to G. Statenwerta and F. Bommer, there is always a danger that this or that form of its implementation will lead to violations of the rights and freedoms of citizens, to which, however, he originally built up [38, s. 262].

In this regard, it seems not entirely clear, given the principles of the basic democratic categories of liberal justice, how our state, in the context of the ongoing ongoing military threat, the political crisis and rampant separatist sentiment, can "adapt" the modern Ukrainian society to the liberal democratic values, political culture of a new type. Accordingly, what legal instruments will it be able to neutralize the activity of extremist, ultralight or ultra-right elements that seek to replenish their followers in order to carry out in the future actions of an extremist, separatist nature, the implementation of another formally "legitimate", "democratic" power change (coup d'état) and so on.

In their aspirations to localize such a radical, destructive anti-state ideology from the public consciousness, the legislator, contrary to the principles of political freedom enshrined in the Constitution, has to counteract such manifestations by strengthening the measures of criminal-legal influence in the sphere of the functioning of public organizations of anti-state (anti-constitutional) orientation, including propagandist -aggitation activity of this kind.

As a result, the fate of legislative suppression of opponents in a democratic society reaches a strange paradox: if it is reasonably able to lead to a goal, then it is usually unnecessary; but if suppression becomes apparent due to any serious threat to the democratic system, the German scientist O. Kirchheimer rightly states that then his value (suppression) is most often limited and it conceals the rudiments of new, perhaps even great, dangers for democracy [42, s. 256].

Of course, such processes can lead to the gradual abolition of democratic principles proclaimed at the constitutional level and the violation of the existing socio-political equilibrium, and hence the emergence and spread of authoritarian and repressive ideology, which denies the natural principles of democracy. On the other hand, the lack of adequate measures of legislative response to the emerging threats to the rights and legitimate interests of the individual, the constitutional system, sovereignty, territorial integrity and immunity of Ukraine, as well as the untimely (in such cases) the use of appropriate measures of criminal repression can lead to the establishment of an anti-democratic regime, which subsequently calls into question the further existence of such a statehood, and hence the imminent death of it.

Such contradictions testify to the existence of various internal disagreements and controversial provisions in terms of conceptual understanding of democracy as the most perfect form of political organization of society. Without any doubt, the democratic principles of the formation of modern society are not flawless, but at the present moment of development of our state, neither the socio-legal nor the political-philosophical conceptions of the development of society have offered a more effective mechanism of organization of society, which guarantees the protection of inalienable natural rights and freedoms of man and citizen.

In Ukraine, in the process of developing a modern democratic state, the pro-Western (pro-European) vector of development predominantly dominates. However, our state (in the person of its legislator), taking into account the existing priorities of European values, including those related to the protection of democratic institutions, regulates the most stringent form of legal responsibility for committing socially dangerous attacks on democratic principles of the development of Ukrainian statehood. In the conditions of modern objective reality, when the threat to the external and internal security of Ukraine, as never before, is relevant, in our opinion, it is precisely the criminal-law tools that appear to be the most effective tools for protecting the foundations of the political system of society as an integral part of modern Ukrainian democratic statehood from various kind of anti-democratic criminal manifestations (separatism, extremism, political terrorism, etc.). It is with this circumstance that it finds its motivated

explanation of the criminalization of the Criminal Code of Ukraine such acts as actions aimed at violent change or overthrow of the constitutional order or the seizure of state power (Article 109), an attack on the territorial integrity and inviolability of Ukraine (Article 110) , financing of actions taken for the purpose of violent change or overthrow of the constitutional system or the seizure of state power, changes in the boundaries of the territory or the state border of Ukraine (Article 1102), an attack on the life of the state or the public th figure (p. 112) propaganda for war (art. 436), the planning, preparation, unleashing and conducting an aggressive war (Art. 437), attempts on the life of a representative of a foreign state (Art. 443) and others.

Certainly, the criminalization of such socially dangerous attacks can undermine a lot of liberal-democratic values, and hence the democratic nature of such a political regime. On the other hand, similar priorities in criminal policy are inherent not only to the Ukrainian state. According to Sh. Kayilitz, and in some highly developed democratic legal states (for example, in the Federal Republic of Germany), along with constitutional law, there is also the criminal-law protection of democracy [41, s. 215]. And this, in turn, means that the substantial (adequate) use of the criminal legal instrument for the effective protection of democratic institutions as an inalienable ideological basis of the constitutional system of Ukraine is in fact incapable of leveling out the fundamental foundations of a democratic rule-of-law state and identifying it with an authoritarian form of organization of power.

It should be noted that not so much the problem of choosing the necessary conceptual direction in the field of study determines the legitimacy and effectiveness of the criminal policy, as well as the availability of the mechanism in place to effectively develop and implement some of the regulatory requirements, which constitute Section I of the Special Part of the Criminal Code of Ukraine, who need a deep rethink. Consequently, the criminalization of only these criminal manifestations in the context of existing threats does not entirely correspond to all the tasks facing the modern criminal policy of Ukraine. In this regard, it seems to us, there is an objective need to reinforce this responsibility.

Such provisions indicate, in the main, that some kind of changes and additions require some crimes in the sphere of internal (political) security. So, in our opinion, the name of the syllables of crimes provided by Art. 109 and 110 of the Criminal Code of Ukraine (“Actions aimed at the forcible change or overthrow of the constitutional order or the seizure of state power” and “Attack on the territorial integrity and inviolability of Ukraine”) do not fully reflect their current political and legal essence, that is, the version of their names, however, and content, do not quite correspond to the threats and challenges that exist in our time. Moreover, taking into account the circumstance of the extent to which the threats of extremist and separatist manifestations, accompanied by physical and mental violence, the widespread use of all kinds of modern weapons by various criminal groups, and so on.

In this regard, we offer the title of Art. 109 of the Criminal Code of Ukraine “Actions aimed at forcible change or overthrow of the constitutional order or the seizure of state power” should be renamed “Political extremism”. This name is motivated by the desire to preserve the inviolability of the political and ideological foundations of the constitutional system of Ukraine, especially in the period of a deep internal political crisis and a significant activation of all kinds of political forces of extremist orientation. The use of the latest unstable political (sometimes revolutionary) situation may ultimately result in the unlawful overthrow of state power or the change in the constitutional order and the approval of an authoritarian regime in Ukraine. Consequently, the new name will most adequately reflect the socio-political essence of the act in question.

In addition, as practice shows, indicated in the disposition of Art. 109 of the Criminal Code of Ukraine often can be combined with the use of firearms or cold weapons. Similar actions may be committed with the use of specially prepared weapons by individual participants in such manifestations, and with the participation of illegal armed groups that joined in the execution of these actions. In this regard, it is proposed to make certain additions to the specified regulatory requirements, which, in particular, will entail and change the structure of the considered norm. So, in our opinion, ch. 3, 4 and 5 st. 109 of the Criminal Code of Ukraine should be endowed with the following content:

3. “Organization of an armed uprising in order to forcibly change or overthrow the constitutional order or the seizure of state power, as well as armed resistance to government military units called to restore the constitutional order, as well as active participation in an armed uprising or a conspiracy to commit the said actions”.

4. “Public calls for an armed uprising in order to forcibly change or overthrow the constitutional order or seize state power or armed resistance to government military units called for the restoration of constitutional order, as well as the dissemination of materials with appeals for such actions -”.

5. “Actions provided for in paragraphs 1, 2, 3, or 4 of this article, committed by a representative of the government, or repeatedly, or by an organized group, or with the use of the mass media -”.

It also seems fair, in our opinion, to give the considered regulation a part of the sixth – an encouraging norm, which should facilitate the perpetrator’s refusal to continue the criminal offense by guaranteeing her release from criminal prosecution subject to the necessary conditions:

6. “The person who committed a crime envisaged by this article shall be released from criminal liability if it has timely and voluntarily informed the state authorities of what has been done, thereby contributing to the prevention of further damage to the interests of Ukraine, and also if its actions do not contain evidence of another part of the crime.”

As regards Part 3, which occupies a central place in the innovation under consideration, it forms the basic forms of the objective side of such an offense, namely: “Organization of an armed uprising” and “Active participation in an armed uprising”.

Under the armed uprising, one should understand the implementation of various preparatory actions aimed at the active armed opposition to legitimate authorities in Ukraine. Such actions may be expressed in: planning such unlawful actions, violating in society a very negative attitude to the existing lawful power, recruiting future participants in such an uprising, providing material support to the participants of such an uprising, providing such participants with the necessary types of weapons, etc.

Active participation in an armed uprising involves the immediate commission of all kinds of violent actions combined with the use or attempt to use the weapon to achieve the desired criminal result.

Such an addition should also be made in the provision of Art. 110 of the Criminal Code of Ukraine – “Attack on the territorial integrity and integrity of Ukraine”. In the new wording, such a norm, in our opinion, should be called “Separatism.” This wording in modern conditions, as never before, rightly emphasizes the legal nature of this crime. This axiom, among other things, finds its logical confirmation in the scientific developments of domestic researchers V.S. Batyrrareyeva and N.Vetes Neves, who study the phenomenon of separatism, as well as the problems of determining the criminal forms of separatism as one of the most dangerous threats to state sovereignty in any -any country of the world [43, p. 65-69].

At a careful analysis of the considered norm, some discrepancies in the legal formulation of the legal features of such a crime are drawn to attention. So, in part 3 of Art. 110 of the Criminal Code of Ukraine, the legislator indicates the possibility of an offense of such a crime of consequences in the form of “death of people” or “other grave consequences”. However, it is difficult to imagine that such effects are possible without the use of violent acts, which are not mentioned in the previous paragraphs of this article. Consequently, in our opinion, it is necessary in Part 2 of the article to indicate the possibility of committing it through the use of violence. From here we get the following wording of this part of this article:

2. “The same actions, if combined with the use of physical or mental violence, or committed by a representative of the government, either repeatedly or by prior conspiracy by a group of persons, or connected with the incitement of national or religious hatred -”.

Moreover, it is difficult to imagine that separating unconstitutional parts of the territory of Ukraine (for example, self-proclaiming an independent territory of Ukraine by an independent state) will not lead to armed confrontation of separatists with government forces. Consequently, as in the case with the previous norm (Article 109 of the Criminal Code), such an addendum needs and is considered a norm. In this regard, it is proposed to lay out parts of the third, fourth and fifth st. 110 of the Criminal Code of Ukraine in the following wording:

3. “The organization of actions envisaged by part one of this article, combined with the use of weapons or threats of use of weapons, as well as armed resistance to government military units designed to restore the territorial integrity of Ukraine, as well as public appeals to such actions or participation in them, – »

4. “Actions provided for by the third part of this article, committed by a representative of the authorities, either repeatedly, or by an organized group, or with the use of mass media -”.

5. “Actions provided for in parts one, two, three or four of this article, which resulted in the death of people or other grave consequences -”.

Also, as in the preceding case, and for the same reason, it is proposed to give the article under consideration the incentive provision set forth in part 6 of this article:

6. “The person who committed a crime provided for by this article shall be released from criminal liability if it has timely and voluntarily informed the state

authorities of its actions, which contributed to preventing further damage to the interests of Ukraine, and also if its actions do not contain evidence of another aspect of the crime."

In our opinion, the provisions will strengthen the criminal reprisals against the anti-state encroachments considered in this case, and, accordingly, reorient the methodological principles of the existing criminal policy of our state in terms of the severity of the measures of criminal repression in order to localize such anti-state criminal manifestations in modern conditions.

In addition, these provisions allow to distinguish in the current criminal law of Ukraine the types of socially dangerous attacks, in which the bases of national security of Ukraine can act as the main or additional objects. Thus, taking as a basis the type of the considered object, it is possible to differentiate such crimes (as foreseen by the current Criminal Code of Ukraine) into the following groups: 1) crimes directly encroaching on the basis of the national security of Ukraine (the basis of the national security of Ukraine is the main object) and 2) crimes encroaching indirectly (indirectly) on the basis of national security of Ukraine (the bases of national security of Ukraine act as an additional object).

Thus, we have identified the types of socially dangerous encroachments in which the bases of national security of Ukraine can act as the main or additional objects: 1) crimes that directly encroach on the basis of the national security of Ukraine (the basis of the national security of Ukraine is the main object): .st 109, 110, 110^2, 111, 112, 113, 114, 114^1, 258, 258^1, 258^2, 258^3, 260, 294, 328, 329 of the Criminal Code of Ukraine; 2) crimes encroaching indirectly (indirectly) on the basis of the national security of Ukraine (the bases of national security of Ukraine act as an additional object): Art. 258^4, 258^5, 335, 336, 337, 436, 437, 438, 439, 440, 442 of the Criminal Code of Ukraine.

Taking into account the group of crimes of anti-state orientation that we have provided and the author's conception accordingly, we consider that the basic and additional objects of such socially dangerous encroachment should be considered at the basis of the scientific classification of the analyzed group of crimes.

Conclusions to Section VIII

Summing up the conceptual situation in the part of improving the criminal-law protection of the foundations of national security, it should be emphasized that the effectiveness and high level of criminal legal action are mainly determined by the possibility of establishing an exhaustive range of socially dangerous encroachments of anti-state orientation. We believe that the basis of their formation is the main and additional object of the attack, which allows to distinguish in the current criminal law the system of crimes: who directly encroach on the specified object of criminal-legal protection; which indirectly (indirectly) encroach on such an object. The given provision allows to some extent unify and differentiate the existing criminal legislation in the part of counteracting the unlawful encroachment on the basis of national security of Ukraine, and, therefore, significantly improve the effectiveness of combating them at the present stage of such protection of the object under consideration.

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SECTION IX

INTERNATIONAL LAW-ENFORCEMENT PRACTICE OF ENVIRONMENTAL LEGAL ORDER

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Annotation

The stydy considers international experience in the field of environmental law enforcement and ways of improving administrative and legal implementation of this area.

It is noted that international legal norms in the field of environmental protection are the basis of international environmental law and order.

International cooperation should be carried out on an equal and mutually beneficial basis. With regard to environmental issues, this means, in particular, the intensification of the trade exchange of environmentally friendly technology and technics, the sale of patents and licenses related to environmental protection, taking into account the experience of industrialized countries, assisting to countries, that are developing, in the choice of such ways and forms of economic development that does not cause a deterioration of the environment.

It is more correct to say that international ecological law-enforcement as a legal phenomenon is formed on the basis of international legal documents, that guides countries, other subjects of international law to ensure a favorable environment and rational using of nature for the benefit of present and future generations.

It was emphasized on the necessity of systematization of environmental legislation and proposed some changes in the current normative legal acts.

Preface

Harmonious relations of society with nature in modern conditions can not be formed without the influence of general legal and administrative-legal mechanisms, which stimulate every citizen to rational treating nature, its resources and ecological systems.

Preservation of natural resources of the country becomes an extremely important problem, the decision of which depends on the present and future generations. Therefore, there is the question of the necessity of developing of another, fundamentally new attitude of the state to the issue of environmental protection, primarily in the context of environmental law enforcement.

Law acts as the most effective mechanism for stimulating citizens of a high level of environmental justice, forcing all natural users to uphold the proposed level of environmental law and order. This order of rational and careful using of nature is formed under the influence of administrative and legal methods and means. The rule of law occupies a special place in the system of legal categories, which effectively provide rational using and proterction of nature. The ecological order of law is currently used only as a legal definition, which is enshrined in some normative legal acts. Achieving the proper ecological order is an extremely important task for Ukrainian society, taking into account the current difficult ecological situation in Ukraine. Therefore, the development of theoretical problems of the new concept of environmental law and order – it is one of the pressing problems of science of administrative law.

§ 1. International experience in the field of providing of environmental legal order

International legal norms in the field of environmental protection are the basis of international environmental law and order. However, norms are implemented in the behavior of subjects of international environmental law.

Even preamble and principles of the Stockholm Declaration of 1972 note that the protection and improvement of the environment, in which a person lives, is one of the most important problems that directly affects the prosperity of peoples and the economic development of the entire world. Also, the declaration reveals the content of the principle of cooperation: "International problems related to the protection and improvement of the environment, should be solved in the spirit of cooperation of all countries, large and small, on an equal basis [1, p. 120].

International cooperation should be carried out on an equal and mutually beneficial basis. With regard to environmental issues, this means, in particular, the intensification of the trade exchange of environmentally friendly technology and technics, the sale of patents and licenses related to environmental protection, taking into account the experience of industrialized countries, assisting to countries, that are developing, in the choice of such ways and forms of economic development that does not cause a deterioration of the environment.

Depending on specific problems, environmental cooperation can be attributed to the sphere of political, economic, scientific-technical or legal cooperation of states.

If we take into account an overview of the tendencies of European countries' environmental policies in the first quarter of the XXI century, they indicate a dramatic evolution of public opinion on the importance of the natural environment as the primary source of economic and social development [2, p. 198].

We can better see this if we look at the evolution of the ecological regulatory framework in Europe, one of the key elements of which, in addition to the directives, is the ecological action plans of the European Union (EU). The first ecological action plan of the EU was adopted in 1973, immediately after the conference in Stockholm. It was aimed at achieving limited environmental objectives, namely on: prevention and reduction, where possible harmful effects of pollution on the environment; promotion of ecologically sound management, stopping of exhausting exploitation of natural resources and violation of ecological balance; improvement of living conditions of people through improvement of the ecological state of the environment; integration of environmental factors into urban planning and land use; development of mechanisms for solving environmental problems with the smallest economic and social costs.

Based on the above goals and recommendations, conceptual foundations for practical activity for 20 years have been developed. A large-scale process of creating ecological public and non-governmental organizations, ministries of ecology has begun.

The main regulatory instruments for environmental policy began to be implemented and applied, with the help of which three main directions of activity were provided: the scientific substantiation of environmental programs and measures through the accumulation, analysis and systematization of environmental monitoring data; formulation of policies and strategies in a complex with the development of concrete measures; in particular, the development and implementation of environmental standards and the practical application of the «polluter pays» principle through fines for environmental pollution; the formation and implementation of relevant state institutions. In the 80 years of the 20th century environmental policy began to be filled with real content [2, p. 199].

At present, the wide and consistent implementation of such important requirements has started at the national and international levels, such as: integration of environmental and sectoral policies; compulsory application of Environmental Impact Assessment Procedures (EIAP) at all levels of using; public participation in such procedures; implementation of environmentally friendly technologies for preventing harmful transboundary environmental impacts through international cooperation.

It is logical that in the 80's of the 20th century such instruments of ecological policy began to come to the fore: payments for the using of natural resources and pollution of the environment; subsidies for the introduction of environmentally friendly and environment-friendly technologies; environmental insurance.

Since 1992, the countries has officially introduced the term «sustainable development » and seeked to build their lives in accordance with the principles enshrined in the Rio Declaration of 1992. The Rio Declaration on Environment and Development of 1992 states: caring for a person is a leading player in sustainable development.

The next important step in the implementation of the concept of sustainable development was the The World Summit is Sustainable Development in Johannesburg of 2002 [3, p.135]. The concept of liberalism is now virtually indistinguishable in the world market. The process of finding the golden mean between the application of the concepts of liberalism and sustainable development continues. It will be long, but productive, since the ecological component of the concept of sustainable development does not in any way imply additional obstacles to international trade (Principle 12 of the Rio Declaration of 1992). It is only about the necessity of maximally taking into account environmental requirements in the course of economic activity, recognition of environmental problems of the general and the establishment of cooperation between the states in their solution.

With regard to the possible interpretation of the concept of sustainable development for providing comprehensive economic assistance to developing countries from developed countries, as their additional obligation, it do not find confirmation in life. The duty of developed countries to assist developing countries exists to the extent that they voluntarily undertake such commitments.

Consequently, on the one hand, after the 1992 Rio Conference, countries recognized the present danger to the future of mankind and expressed their readiness to agree on solving common problems and even on the partial delegation of

their sovereign rights. However, at the same time, there are other trends. At the special session of the UN General Assembly in June 1997, devoted to the fifth anniversary of the UN Conference on Environment and Development, it was determined that the economic, social, technical development of society on Earth continues with a minus sign in relation to the environment, in essence leads to an ecological catastrophe [3, p. 145]. What does not allow states to solve these global issues that prevented the achievement of common goals? To find answers to these questions, one should consider the legal aspects of the problem.

In general, sustainable development of society is possible only in the world order, which requires a comprehensive security system that includes military, political, economic, environmental and legal security. At the same time, if it is a question of military, political and economic security that has long been known, its international legal principles are well known, then environmental safety is mostly a slogan.

It is more correct to say that international ecological law-enforcement as a legal phenomenon is formed on the basis of international legal documents orienting the state, other subjects of international law to ensure a favorable environment and rational nature using for the benefit of present and future generations. At the same time, it is important to understand that this problem can not be solved within the same region for a comprehensive approach, the achievement of a favorable environment for the sustainable development of all humanity. In this sense, at present, the question of the presence in developed countries of the obligation to provide effective assistance to developing countries is increasingly being raised. This duty is enshrined in many documents related to the field of the environment.

With regard to environmental human rights, at the present stage of the greatest progress in monitoring their provision at the international level, the European Court of Human Rights has come to the conclusion that, in the absence of a special article, it accepts and examines complaints on environmental issues, guided by Art. 8. The next important step in protecting environmental human rights within Europe was the order of Art. 37 of the European Union Charter of Fundamental Rights of 2000, as well as the adoption in 1998 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. However, in general, there are problems applying the Charter, assessing the legal force of its provisions, as well as the fact that in Art. 37 are not fixed specific environmental rights. The absence of a special article on environ-

mental rights can be found in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 [5, p. 67].

Consequently, in the context of sustainable development, the problem of ensuring international environmental legal order is important, because it is defined as a system of legal relations, which are drawn up in accordance with the norms of international law, designed to promote the rational use of natural resources and the provision of a favorable environment for the life of present and future generations. International ecological law-enforcement as an integral structure has its basic principles and principles.

In our opinion, the most important sources of international environmental law are the UN Declaration on Environment, adopted in 1972 at the UN World Conference on Environmental Issues (Stockholm, Sweden); World Conservation Strategy, adopted by IUCN (1980), "Declaration of Rio", which was approved by the International Conference on Environment and Development in 1992. (Rio de Janeiro, Brazil) [6].

The specialized organizations called the United Nations Environment Program (UNEP) and other United Nations bodies (UNESCO, FAO, WHO, IAEA) play a significant role in implementing the provisions of these instruments and other international conventions.

The solution of the current environmental problems in Ukraine is possible only in the context of wide and active international cooperation of all countries in this area. This is primarily due to the following circumstances: the global nature of environmental problems; transboundary nature of environmental pollution; the international obligations of Ukraine regarding the protection of the natural environment; the necessity for an international exchange of experience and technology, the possibility of attracting foreign investment [6].

Ukraine is a member of more than 20 international conventions and bilateral agreements related to the protection of the environment. Ukraine's international commitments to the natural environment, the use of natural resources and the provision of environmental safety are derived from the provisions already ratified, as well as those under consideration of conventions and agreements.

Ukraine's compliance with the obligations arising from the above-mentioned multilateral agreements requires bringing domestic legislation in line with international law and taking into account existing international practice when drafting new legislative acts.

Along with the fulfillment of Ukraine's obligations stemming from multilateral agreements in the field of environmental protection and environmental safety, in the long run, it is important to further expand international cooperation in the following areas:

– cooperation with international organizations of the UN system in the field of environmental protection (UNEP – United Nations Environment Program, UNECE – UN Economic Commission for Europe, UNDP – United Nations Development Program, IAEA – UN International Nuclear Energy Agency, FAO – Food Organization Agriculture, Center for Human Settlements, Commission on Sustainable Development, Global Environment Facility, etc.);

– participation in regional environmental events;

– participation in international programs for the elimination of the consequences of the Chernobyl accident (problems of waste, transport of air and water pollution, etc.).

In general, in our opinion, the environmental policy of Ukraine is the basis for creating prerequisites for sustainable development of the country.

The draft Strategy for National Environmental Policy for the period up to 2020, developed in 2008, is based on a complex of administrative, economic, social and environmental measures. At the same time, the concept of the national strategy of environmental policy requires taking into account modern international principles of coexistence of mankind and the environment, based on world experience, perspectives and contradictions of the implementation of environmental policy by governments of world powers, international organizations, and current trends in overcoming environmental threats.

The first steps in creating mechanisms for protecting against environmental threats at the level of international cooperation have already been made. Under the auspices of the United Nations, a number of measures have been taken, among which:

– in the 1992 UN Conference on Environment and Development in Rio de Janeiro, the "Agenda for the 21st Century" was adopted;

– The Kyoto Protocol adopted in 1997 at the Conference of the Parties to the United Nations Framework Convention on Climate Change, which stipulates the commitment of developed industrialized countries to limit the levels of greenhouse gas emissions in order to avoid a dangerous violation of the climate system; [7, p. 37];

– the outcome of the Summit in Johannesburg in 2002 was the adoption of "Declaration on Sustainable Development". It identifies key tasks for strengthening the foundations of sustainable development, its economic, social and environmental components. One of the ways to overcome global environmental safety problems is the necessity to change the pattern of consumption and production, ensuring the protection and rational using of the natural resource base [8].

The evolution of the European Union's environmental policy has formed clear approaches to environmental issues, has contributed to the establishment of the EU as an influential subject of international environmental policy. Between 1973 and 2000, five European Environmental Action Programs were introduced. The Sixth Action Program (2001-2010) was adopted on the eve of the large-scale EU enlargement. The program provides: coordination of environmental measures not only of Member States and candidate countries and other European countries, but also international environmental organizations; development and adoption of seven thematic strategies related to air pollution, protection of the marine environment, sustainable using of resources, prevention of waste generation and disposal, sustainable using of pesticides, soil protection, and protection of the urban environment [11, p. 156].

The main members in initiating and implementing the EU environmental policy are:

– The European Commission – the main participant in the process of policy development in the field of environmental protection. Since 1992, non-governmental organizations have gained significant influence in environmental policy.

– Council of the EU. Ecological ministers, who have greater freedom of action at EU level, often manage to adopt legislative acts that would hardly be supported by national governments.

– The European Parliament, unlike many parliaments of the Member States, has a much greater impact on the Community's environmental policy.

– The European Environment Agency was created in accordance with the EU Council of Ministers resolution of May 1990 as an independent body with the objective of protecting and improving the environment in accordance with the provisions of the Treaty and the Community Environmental Action Programs.

– The EU Court plays an important role in deciding which environmental measures are permissible in the context of a single internal market, and which potential claimants have the right to challenge environmental decisions. The EU Court upheld EU environmental protection policy even in the absence of a proper legal base in Community treaties over a period of time [10].

The modern environmental initiatives of the European Union testify to the EU's readiness to assume leadership in combating global climate changing.

From the beginning of the 21st century, European climate change policies focused on harm reduction measures and attempts to persuade international partners to sign the Kyoto Protocol. However, global climate challenges have prompted EU politicians to adopt in June 2007 the first program document – the Green Paper "Adapting to Climate Change in Europe – Options for EU Action" [11, p. 245]. The European Commission document states that in order to address global warming, steps must be taken to adapt to changing climatic conditions, along with measures to reduce greenhouse gas emissions. The Green Paper gives an exact definition of the strategy of adaptation as a set of measures to combat the effects of climate change – an increase in temperature, a decrease in water resources in case of their occurrence and prediction of possible changes in the future. Adaptation should include national and regional strategies, adaptation measures can be of a preventive or reactive nature.

Taking into account the global nature of environmental problems, the establishment and implementation of a national environmental strategy and environmental law enforcement are impossible without using international experience. At the same time, attempts to overcome global ecological crises have shaped the approaches of the world community in which the implementation of any specialized programs is activated with the participation of national governments. Therefore, Ukraine today has a unique opportunity to highlight its vision of global environmental security, become an active participant in the formation of international strategies in this area. In particular, the need to publicly publish at the international level its position on rehabilitation and adaptation of affected Chernobyl territories on the basis of biological, medical, socio-psychological data of profile departments and ministries with the view of further coordination of efforts of our state and the international community in solving the ecological perspective of these lands are very relevant.

An indication of contemporary world environmental strategies is the priority of the problem of global warming. Among the measures to reduce the negative impact of emissions into the atmosphere, the emission trading system is considered to be a cost-effective system.

The commercialization of the idea of combating global warming carries risks in the form, first, of the probability of the concentration of environmentally harmful production on the territory of countries that save their emissions, and secondly, to lead to one-dimensional solution of environmental problems without taking into account other constituent threats the environment – soil contamination by heavy metals, water areas of the oceans and seas with waste, etc. Therefore, Ukraine may act as an initiator of additional and voluntary restrictions on harmful emissions in addition to those already stipulated by international agreements.

In our opinion, the national ecological strategy at the present stage should create the preconditions for solving a complex of problems in the field of the environment. Strategic planning of environmental law policy should be based on the principles: political priority of solving environmental safety issues; integration of the ecological component in sectoral policies – economic, social; environmental responsibility of the subjects of the industrial sphere; balancing and mutually supplemented national and regional environmental priorities; scientific and expert substantiation of means for effective overcoming of environmental threats.

Also, in our opinion, the draft National Ecological Policy Strategy of Ukraine until 2020 should be supplemented: an analysis of the possibilities of implementing environmentally-friendly technologies in industrial production; forecasting of economic efficiency of ecologically pure agricultural production; conclusions on creation of a favorable investment climate for eco-innovation development; in part as regards the scientific support of the national environmental policy to submit expert assessments of scientific developments of domestic scientists to consider the prospects of creating an eco-innovation market, the national base of scientific inventions, technologies, projects, programs.

Creation of the concept of international environmental safety is a logical response of humanity to aggravating the threats of the global ecological crisis. The implementation of international environmental safety consists in the creation of a system of state-legal measures aimed at limiting the negative human impact on the environment, and, in the future, on achieving a balance between the use of human resources and the restoration of natural resources. The achievement of harmonious coexistence of man and nature – it is the ultimate goal of international environmental safety. The construction of the system of international ecological security combines elements of regulation of the using of

natural resources, economic development, socio-cultural progress of humanity and many other factors.

§ 2. The ways of improvement of administrative and legal providing of environmental legal order

Preservation of natural resources of the country becomes an extremely important problem, the present and future generations depends on the decision of it. The development of a fundamentally different, new attitude of the state towards the issue of environmental protection in the context of ensuring, above all, environmental law enforcement is important.

In our time, although the effectiveness of the protective mechanism of ensuring environmental safety finds support in our country, but due to a number of economic and social circumstances, backing is extremely low. There are no single system of effective management of natural resources, reliable legal and economic grounds for environmental protection and environmental law enforcement.

We can assert that now the legal framework for the rational using of natural resources is not yet thoroughly formed. It is undergoing a period of continuous reform and, as a result, represents a largely unsystematic set of constitutional provisions, laws, subordinate regulations of interagency, as well as sectoral normative documents are regulating the using of certain types of natural resources.

In today's conditions of formation of the legal system of Ukraine, its reformation is connected with the solution of systematization of domestic legislation with increasing its stability, elimination legal conflicts, and creation a scientifically substantiated system of normative and legal acts.

In our opinion, it would be worthwhile to study in more detail the modern scientific views of leading lawyers in relation to the above-mentioned problems.

For example, Yuriy Shemshuchenko noted the necessity of developing and sending to the Verkhovna Rada a qualitatively new project of the Environmental Code of Ukraine, which will take into account the subjective right to environmental safety and will determine the legal mechanism for its implementation. According to the scientist, the development of national environmental legislation should take place through harmonization with European and international legislation [13].

He notes the necessity for international cooperation in the development of international and national environmental law. In his view, the international community at the present stage has faced with the necessity of developing and adopting an act that should become a key to the field of international environmental law. It may be the Ecological Constitution of the Earth. According to Y. Shemshuchenko, the Ecological Constitution of the Earth should become an act of a political and legal nature, a legal form of consolidation of environmental human rights. At the same time, we should not try to regulate the diversity of environmental relations by the said act. International experience (in particular, the experience of the codification of international maritime law) suggests that such acts are generally of a framework nature.

Consequently, the Ecological Constitution of the Earth should consolidate the basic principles relating to international cooperation of countries in the field of public relations. The scientist also supports the idea of setting up the International Council for the Ecological Security of the United Nations, such as the UN Economic and Social Council. It would be advisable to give this Council the status of an international specialized organization and give it wide powers to ensure a safe environment, coordinate international environmental cooperation, etc. An integral part of the mechanism for the implementation of the Earth's Ecological Constitution should be judicial protection.

At the same time, Y. Shemshuchenko notes that the issue of the creation under the auspices of the United Nations of the specialized International Ecological Court has come to an end as an integral part of the new world rule of law, based on the Ecological Constitution of the Earth.

Thereby, proposed by Yuriy Shemshuchenko Ecological Constitution of the Earth can solve a lot of common problems, which are important for the world community and its members: forming the system of ecological human rights and consolidation its right to a safe environment; determination of the directions of world environmental policy, as well as environmental cooperation between counties and international organizations; filling gaps in the international legal regulation of environmental relations and making the systemic branch of international environmental law; offering additional international organizational, legal and judicial guarantees of ensuring environmental law and order in the world; promotion of development of national environmental legal systems [13].

Galina Baluk believes that the systematization of environmental legislation will increase its effectiveness. In particular, it is important to develop

a unified approach to the definition of environmental legislation and to study the experience of systematization of environmental legislation. G. Balyuk notes that the overall objectives of systematization in the field of environmental legislation are making the legal regulation of environmental relations the most effective, high-quality and stable in order to establish and maintain the rule of law in the sphere of interaction of society and nature that would guarantee the right of everyone to a favorable environment. The final result of this activity should be the creation of a single codified act of the industry – the Ecological Code of Ukraine [13].

In particular, the head of the All-Ukrainian Ecological League Tetyana Tymochko emphasizes that one of the most important problems in the state is modern environmental legislation, the gap between science and lawmaking, as well as between the norms of legislation and practice. For example, in accordance with the provisions of the Law of Ukraine "On Regulation of Urban Development" of 17.02.2011, the state ecological expertise of construction projects, including projects for the construction of nuclear facilities, is completely offset. T. Timochko believes, that if current environmental legislation is ineffective, it is not subject to systematization, and therefore it is expedient to develop modern legislation involving scientists and representatives of environmentally-oriented business. In this regard, civic organizations place high hopes on scholars [13].

Pavlo Kulinich, in the report "Codification of Land Law of Ukraine: A Retrospective and Prospect", noted that this document is not a product of codification, but as a result of bringing the norms of the Land Code in 1992 in line with the provisions of the Constitution of Ukraine. Since the current LCU is not fully operational, it is impossible to evaluate its effectiveness until the expiration of the Transitional Provisions. The scientist believes that before the completion of the land reform it is inappropriate to codify the land legislation.

The scientist drew attention to the fact that in the history of land law of Ukraine there was no period during which land relations was regulated only by one legal act – the Land Code. Almost all land codes regulated land relations in close cooperation with other land-legal acts, adopted both before the entrance into force of the next Land Code, and after its approval. The current LCU is a legislative act, which codifies only the basic, most principled provisions and norms of the land legislation of Ukraine.

The Code does not contain all of its norms, which makes it necessary to adopt a number of other legislative acts on land relations regulation, which will

develop and supplement the rules of the LCU. Consequently, it should be considered an incomplete code, that is, a code that codifies only a part of the norms of land and legal acts.

P. Kulinich believes that the legal preconditions for the elaboration and adoption of a complete LCU will arise when, first, the land legislation of Ukraine, the rules of which regulate all types of land relations without any gaps, will be fully formed, and, secondly, all or most of the land laws will ensure the stability of land relations in Ukraine. According to the scientist, in the future codification of land legislation is necessary at the level of legal regulation of the using of certain categories of land. The adoption of the Law of Ukraine "On agrolandscapes" with the purpose of legal protection of such natural objects as forest bands, which are used by agricultural producers. Also, P. Kulinich proposed creating a joint body to develop a consolidated scientific position on rulemaking in the field of land relations, for example, the Association of Environmental Lawyers. It is also proposed to consolidate the necessity of a public scientific expertise of draft legal acts at the legislative level [14].

Petro Laptechuk proposed to decide on the range of objects of legal regulation of the future Ecological Code of Ukraine, which may become a kind of ecological constitution, the norms of which will be taken into account when developing normative legal acts regulating human life and the development of society. Another important direction for improving the environmental legislation of Ukraine is harmonization of it with the legislation of economically developed countries, which over the past decades have accumulated significant experience in the formation of environmental legislation and the mechanism for implementation in practice. At the first place, countires-members of the European Union, whose membership in the future may be Ukraine, should make it [13].

Svetlana Kuznetsova stresses the urgency of the adoption of the Environmental Code of Ukraine, which will lead to the repeal of certain legislative acts that will become its components, raising to a level of the law a number of legal requirements, which they now contain bylaws, the introduction of international environmental standards in the day-to-day practice of state institutions, public organizations and citizens in order to provide a systematic environmental policy. The Code should ensure the observance of a single terminology, contain the maximum number of rules of direct action, avoid declarative and stand-by norms, and determine the procedures for implementation. The adoption of the Environmental Code of Ukraine, in the opinion of the scientist, may precede approval of the relevant Concept, which will define the basic requirements for the specified normative act.

Elina Poznyak stresses on the necessity of systematization of the legal rules that are part of separate inter-branch institutions, in particular, in the field of environmental insurance. The first step towards systematization of legislation on environmental insurance should be its codification in order to eliminate collisions and duplications, establish compliance with international requirements in the field of environmental risk insurance, and the formation of insurance funds for the financing of environmental damage. It will be an important prerequisite for the elaboration and adoption of the Law of Ukraine „On Environmental Insurance", the implementation of which should be carried out with the help of sources of environmental, economic, civil and other branches of law [15].

Andriy Yevstigneyev proposes to generalize and simultaneously update the legislation in the field of environmental safety, to study the possibility of developing a system-building normative act at the level of the law, for example, the Constitution of the ecological security. For this purpose, it would be useful to study the work of the scientists of the Kyiv School of Environmental Law on the drafting of the Law „On Environmental Safety" [15].

As we have already mentioned, we support the opinion of modern leading lawyers Y. Shemshuchenko, P. Lapechuk, S. Kuznetsova on the relevance of the adoption of the Environmental Code of Ukraine as the basis of environmental law. In our opinion, such Code could in the General part contain the tasks of the national legislation on legal regulation, objects and principles of legal protection of the environment, legal regulation of property relations, etc., and in the special – the Special part – the legal regime of protection and use specific natural resources.

We also believe that in order to achieve this goal it is necessary to determine a complex of tasks for the systematization of environmental legislation: practical and scientific. In our opinion, there are such practical tasks: a) elimination of conflicts and gaps of environmental legislation related to legal regulation, comprehensive improvement of the quality of its content (improvement of the conceptual apparatus, the formulation of specific environmental laws, mechanisms for the implementation of environmental legislation, targeting their best practices in foreign law, if possible, their using, compliance with the principles of international treaties, etc.); b) overcoming unnecessary narrowness of the subject of legal regulation of various laws, consolidation of normative legal

acts; c) improving the quality of environmental legislation in terms of taking into account the achievements of legal science and ecology; c) inventory of ecologised acts and acts for which ecologization is necessary, taking into account the essence of their regulated relations in the aspect of revealing whether of the existence or absence of ecological-legal norms in them is substantiated; d) determination of the necessary degree of detailing of legal regulation of environmental relations at the legislative level; e) strict compliance with the ecological legislation that is being systematized, the Constitution of Ukraine; f) using of judicial practice; g) maintaining the positions, which was achieved in the legal regulation of environmental relations. There are the following scientific tasks: a) formation of scientific basis of systematization within the branch science; b) solving general theoretical problems of systematization and elimination of general logical contradictions in the process of sectoral systematization; c) establishment of criteria for the inclusion of normative legal acts in the system of environmental legislation, as well as criteria of justification and necessity of ecologization of normative legal acts of other branches of legislation; d) clarification of the significance of judicial practice in order to systematize environmental legislation.

In our view, the systematization of environmental legislation can be effective only if it is based on certain legal principles. The principles of systematization of environmental legislation include lawfulness, planning, science, democracy and transparency, harmonization of national ecological and legal norms with international legal norms, completeness, comprehensiveness, complexity, continuity and phased systematization. We also believe that the principles of systematization of environmental legislation should be established at the legislative level, in normative legal acts of a programmatic nature, which determine the directions of development of the environmental legislation of Ukraine.

The next link in improving environmental law enforcement is administrative responsibility in the field of nature management. The question arises as to increasing responsibility in this area.

In our opinion, every head of Code of Ukraine on Administrative Offenses, as its structural component, should be logically integral as an approach to the regulation of the whole set of issues, as well as important content.

We believe that an increase in the amount of sanctions in the form of a fine will help to reduce the number of violations in the environmental sphere. When increasing the amount of fines, it is necessary to take into account that sanctions

for administrative offenses in the environmental sphere should not be equal to, or significantly exceed, the maximum amount of fines for committing crimes, that is, to exceed the criminal liability. Because it violates the logic of building of the system of punishment in the articles of the Special Part of the Criminal Code, as well as penalties for committing administrative offenses in CUoAO and other legislative acts. The application of penalties for the commission of administrative offenses should aim at creating an offender psychological barrier against the commission of such offenses.

It should be taken into account, that in addition to administrative liability, these public relations may also be protected by the using of civil liability by compensation for damage to the environment in the manner prescribed by art. 40 CUoAO and relevant articles of the Civil Code of Ukraine and laws of Ukraine on environmental protection, which may become an effective incentive to comply with the requirements of the legislation on environmental protection.

Also, attention should be paid to the fact that the amount of the fine should be such that state inspectors and state environmental inspectors will be able to perform their duties to the fullest extent. Because according to the requirements of part three of Art. 242-1 CUoAO a fine of up to three non-taxable minimum incomes of citizens may be charged on the spot by officials. The minimum amount of fine that the bill proposes to establish for the commission of the offense provided for by Article 85.3 of the CUoAO is for citizens from ten to thirty and for officials from twenty to fifty tax-free minimum incomes [16].

In our opinion, it is also necessary to pay attention to such shortcomings. For example, in the text of the sanction of part one of Article 85 of the CUoAO, the wording "... imposition of a fine on citizens from six to sixty tax-free minimum incomes and warning or ..." is unsuccessfulThe disclosure of these types of penalties through the combination "and" makes it possible to interpret the prescription in such a way that the law permits imposing on citizens a fine and a warning simultaneously, contrary to the requirements of Article 25 of the CUoAO. Therefore, the list of these penalties should be put through the "or" conjunction. The following version of the sanction of the first part of the CUoAO is proposed: "It entails the prevention or imposition of a fine on citizens from six to sixty tax-free minimum incomes, or a warning, or imposition of a fine on officials – from thirty to ninety tax-free minimum incomes".

When we analyze the current legislation of Ukraine on administrative liability in the field of environmental reorganization, we state the fact of the incon-

sistency of the composition of administrative misconducts. For example, Art. 211 of the Land Code of Ukraine provides a list of misconduct that entails legal liability. But this list is not always consistent and in some cases it is not included in CUoAO. Therefore, we propose: firstly, to delineate the composition of administrative misconducts in the sphere of nature using, which are provided for by the CUoAO's articles, taking into account the composition stipulated in other legislative acts, such as land, forest, water legislation, subsoil legislation, etc .; and secondly, to submit to the CUoAO those administrative offenses, which are stipulated in the aforementioned legislative acts of Ukraine, but absent from the CUoAO.

We believe that in order to ensure environmental law enforcement, the elaboration of an action program of law enforcement bodies in the field of environmental safety is relevant today. The purpose of the program should be to combine the efforts of state, authorized bodies (environmental inspection, environmental prosecutor's office, etc.) to prevent offenses in the field of environmental safety. The main objective of the program is to implement measures, wich are aimed at preventing administrative offenses in the environmental sphere. Such measures include: conducting inspections by law enforcement agencies, prohibiting (limiting) the activities of organizations, institutions in case of violation of legislation, which may lead to adverse, ecologically dangerous consequences in administrative and judicial procedures. Ensuring observance of the protection of the rights of society in the field of environmental safety is possible only through the carrying out of preventive measures.

The program should also establish specific measures of a procedural nature, to establish a clear interaction of law enforcement agencies in the field of environmental security. Of course, the regional factor should be taken into account, when program are taked.

Another means of ensuring ecological human rights is providing compensation for losses, which is a prerequisite for guaranteeing the ecological right of the individual and a step towards the establishment of a law-governed state. The restoration of losses caused by chemical, agricultural, metallurgical, construction activities does not always lead to the reimbursement of the amount of actual losses incurred.

The system of public administration plays an important role in the process of damages, possible losses. A compulsory feature of public administration is the coercive method or the imperative method. The imperative method involves

the work of authorized bodies for imposing financial and other administrative sanctions for violations and non-compliance with environmental safety legislation [18].

In our opinion, it is possible to ensure the guarantee of compensation of losses by creating a special target state body, which will ensure the indemnification of environmental damage. This body must directly subordinate to the Minister of the Environment. The introduction of a fee for environmental risks will make it possible to create a peculiar system of insurance and protection of the rights of citizens and legal entities in the event of the commission of an administrative offense in the environmental sphere by other economic entities.

Consequently, the main tendencies of the development of legislation and law enforcement practices in the field of environmental law enforcement is the expansion in the legislation of the administrative and legal regulation of rules that ensure environmental safety; introduction of amendments and additions to the administrative legislation concerning the establishment and implementation of legal liability for environmental offenses; creation of the administrative and legal mechanism for the implementation of targeted programs in the field of providing ecological functions; formation of the ecological and legal culture of citizens; increasing of activity of law enforcement agencies and prosecutor's supervision; scientific analysis of administrative and legal measures to ensure ecological law and order.

Conclusions to Section IX

International cooperation should be carried out on an equal and mutually beneficial basis. With regard to environmental issues, this means, in particular, the intensification of the trade exchange of environmentally friendly technology and technics, the sale of patents and licenses related to environmental protection, taking into account the experience of industrialized countries, assisting to countries, that are developing, in the choice of such ways and forms of economic development that does not cause a deterioration of the environment.

It is determined that solving of modern ecological problems in Ukraine is possible only in the conditions of wide and active international cooperation of all countries in this sphere. This is primarily due to the following circumstances: the global nature of environmental problems; transboundary nature of environmental pollution; the international obligations of Ukraine regarding the

protection of the natural environment; the necessity of international exchange of experience and technology, the possibility of attracting foreign investment.

It should also be noted that along with the fulfillment of Ukraine's obligations, which are followed by multilateral agreements in the field of environmental protection and environmental safety, in the future expansion of international cooperation in the following areas is important: cooperation with international organizations of the UN system in the field of environmental protection (UNEP – United Nations Environment Program, UNECE – UN Economic Commission for Europe, UNDP – United Nations Development Program; IAEA – International Atomic Energy Agency of the United Nations; FAO – Organization for Food and Agriculture; UN Center for Human Settlements; Commission on Sustainable Development; Global Environment Facility, etc.); the participation in regional environmental measures; the participation in international programs for the elimination of the consequences of the Chernobyl accident (problems of waste, transfer of air and water pollution, etc.).

We have defined the principles of strategic planning of environmental law policy. We attributed to them the following aspects: the political priority of solving the problems of environmental safety; integration of the ecological component in sectoral policies – economic, social; ecological responsibility of subjects of industrial sphere; balancing and complementary complementarity of national and regional environmental priorities; scientific and expert substantiation of means for effective overcoming of environmental threats.

At the same time, it is noted that it is necessary to supplement the draft National Ecological Policy Strategy of Ukraine by 2020: analysis of the possibilities of implementing environmentally-friendly technologies in industrial production; forecasting of economic efficiency of ecologically pure agricultural production; conclusions on creation of a favorable investment climate for eco-innovation development; sending of expert assessments of scientific developments of domestic scientists; consideration of the prospects for creating an ecologically innovative market, the national base of scientific inventions, technologies, projects and programs.

A set of tasks for the systematization of environmental legislation was defined: practical and scientific. In our opinion, there are such practical tasks: a) elimination of conflicts and gaps of environmental legislation, which is related to legal regulation, comprehensive improvement of the quality of its content (improvement of the conceptual apparatus, the formulation of specific environmental laws, mechanisms for the implementation of environmental legislation, targeting their best practices in foreign law, if possible, their using, compliance with the principles of international treaties, etc.); b) overcoming of the unnecessary narrowness of the subject of legal regulation of various laws, consolidation of normative legal acts; c) improving of the quality of environmental legislation in terms of taking into account the achievements of legal science and ecology; c) inventory of ecologised acts and acts for which ecologization is necessary, taking into account the essence of their regulated relations in the aspect of revealing whether of the existence or absence of ecological-legal norms in them is substantiated; d) determination of the necessary degree of detailing of legal regulation of environmental relations at the legislative level; e) strict compliance with the ecological legislation that is being systematized, the Constitution of Ukraine; f) using of judicial practice; g) maintaining of the positions, which was achieved in the legal regulation of environmental relations. There are the following scientific tasks: a) formation of scientific basis of systematization within the branch science; b) solving general theoretical problems of systematization and elimination of general logical contradictions in the process of sectoral systematization; c) establishment of criteria for the inclusion of normative legal acts in the system of environmental legislation, as well as criteria of justification and necessity of ecologization of normative legal acts of other branches of legislation; d) clarification of the significance of judicial practice in order to systematize environmental legislation.

It is stressed that an increase in the amount of sanctions in the form of a fine will contribute to reducing the number of violations in the environmental sphere. It is necessary to take into account that sanctions for administrative offenses in the environmental sphere should not be equal or significantly exceed the maximum amount of fines for committing crimes, namely they should not exceed the criminal liability. Because it violates the logic of building a system of punishment in the articles of the Special Part of the Criminal Code, as well as the enforcement of administrative violations in the CUoAO and other legislative acts.

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SECTION X

ORGANIZATIONAL AND LEGAL ISSUES OF PERSONAL DATA PROTECTION IN UKRAINE

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Annotation

This part of the monography revolves around the legal and organizational issues of personal data protection in modern Ukraine. Based on the achievements of domestic law, best foreign practice, analysis of current national legislation, lawmaking and law applying activity formed theoretical concepts and practical recommendations aimed at improving the efficiency of legal regulation and organizational support of personal data protection. The main trends of improvement of information legislation are outlined. The ways of optimization of the public administration on personal data protection were reflected. A series of steps for solving actual problems of personal data protection in modern Ukraine are proposed.

Preface

One of the main political priorities of modern Ukraine is building of the open, people-centred informational society, where everyone can create, collect, use and share information, realizing their potential, promoting social and personal development, improving quality of human life.

However, darting development of information networks, expansion of technical possibilities in the field of storage, processing and transmission of information, wide branching of electronic communications networks, increasing the speed, capacity and functionality of electronic databases – are not only factors of social progress, but also a source of different threats to information security and private confidentiality. Powerful information resources, which offer opportunities for the gathering, processing and use of confidential information can simultaneously serve as a lever of psychological pressure on people, means of interference into personal life, a tool of discreditation the person in the eyes of society.

Realizing the large-scale of the problem and the threat of its escalation with further development of electronic technology, the Ukrainian government considers personal data protection as the key direction of the national information policy. Over the last few years, Ukraine implemented a wide range of legal and organizational measures aimed at increasing the effectiveness of personal data protection.

Ukraine has its own history of foundation the grounds of information society. Among the most important achievements of recent decades can be outlined: the activity of the world famous school of cybernetics; adopting of the National informatization program; expansion of innovative informational and communication technologies; improvement of multipurpose national electronic information-analytical systems; development of national electronic government system.

At the current stage of development is conceptually formed the legal basis for building the informational society in Ukraine. During 1991-2018 was adopted a wide spectrum of legislative acts, aimed to promote civil society and open administration, creation of electronic information resources, protection of intellectual property, providing wide access to public information, electronic document management, information security and more.

Business entities intensively introduce modern information technologies and solutions in order to create high-powered resources and means of electronic communication. Great efforts are directed to introduction of new informational and communication technologies in the public sector, particularly in education, science, health and culture.

However, despite the existence of general positive trend, we should note a number of problems that occur on almost all levels of regulation and administrative activities in the field of personal data protection. Drastically needs updating the informational legislation, which is characterized by inconsistency, collisions, sporadic regulation of public relations and many other drawbacks. The system of public administration in this sphere proved to be ineffective, and its current reform proceeds very sluggishly. Some components of this system operate separately, without proper cooperation and coordination. Their activity is complicated by uncertainty of legal status, "overlay" of responsibilities, a lack of human and material resources. These problems make negative impact on state policies of personal data protection, reducing its effectiveness, levelling its achievements.

This situation calls for a wide range of legal, organizational, technical and other measures aimed at strengthening control over the flow of information, personal data protection and ensuring privacy. However, the first step in this direction should be creation of solid scientific basis for future practical reforms.

§ 1. The system of public administration in the field of personal data protection

At the national level, personal data protection is a complex, multidimensional process, determined by a wide range of social actors: state authorities, public institutions, private structures, legal entities and individuals. All of them (both those who form informational policy, those who implement it, those whohandlepersonal data and those who provide its security) make significant influence on functioning and development of personal data protection.

However, in current context, the main burden of responsibility for the formation and implementation of national policy is beared by public administration. Public administration, as the leading organizing force of a democratic society, defines the strategic and priority directions of socio-economic development. It makes organizing influence on the main social relations, forms the content of specific social ties, clothes them in legal form, provides them support and protection, guarantees their stability and security. It build the organizational mechanism of such influence and themselves act as its core element[1, c. 37]. Public administration is the main executor of the public order for the provision of information security.

The analysis of current legislation gives grounds to consider that public administration in the field of personal data protection is represented by a wide range of entities and officials, which, along with the solving of general management tasks, provides specific activities on information security. This range includes Verkhovna Rada of Ukraine (Ukrainian Parliament), the President of Ukraine, the Cabinet of Ministers of Ukraine, the Ukrainian Parliament Commissioner for Human Rights, central executive authorities, local state administrations and local self-government bodies.

The Verkhovna Rada of Ukraine plays an important role in shaping the principles of public administration in the field of personal data protection. As the sole legislative body, the Verkhovna Rada of Ukraine sets the requirements for the processing and protection of personal data at the highest regulatory level. It

outlines the circle of subjects of the relevant legal relations, sets the framework for informational control, defines special powers of authorities and as well, corresponding rights and obligations of individuals and legal entities.

Within the framework of its legislative function, the Verkhovna Rada of Ukraine approves international agreements on the personal data protection, which automatically makes them a part of national legislation. A clear example is the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transboundary Data Flows ratified by the Verkhovna Rada of Ukraine on July 6, 2010[2].

The Verkhovna Rada of Ukraine influences on public administration in the field of personal data protection by regulation of their legal status. In particular, by the acts of the Parliament (the Laws of Ukraine) are regulated main activities of the Commissioner for Human Rights, central and local executive authorities, self-government bodies and their officials [3; 4; 5].

An equally important way of Parliamentary influence is managing post of the Commissioner for Human Rights, as the key entity of public control in the field of personal data protection.

Along with adoption of legislative acts, resolution of organizational tasks and the reconciliation of appointments, the Verkhovna Rada of Ukraine regulates the field of personal data protection through various forms of parliamentary control. In particular it approves the Program of Activities of the Cabinet of Ministers of Ukraine and annually hears the Government report on implementation this Program, as well as on implementation other national programs (including information security and personal data protection programs). And finally Verkhovna Rada of Ukraine considers responsibility of the Cabinet of Ministers of Ukraine for ineffectiveness, including ineffective implementation of informational policy[6].

The President of Ukraine as the head of state and the guarantor of state sovereignty, territorial integrity, observance of the Constitution of Ukraine, human and civil rights and freedoms, carries out general management of all areas of state and political activity, including activities related to providing information security and personal data protection. The recognition of the President by the head of state determines his organizational autonomy and his ability to exert a comprehensive influence on all branches of state power.

However, as practice shows, despite a special legal status and quite impressive “arsenal” of powers, the real involvement of the President in the administration of personal data protection is very limited. After the Constitutional Reform of 2014, significant part of President’s powers (including foundation of central executive bodies and the appointment of their heads) was transferred to the Parliament and the Cabinet of Ministers of Ukraine, which automatically entailed reducing the President’s activities space.

Nevertheless, at the President disposal still remain rather powerful levers of administrative influence: the right to suspend acts of the Cabinet of Ministers of Ukraine on the grounds of non-compliance with the Constitution, the appointment of heads of local state administrations, the heading of the National Security and Defence Council of Ukraine, as the subject of control over the activities of executive authorities in the field of national security, and others.

The above gives grounds for concluding that today, and in the nearest future, the President of Ukraine will possess an important place in the national system of administering personal data protection, defining the its general tendencies and directing its development.

The Cabinet of Ministers of Ukraine, as the supreme executive body, occupies a leading position in the domestic system of public administration. The Cabinet of Ministers of Ukraine administers the sphere of personal data protection both directly and through separate ministries, other central executive bodies and local state administrations, directing, coordinating and controlling their activities.

The analysis of the legal status of the Cabinet of Ministers of Ukraine, as well as its rule-making and executive practice, shows that the main forms of its participation in personal data protection are next: drafting laws on personal data protection; development national programs on information security; financing such programs; ensuring of their implementation; direction and coordination of executive bodies in the field of personal data protection; establishing, reorganization and liquidation of central executive bodies, responsible for national information policy; implementation of personnel appointments (in particular, appointment and dismissal of heads of central executive bodies that are not part of the Government); control over legality of executive activities; regulating the functioning of the State Register on personal data bases; planning and implementation of measures on protection information rights and freedoms; control over implementation of court decisions on personal data protection by the executive authorities and their heads.

The above list is not complete. Current legislation gives the Cabinet of Ministers of Ukraine a significant amount of powers and wide opportunities for administering personal data protection. However, not all of them are fully implemented in practice.

In part, this can be explained by objective factors. For example, only with Constitutional Reform of 2014 the Ukrainian Government was empowered to establish central executive bodies, determine their legal status and form their stuff. Before 2014, the Cabinet of Ministers of Ukraine had not such administrative possibilities, as it has now.

But still, we should admit that in the vast majority of cases, inertia of the Government is due to the lack of attention to the issues of personal data protection. Since proclaiming the Independence in Ukraine haven't been adopted state program on information security and personal data protection (even the concepts of such programs were not developed). Interaction between public entities in the field personal data protection is far from perfect. The duplication of their powers is not eliminated. Legislative changes on personal data protection find reflection in Government's normative acts with a great delay. Government control over the legality of data flow and protection in the system of executive power is very poor.

This state of affairs does not correspond to requests of today. In situation where information security problems are on the path toward European integration and impede a number of ambitious international projects, to their solution should be paid much more attention. And first and foremost, the Government should play a leading role in this process by consolidating the efforts of executive authorities on most important sectors of personal data protection.

First steps in this direction should be the next: – development and approval of a state target program on personal data protection, which would have cross-sectoral character and would be based on the principles of expediency, comprehensiveness, purposefulness, social and economic substantiation; – clear definition the status of executive entities involved in administering personal data protection, delineation of their competence, special powers and areas of responsibility; – strengthening control over execution of court decisionson the personal data protection; – providing tight coordination between executive entities in the field of personal data protection.

Besides, the main directions of the Government's activity on personal data protection should find its reflection in current information legislation, in particular, in the Law of Ukraine "On Personal Data Protection". To this end, the Law

should be added with special provisions (an article or a series of articles), the list of executive entities involved in administering personal data protection, and outlining the scope of their powers in this sphere.

Turning to the coverage of data protection activity provided by Ukrainian Parliament Commissioner for Human Rights, we should admit that its history is relatively short. It starts from January 1, 2014, with adoption the amendments to the Law of Ukraine "On Personal Data Protection", according to which the Ombudsman was acknowledged as the subject of relations in the field of personal data processing, and at the same time was endowed with a set of special rule-making, organizational, regulatory, control and jurisdictional powers. In particular the Ombudsman got powers: to receive offers, complaints and other requests for personal data protection; to make decisions based on the results of their consideration; to conduct on the basis of appeals or on its own initiative the verification of personal data owners and managers; to approve normative acts in the field of personal data protection; to issue mandatory requirements in the field of personal data protection, including the modification and deletion of personal data, prohibition of its exchange and dissemination, suspension or termination of its processing; to provide recommendations for proper application of legislation on personal data protection; to draw up protocols on administrative offenses in the field of data protection; to inform data holders about legislative novels on personal data protection and about problems in their application; to monitor new practices, trends and technologies of personal data protection; to provide international cooperation in the field of personal data protection, etc. [3].

At first glance, the above list of powers seems sufficient and complete. It embodies rich administrative toolkit designed to provide multidimensional impact on the corresponded sphere of public relations. At the same time, its practical implementation can't be considered satisfactory. At present, overwhelming majority of the Ombudsman's powers in the field of personal data protection is rather declarative than applicable. The main reason for this is the lack of qualified staff.

In order to perform Commissioner's functions at the local level, there are some Regional Representative Offices [7] and Special representatives the Commissioner [8], which represent his interests with all rights granted by the current legislation. But, in fact, their stuff and resources are not sufficient for full implementation of the Ombudsman's powers on personal data protection.

As of 2018, 12 Regional Representative Offices and 8 Representatives of the Ombudsman function in Ukraine. However, due to variety of performed

functions (only one Representative of the Commissioner specializes in solving the issues of personal data protection), it is extremely difficult for them to ensure comprehensive and complete control over compliance with legislation on personal data protection.

If by 2014, the majority of controlling functions in the field of personal data protection was performed by the State Service on Personal Data Protection of Ukraine – a central executive body with 51 persons staff, today these functions are being implemented by only 20 servicemen of Department on Personal Data Protection in the Ombudsman's Secretariat.

In light of this, administrative abilities of the Department (in its current staffing) look rather dubious. In our opinion, the considerable complexity, versatility and wideness of the Department's tasks, demand increasing its staff to actual needs of practice.

Another factor of the negative influence on the activity of the Department on personal data protection is the lack of legal support. The analysis of normative legal acts, determining legal status of the Commissioner and his Secretariat, shows a raw of fundamental contradictions.

For example, Clause 10 of Art. 23 of the Law of Ukraine "On Personal Data Protection" entrusts drawing up protocols on administrative offenses against personal data protection directly to the Commissioner on human rights; Art. 255 Code of Ukraine on Administrative offenses – entrusts this function to the Commissioner's Secretariat; Clause 6.7. of Provisions about Commissioner's Representatives – entrusts it to the Representatives, and Clause 7.5. of Provisions on Commissioner's Regional Representative Offices – entrusts it to officials of Regional Representative Offices [3; 5; 8].

At the same time, a number of Ombudsman's Secretariat powers, defined by the Law of Ukraine "On Personal Data Protection" (such as the publication of binding regulations, interaction with units/persons responsible for personal data processing, etc.) are not reflected in the Regulation on the Secretariat approved by the Order of the Commissioner dated June 20, 2012 No. 4 / 8-12 [9].

It is clear that the existing conflicts do not contribute to effective control of personal data protection. They entail jurisdictional uncertainty and conflict situations. In the light of this, there is an urgent need for comprehensive review and harmonization of legal acts, determining the status of the Commissioner, his Secretariat, Regional Representative Offices and Representatives.

Describing the role of central executive bodies in the mechanism of public administration on personal data protection, it should be noted that most of them implement corresponding administrative functions only in a separate branch or sphere. They don't define the categories of personal data, which processing carries a risk for the human rights and freedoms, don't establish general requirements for its protection, don't provide the above-departmental inspections, don't participate in detection, stopping and disclosure of informational offenses. In fact, they take care about personal data protection only to the extent dictated by their organizational needs.

Nevertheless, every central executive body, regardless of its specialization, is entrusted by the task of human rights protection in the field of personal data. To this end, in the structure of all ministries, services, agencies and other departments there are specialized units (or responsible persons) on personal data protection, which competence includes: determining real and potential threats to security of processed personal data; analysis of compliance with information laws; detection of offenses, issuing prescriptions on stopping offenses; interaction with the Ombudsman and the officials of his Secretariat on fighting offenses; ensuring implementation of human rights and freedoms in the field of personal data. The requirements of such a unit/person are mandatory for all employees who process personal data [10].

Besides, in the system of central bodies of executive power there is the body authorized to administer personal data protection at inter-sectoral (national) level. It is the Ministry of Justice of Ukraine. The Ministry of Justice of Ukraine is the main executive body in the system of formation and implementation of the state policy on personal data protection. The most typical forms of the Ministry's activity in the field of personal data protection include legislative regulation, issuing informational rules, directing and coordinating public administration[11].

Unfortunately, as the experience of recent years has shown, the real involvement of the Ministry of Justice of Ukraine in public administering of personal data protection is limited to carrying out of representative and internal functions. Instead, the issues of strategic planning and interagency coordination in this area are mostly ignored.

Meanwhile, the Ministry of Justice of Ukraine, in accordance with its tasks and functions, would have to pave the way for implementation of the state policy on personal data protection. It should give overall assessment of its effective-

ness, find the sources of existing problems, develop strategy for their solution and, if necessary, carry out reforms in the field of personal data protection.

It is vividly seen that all these directions of activity should be reflected in the main acts of information legislation (Law of Ukraine "On Information", Law of Ukraine "On Personal Data Protection" etc.), as well as in the Regulation on the Ministry of Justice of Ukraine, approved by the Decree of the Cabinet of Ministers of Ukraine dated July 2, 2014, №228 [11].

Local state administrations and local self-government bodies provide administering of personal data protection at the level of separate territorial entities. In particular, according to the current legislation local state administrations are empowered to: organize implementation of state programs on personal data protection; control the observance of informational legislation; adopt rules on personal data processing in subordinate bodies, divisions, institutions, organizations; carry out legal informing about personal data protection; implement other functions provided by the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine and executive bodies of a higher level.

In turn, self-government bodies authorized to: ensure compliance with the requirements of legislation and decisions of central executive authorities on information security and personal data protection; approve regulations on possession, processing and protection of personal data; control activities of communal enterprises in personal data processing and protecting; carry out measures for prevention of informational violations.

As the above list of powers shows, the main efforts of local authorities are directed to personal data protection "inside" their system. They organize processing of personal data solely within the framework of their organizational structure. Their control over the observance of legislation is purely internal. They don't provide any forms of external (normative, supervisory and jurisdictional) control activities.

Nevertheless, the contribution of local authorities to the implementation of state policy on personal data protection should not be underestimated. Given the huge number of subordinate structures, the large array of processed information and the high intensity of such processing, they make strong influence on the field of personal data protection. As well should not be discarded their functions on implementing the regional information policy, such as: participation in state planning (programming) of information security measures, participation in rule-making activities, carrying out public campaigns, social advertising, etc.

Thus, local authorities are an important part of the system of public administering personal data protection, which determines information security not only of separate entities, but also of all territorial levels – from the village to the region.

In this regard, should not be ignored the urgent problems of local administering personal data protection, such as: – an anachronistic legal regulation (in most cases local authorities react to legislative novels with great delay); – unclear distinction(and in some cases –overlapping) of responsibilities between different local authorities operating on the same territory; – insufficient attention to the issues of personal data protection, considering them secondary importance (as compared with economic matters) and low activity in their resolution.

The outlined problems make heavy impact at personal data protection and require solution in the framework of both national and regional levels of information policy.

In general, the above analysis of administrative system on personal data protection shows that its rich potential is not sufficiently realized. Despite the undoubted achievements, this system is still unbalanced, and its results don't meet objective needs of society. This situation is due to a wide range of organizational and legal problems, which take place at all levels of public administering (state, branch, regional, local, etc.). These problems are closely interrelated and can be solved only within the framework of an integrated approach.

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§ 2. Forms and methods of public administration in the field of personal data protection

Analysis of practical aspects of administrative activities in the field of personal protection allows stating the widespread use of all forms and methods of public administration. However, we will focus only on those, which are prevalent in the field of personal data protection and characterize its main directions.

First of them is rulemaking. From the beginning of 2010ththe legal and regulatory framework for personal data protection in Ukraine is steadily expanding. During this time more than 50 legal acts on personal data protection were adopted at the national level. Besides, special regulations for personal data processing and protection were approved by all local state administrations and executive committees of local councils.

But, despite general positive tendencies, rulemaking activity in the field of personal data protection is accompanied by a number of problems that significantly reduce its quality and effectiveness. In particular, such are: imperfect technique of rulemaking (as a result, many provisions are characterized by ambiguity, incompleteness and contradictions); unsystematic upgrading of regulatory framework (regulatory changes are introduced asynchronously; adaptation of sub-legislative acts to the new laws is too slow; adoption of key legal acts on personal data protection weird for years.

These and other issues of rulemaking require urgent solution within an integrated approach that covers all levels of regulatory regulation: from the local to the national.

The next form of public administration – law enforcement– in the field of personal data protection is implemented mainly through the methods of supervision (including systematization of information about personal databases), control (on-site and distant inspections), prevention, detection and stopping offenses (drawing up the relevant written prescriptions), ensuring responsibility (administrative, disciplinary, etc.).

According to the analysis of law-enforcement practice, in recent years these forms of administering carried out less and less frequently. The main reason for such a negative trend lies in the above-mentioned problem of insufficient stuff and poor resources of the main control entity – the Ombudsman's Office (Department on Personal Data Protection).

For comparison: during 2013, former main subject of informational control– the State Service of Ukraine on Personal Data Protection (i.e., the precursor of the Office) considered above 230 thousand applications of personal data bases owners, as well as 1,5 thousand appeals of other individuals and legal entities; were carried out 187 outbound inspections of compliance with information law requirements; 192 thematic "hot" lines were conducted, during which were given answers on 20,000 questions concerning practical aspects of personal data processing and protection[12].

By contrast, in 2015, the Ombudsman's Office Department on Personal Data Protection had only 62 inspections of personal data holders. Among them: 17 personal data owners in the sphere of social services, 11 personal data owners in telecommunication sphere, 10 boarding schools, 10 bodies of the Ministry of Internal Affairs of Ukraine and the State Migration Service of Ukraine, 6 personal data holders in the field of medical services, 3 personal data holders, processing personal data of conscripts and mobilized reservists, 2 secondary schools and 3 housing maintenance organizations [13].

With time, the scope of Department's activities constantly decreased. At least, its plan of inspections on personal data protection in state authorities, enterprises, organizations and institutions provided 13 inspections in 2017, and only 4 in 2018[14].

On the whole, carried measures have shown that the most widespread violations in the field of personal data protection are: – improper registration of contractual relations between the owner and the manager of personal data (in many cases, written agreements between them are absent); – excess of personal data proceeding, specified in the contract with its owner; – processing of personal data out of specified purposes; – the purpose of the processing of personal data, declared in the internal documents of their owner or manager, is not in accordance with the purpose indicated in the documents given to authorized control subject; – inconsistency of gathered personal data with declared purposes of its proceeding; – processing of personal data without legal grounds; – illegal distribution of personal data; – not notifying the person about changes in personal

data processing (about the changing the owner of personal data, about changes in the content of gathered personal data, about the purpose of its gathering etc.); – granting access to personal data to unauthorized persons; – non-creation of special unit (determination of responsible person) on personal data protection in public administrative entities; – uncertainty of internal order on personal data processing and protection; – insufficient protection of personal data bases.

In general, the analysis of law-enforcement activities in the field of personal data protection gives grounds for the following conclusions.

Firstly, this form of public administering is realized mainly by the forced methods (supervisory, control, jurisdictional, etc.), aimed at fighting offenses. Instead, the so-called positive methods of administering (informing, convincing, encouraging, etc.) play a secondary role. From our point of view, such a "bias" does not contribute to improvement of "good governance" standards in the field of personal data protection. After all, despite the importance of coercive methods, their practical effectiveness is very limited. They are just a reaction to negative processes, which have already begun and are continuing. They are extremely important. But much more important is prevention of such processes by the enhancement of legal culture and development of social responsibility. In this regard, compulsion should be combined with positive methods of administering, being their logical continuation in cases where positive methods haven't brought good results. In turn, non-coercive measures (explanatory, educational, educational, etc.) should play prevalent role in administering of personal data protection.

Secondly, the overall effectiveness of law-enforcement activities in the field of personal data protection is quite low. Even coercive methods, which at the moment constitute the core of domestic administering, are not implemented efficiently and don't bring large-scale results. A clear example is weakness of administrative control, increase of offenses in the field personal data protection and, at the same time, their high latency (by unanimous recognition of personal data owners and state executives, he actual number of offenses in this field far exceeds official figures).

Among the main reasons for such a disappointing state of affairs is insufficient staff and legal support of control entities, in particular, the Ombudsman's Secretariat; lack of coordination between the authorities, involved in personal data protection; duplication of their powers and responsibilities; the lack of methodic for identifying, qualifying and "processing" offenses. Elimination of

these factors should become a priority task of the state informational policy. To this end, it is advisable to consolidate a set of appropriate measures (legal, organizational, informational, logistical, etc.) in state target program on personal data protection.

Concerning such a form of public administering as the conclusion of administrative treaties, it should be noted that in the field of personal data protection its use is quite limited. The vast majority of treaties in this sphere (in particular, agreements between owners and managers of personal data) have private-law character: they are initiated by the parties, and not on the administrative demand; they do not require the obligatory participation of public administration; they don't limit the will of the parties (including free choice of the counterparty); they don't pursue public interests, etc. Perhaps this is why modern scholars almost never analyze the issues of administrative-contractual relations in the context of personal data protection. Among numerous domestic legal studies, there is hardly one capital research that at least briefly addresses relevant issues.

However, such lack of attention is difficult to recognize substantiated. Today, the practice of conclusion administrative treaties in the field of personal data protection constantly spreads out.

For example, according to the Law of Ukraine "On the State Register of Voters" (Art. 24), all political parties which have their faction in the Parliament or are a part of electoral bloc that has such faction, are empowered to make public control over the functioning of the State Register of Voters (hereinafter – Register).

For this purpose once a year, but no later than sixty days beforevoting day of the elections or referendums, upon written request of a political party, the Registry administrator (Central Election Commission) submits to it a digitally signed electronic copy of the Register data base[15].

An electronic copy of the Register database is transmitted with: a program for its review, an instruction for using this program, a sealed envelope with a personal identification number and a personal unblocking code, as well as the storage of key information (digital storage for recording and saving access keys). In this case, transmission the storage of key information is carried out according to the treaty, concluded in accordance with the Regulation on the Procedure for development of cryptographic protection, approved by the Order of the State Service for Special Communications and Information Protection of Ukraine of July 20, 2007 № 141 [16].

By all basic features, this type of treaties is administrative. Its obligatory (and only possible) sides are state entity (Central Election Commission) and the political parties, represented in the Parliament. Its subject and basic conditions are predetermined by law. It is concluded in the framework of public control, is not aimed at commercial profit or meeting other private interests.

Thus, the existence of administrative treaties in the field of personal data protection is undoubted. Such treaty practice is not wide spread, but it relates to very important sphere of public activity (the electoral process) and plays a significant role in the mechanism of staffing state bodies of power.

The foregoing determines the expediency of recognizing administrative treaties as a form of administering personal data protection, as well as the necessity of their substantive consideration both in the framework of special scientific researches and educational process.

Conclusions to Section X

Summarizing all the above, we can state that the organizational and legal support of personal data protection in Ukraine is far from perfect. The drawbacks of information legislation, poor organization, the lack of staff, the shortage of resources – all these factors make a destructive impact not only on personal data protection, but also on the state of information security.

In the light of this, there is an urgent need to improve the legal and organizational grounds of personal data protection. This field of relations should receive comprehensive, detailed and coherent legislative regulation. As soon as possible, it is necessary to harmonize the regulatory framework and review the information legislation on the issue of relevance, coherence, completeness of regulation and compliance with practice requests.

The boundaries of competence, powers and responsibilities of all public entities should be clearly outlined. Their activities should be based on the principles of planning, consistency, inter-sectoral and interregional coordination. At the same time, every of them should have conditions for the most effective implementation of administrative functions. In some cases, this demands optimizing their structure, staffing and, as well, the amount of budget financing.

Among the methods of public administering in the field of personal data protection, non-coercive methods (information, explanatory, educational, etc.)

should take the leading place. This requirement should be mandatory forthe developers of state information security programs.

Only under these conditions can be provided the efficient public administering of personal data protection. Only under them, all forms and methods of personal data protection will develop in a progressive way, will receive a functional mechanism of implementation and, thus, will provide new opportunities for successful national information policy.

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SECTION XI

GENERAL THEORETICAL FORMS OF THE FUNCTIONING OF SELF-REGULATORY ORGANIZATIONS IN THE FIELD OF CITY BUILDING IN UKRAINE

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Annotation

The legal status of self-regulatory organizations in Ukraine, their essence, legal principles of activity, competence are revealed.

The emphasis is on the basic models of self-regulation in the field of construction like delegated, voluntary and mixed, highlighted features of each model of organization and functioning of self-regulatory organizations, and given examples taking into account international experience.

The focus is on the list of self-regulatory organizations in Ukraine. The features of manifestation of some of their functions are revealed.

It is noted that self-regulatory organizations form a special part of regulatory bodies with certain powers and promote the implementation and protection of private and public interests, and thus, in the process of self-regulatory activity, harmonize public interests of the state and private interests of economic entities or professional activities.

The thesis is based on the fact that the transformation of state regulation into the self-regulation plane meets European standards for the management of the construction industry, which brings our country closer to the international model of organization of construction.

Preface

Today realities are the formation of a new system of regulatory bodies in general and in the construction sector, in particular. And this causes the need to rethink the existing system of regulatory bodies, taking into account world practice and scientific substantiation of the legal phenomenon – self-regulatory organizations. An important factor in this process is the decentralization of state

regulation on the principles of subsidiarity, according to which the competence of central government bodies gradually gets the character of an additional, auxiliary in relation to the competence of those entities, bodies and organizations that manage the lower levels, remote from the center and the approximate ones to people [1].

This direction of development of the national legislation coincides with the direction of transformation of regulatory bodies in international practice. One of the trends in the development of the regulatory sphere in the world is the transfer of rights to establish rules and control market participants from the state to entrepreneurs or with the involvement of the public. The principle of self-regulation is implemented, the functions of regulating the activities of market participants by the market participants themselves.

This principle is one of the most effective tools for reducing the impact of state regulation and obtaining a more effective result, as a centralized system of establishing rules / standards for professional activities and product requirements is one of the factors inhibiting business development. The negative influence of centralized regulation is due to a number of factors, which may include: lack of efficiency of activities, low level of competence, extreme inertia of the response to market demands, the absence of real objective mechanisms of feedback between economic entities and authorities, and high costs for supervision and control by the state, low level of interest in obtaining a real result by the control bodies, and so on.

According to international experience, one of the ways to solve the above problems is to develop and apply the capacity of the institute of self-regulatory organizations.

But today in Ukraine there is no single concept of legislative regulation of such organizations, and as a result, there is no single model of self-regulation.

However, the first steps in this direction have already been made. At the legislative level in Ukraine, a system of regulatory bodies introduces self-regulatory organizations. This legal phenomenon for the national legal space is new, therefore, requires scientific reflection. In this regard, it is relevant to study the legal status, competencies, tasks and functions of self-regulatory organizations. Problems of scientific understanding of this issue are caused by the complexity of relations related to the state regulation of construction activities, the intensity of reforms, taking into account the integration into the EU and not the perfection of the regulatory framework.

All of the above stipulates the development and substantiation of the theoretical provisions and recommendations for the improvement of state regulation of urban development activities in the context of decentralization of power taking into account the emergence of a new “player” in the system of regulatory bodies like self-regulatory organizations.

§ 1. Legal regulation of self-regulatory organizations

Most specialists in the construction industry state that today in Ukraine there is no understanding of the state and prospects of this industry. It is divided into a number of tied fragments, such as the construction industry, urban planning and territorial planning, real estate market, cultural heritage conservation, transport infrastructure, community self-government, etc., in relation to which analytics and management decisions are made [2].

Hence the accumulation of growing contradictions and conflict situations, the deterioration of the habitat and, in general, the lack of prospects for the development of the country and its territories as a meaningful whole.

Fragmentary representations do not form an integer, in relation to which one can build a vision of the future and make strategic decisions. Possible way of solving the current situation is to create a concept of transformation, but in essence to create a coherent sphere with its vision of the future, the formats of thinking, methods of management and self-organization, value orientations and regulatory legal regulation of the concept.

And the important place in the concept should be given to the development of the Institute of self-regulatory organizations.

The proliferation of professional self-regulation is one of the mechanisms for reducing the pressure of central government of a certain branch and its compensation in order to ensure the safety of life, health of citizens, creating a safe environment, implementation and observance of standards in the activities of business entities and other persons and standards of life has become organization.

Professional self-government in Ukraine is realized in the form of self-regulating organizations.

Firstly, the term self-regulatory organization was used in US law in 1934 under the New Deal policy of T. Roosevelt in the Securities Exchange Act of 1934, according to which a separate association and organizations in the stock market provided the status of self-regulatory organizations [3].

Self-regulatory organizations in world practice are business associations, voluntary associations, which establish formal rules for their members in conducting business for their members.

As I. Shatkovskaya notes the development of self-regulation promotes interaction between the entities that carry out economic and professional activities of a certain type and independently develop them uniform and understandable to all categories of citizens the rules of economic activity of a certain type. The full regulatory framework regulating the activities of self-regulatory organizations promotes the implementation and development of economic activity, the improvement of the quality of goods, works and services, and ensuring effective interaction between business entities and public authorities [4].

The isolation and elaboration of problematic issues in the legislative provision of this sphere is a very necessary and appropriate step on the way of development of the construction industry and improvement of the efficiency of the system of state management of urban development activities.

The legal nature of self-regulatory organizations can be disclosed through the definition of their features, functions, principles of the creation and operation of self-regulatory organizations, their structure, purpose, objectives, and so on.

Starting the consideration of this issue, it is first necessary to distinguish the main features of a self-regulatory organization, which may include:

– voluntary membership;

– Membership is conditioned by professional membership in certain activities or an appropriate business activity;

– the presence of functions that determine the formal rules of doing business. For example, self-regulation involves the development by such organizations of their own standards and rules of operation, control over their compliance and the mechanism of compensation for losses incurred by consumers as a result of the provision by members of self-regulatory organization of services and services of inadequate quality. Determination of conformity of subjects of city-planning with the requirements, which are presented to market participants [5];

– one of the grounds for the creation is the realization of functions transferred by the state;

– satisfaction of legitimate interests (social, economic, professional, industrial and other) of the participants of the organization;

– raising the prestige of a particular profession.

It should be noted, however, that self-regulating organizations form a special link of regulatory bodies with certain powers and promote the implementation and protection of private and public interests, and thus, in the process of self-regulatory activity, harmonize public interests of the state and private interests of economic or professional entities.

In accordance with the Law of Ukraine "On Architectural Activities" [6], self-regulatory organizations are non-profit voluntary associations of individuals and legal entities in the appropriate direction of entrepreneurial or professional activity, which have acquired the appropriate status in accordance with the established procedure. This Law determines the grounds for self-regulation in the field of architectural activity, as well as the powers of these organizations. They may, on the basis of delegated authority, carry out professional certification of the performers of works (services) related to the creation of architectural objects, and be involved in the licensing of economic activities of members of the self-regulatory organization.

Here the main contradiction of the national legislation arises like the self-regulatory organization is a public organization and its membership is voluntary, that is, some participants in one or another market may not want to participate in the organization, but requirements are extended to all participants in the market.

It is necessary to focus attention on the fact that recently the development of the institution of self-regulation, as an alternative public mechanism for regulating the admission to the construction market of performers of certain types of works, takes on the development of urban planning. Thus, the system of professional certification of works executives in construction was built.

To date, four All-Ukrainian public organizations have been established in Ukraine, which are entrusted with the authority previously belonging to the Ministry of Regional Development and Construction of Ukraine (hereinafter referred to as the Minregion of Ukraine).

These include:

– All-Ukrainian public organization "Guild of designers in construction";

– All-Ukrainian public organization "Association of experts in the construction industry";

– All-Ukrainian public organization "Guild of engineers of technical supervision of the construction of architectural objects";

– National Union of Architects of Ukraine.

Procedure for registration of self-regulatory organizations in the field of architectural activities, the procedure for entering information about them in the state register of self-regulatory organizations, the list of documents submitted for registration; the grounds for refusal, etc., are specified in the Order of the Ministry of Regional Development No. 137 dated May 13, 2014 „On Approval of the Procedure for Registration of Self-Regulatory Organizations in the Sphere of Architectural Activity" [7].

All-Ukrainian public organization „Guild of Designers in Construction" is founded to protect the rights and freedoms of its members – chief engineers (specialists) of the project and other designers (specialists) in construction, to meet the social, increasing the prestige of the profession and the level of skills of the chief engineers of the project and other designers in the construction, promoting the exchange of experience between them, introducing the principles of self-regulation, development ment and improvement of legal acts, regulations and other acts in the field of construction of architecture [8]. The Guild is directly involved in the professional certification of the chief engineers of projects, carries out other activities within the limits of the powers delegated in accordance with the current legislation.

This self-regulatory organization is interested in allowing only professional and responsible professionals to enter the market – it is not only their face and reputation, and, above all, responsibility for the reliability of buildings.

All-Ukrainian public organization „Association of experts in the construction industry", founded in 2010 (given by the Association) is a voluntary public association, which was founded with the aim of influencing the urban environment, preventing corruption, as well as protecting the rights and interests of Association members, regulation their activities to ensure the proper quality of goods, works and services and guarantee the protection of consumer rights. The Association was one of the first in Ukraine to receive the status of a self-regulatory organization [9] and entered it in the State Register of Self-Regulatory Organizations in the Field of Architectural Activities [10]. The Association has delegated authority to conduct professional certification of experts. Granting such authority is based on the availability of significant experience in the market and the provision of professional certification of more than 3,5 thousand professionals [11].

However, the involvement of the Association to implement democratic reforms allowing to strengthen its institutional capacity (to gain experience of

social dialogue, form a horizontal and vertical relationships between key stakeholders to build a coalition of self-regulatory organizations in construction). It should be added that the Association, with experience in urban development reform, including the decentralization of the construction industry and the empowerment of civil society organizations, local communities and municipalities actively involved in the development of legislation ... and its implementation in the region. [11]

Ukrainian public organization „Engineers Guild engineering supervision architectural objects" (hereinafter – HITN) – established to protect the rights and freedoms of its members – engineers, technical supervision, social, economic, professional, industrial and other legitimate interests of these professionals promote improvement of the prestige of the profession and the level of qualification of technical supervisors, exchange of experience between them, development and improvement of normative legal acts, normative documents and other acts in the field of technical implementation supervision of construction of objects of architecture. GITN is registered as a self-regulatory organization in the field of architectural activity in the direction of professional activity of technical supervision engineers. Stated Ukrainian public organization delegated authority to conduct professional certification Engineers Technical Supervision as a self-regulatory organization in the field of architectural activities in the field of professional activity Engineers Technical Supervision [12] and the protection of their interests to the employer, if possible, contributes to employability by providing guidance, use of corporate-called tanks, etc.

National Union of Architects of Ukraine. The main objective of the Union's activity is to develop the architecture of Ukraine, to create conditions for international cooperation of architects, to promote the preservation of the historical and natural environment of regions, cities and settlements of Ukraine [13].

And among this purpose, the National Union of Architects of Ukraine together with state authorities develops the provisions „On Certification of Architects" and „On the Certification Commission", and also takes part in the certification of architects for obtaining qualification certificates and inclusion in the Register of Architects of Ukraine and other statutory provisions [14]

The organization is a member of the International Union of Architects, which brings together artistic unions of architects from 106 countries of the world since 1993, which makes it possible to be closer to the international community.

For example, the approach suggested by the Expert Panel of the Union, which in the world practice is called „legal guillotine", is a very interesting and promising area of activity. This approach suggests that work on a new regulatory framework begins with a „clean sheet" – without taking into account existing laws, norms and rules.

This means that designing is based on ideological grounds and the conceptual framework of regulatory regulation. Then a conceptual framework is developed – the composition of the legal regulation subjects and the basic processes that are being developed in the sphere are determined. The concept of normative-legal regulation defines the basic formats of participation of the basic subjects in the basic processes at each stage (stage) of their (process) deployment.

The concept becomes a technical task for the development of a set of normative legal acts regulating relations in the field. The concept is also used to analyze the existing regulatory framework, to identify and use new fragments acceptable to the existing regulatory framework. This approach allows you to change the essence of regulatory regulation, and not just its individual fragments [2].

This example illustrates a situation that requires a clear definition – this is the nature of the relationship between the state regulator and self-regulatory organizations. In order to take full advantage of its functioning, self-regulating organizations must have clearly defined responsibilities, including the development and enforcement of their own rules. In this case, the state regulator should perform supervisory functions predominantly.

In our opinion, the creation of self-regulatory organizations in Ukraine is a positive and very important step towards decentralization of power. Given the importance of this activity, we support those scholars who emphasize the need to adopt a number of special laws. For example, the Law of Ukraine "On Self-Governing Organizations", since sectoral legal acts can not fully cover all issues related to their activities.

Thus, the provisions of the draft Law of Ukraine "On Self-Regulatory Organizations" of the Register. No. 4841 dated July 23, 2010, which is regulated by the procedure for obtaining and terminating the status of a self-regulatory organization, relations between self-regulatory organizations and the state, the internal structure of self-regulatory organizations and the procedure for its management, mechanisms for ensuring consumer rights, and the procedure for exercising state control over self-regulatory organizations.

The Law of Ukraine "On Architectural Activity" also needs to be supplemented. It does not contain, for example, the principles of the activities of these organizations, their functions, etc., although in the scientific literature such developments have long existed. Thus, characterizing the activities of self-regulatory organizations, V.V. Suslova distinguishes the following functions: accumulative – the unification of the interests of their founders regarding the order of their economic or professional activities; norm-setting, within which it is formed, optimizes the proper order of economic or professional activity; founder, within which the necessary bodies of the self-regulatory organization are created that facilitate its implementation of self-regulatory activity. Regulatory, within which there is one of the main functions of a self-regulatory organization that implements its organizational and economic purpose is to regulate the activities of economic entities within the relevant market of goods and services, a particular type of professional activity; representative, within which the subjects of economic activity and subjects of professional activity actually reach the level of public relations, inform the state of their collective interests and enter into dialogue; control, within which control measures are carried out, which ensure the effectiveness of a number of other functions: regulatory, normative, etc.; information-analytical, which can be considered in the independent and auxiliary sense, based on the fact that the information format is a universal factor in any interaction, relationship; conditional insurance, which provides for the formation of appropriate cumulative monetary funds for assistance in the period of crisis or other economic unfavorable periods of economic activity, as well as compensation of harm caused to consumers as a result of the activities of individual entities – members of a self-regulatory organization; law enforcement, which is to apply to the subjects as founders of economic sanctions, the right to use which is delegated to self-regulatory organizations by the state [15, p. 124-125].

But the requirements of today are a radical renewal of the legal and regulatory framework on fundamentally new principles. No improvement of certain provisions and norms can produce positive results until the legislation is based on an outdated ideological basis of regulatory regulation.

The issue of "state regulation" and "self-regulation" deserves special attention.

Among the scholars there is a controversy about the relation between the concepts of "state regulation" and "self-regulation".

There is a concept that self-regulation is a type of regulation that is opposed to state regulation and is not part of the latter [16]. According to this concept, self-regulatory organizations are not part of the regulatory system. But with this statement it is difficult to agree, taking into account the goal of creating self-regulatory structures, their tasks, functions and powers.

The second concept suggests that self-regulation replaces state regulation in certain areas of activity [16].

Proponents of the third concept, believe that self-regulatory organizations are part of the regulatory system. Self-regulating organizations, in exercising their functions, act independently without any financial state support, therefore, the state does not delegate its powers to self-regulated organizations, therefore, the allocation of self-regulatory organizations by these authorities is a means of state regulation [16], that is, self-regulation in any in which case an element of regulation is envisaged, performing part of the state control functions [16].

Therefore, most scholars are adherents of the third concept.

§ 2. Modern self-regulation models

Based on the analysis of scientific literature, it is possible to distinguish three main models of self-regulation: delegated, voluntary, mixed self-regulation.

Let's consider in more detail each of the models of self-regulation.

The first model is delegated self-regulation.

This model is characterized by such a feature, which manifests itself in the fact that the state forms the organizations of professional self-government with the status of a legal entity of public law, and then delegates this public person a number of public functions to streamline the industry or type of activity. Under delegated self-regulation, professional activity can be done only when it is a member of the relevant professional association, whose activities are regulated by special rules of conduct. This model implies the creation of professional self-government organizations.

That is, organizations of professional self-government are legal entities created by direct indication of their formation in the law, and with the granting of authority to them in a certain area of professional activity. And, as a rule, they have the status of a legal entity of public law, with the right to perform certain state functions, which prior to the formation of such organizations belonged to the competence of state authorities. As a rule, the authorities of the level of

central executive authorities are assigned to organizations of professional self-government.

OHM. Nepomnyaschy, O.V. Medvedchuk [17] singles out the main features of organizations of professional self-government:

first, they are created by the state itself, that is, by direct indication of their formation in the law and as a result of the disposal of a state body;

secondly, creating professional self-government organizations, the state gives them powers of authority regarding the organization of work in the profession and control over the activities of the members of the "shop";

thirdly, membership in the organization of professional self-government is mandatory;

Fourthly, in the profession there can be only one organization of professional self-government. This does not mean that the territorial structures of the organization of professional self-government can not have the status of legal entities. On the contrary, for the democracy of the system of self-government, each of the territorial (regional) chambers must be the subject of law and be part of a single organization of professional self-government profession [17 6];

fifth, the organizations of professional self-government act as the "second legislator" in matters of regulation of professional activity and issues of governance within the members of their profession. This is the difference between the nature and purpose of creating a professional self-government organization and self-regulatory organizations.

European experts emphasize that compulsory participation in organizations of professional self-government is not a violation of the right of persons to an association, provided for in Art. 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [18].

N. Slyusarevsky notes that the activities of the organization of professional self-government are directed primarily to the achievement and solution of the following goals and objectives:

– assistance in the organization of professional activities, in particular through the participation of the organization of professional self-government in the procedures for admission to the profession (licensing) and exclusion from the profession (disqualification);

– raising the professional level of members of the professional community, as well as facilitating the preparation of persons who claim the right to engage in such activities;

– raising the level of material liability of the carriers of the profession to society and specific consumers (creation of a compensation fund);

– Representation of the carriers of the profession and providing information on the activities of the organization of professional self-government;

– development of international relations, exchange of experience with foreign organizations of professional self-government.

In countries where professional self-government organizations are created, the latter are developing standards for activities for members of their professional community, usually adopted in the form of codes of professional ethics.

Carriers of the profession, along with the implementation of the provisions of laws and regulations, established and controlled by the state, are obliged to adhere to these standards of professional activity (provisions of the code of professional ethics), the supervision of which is carried out by the organization of professional self-government.

Organizations of professional self-government contribute to increase the level of material responsibility of members of the professional community to society (consumers) by establishing a compensation fund, the payment of which is possible in the event that the actions of an unscrupulous member of the community caused material damage to the consumer [19] Slyusarevsky.

Most European states have gone along the path of creating a professional self-government, which in many cases are called chambers.

For example, the Bavarian House of Engineers and the Bavarian Chamber of Architects, the Berlin Chamber of Architects and Builders, the Polish Chamber of Building Engineers, the Polish Chamber of Architects, the Urban Chamber of Poland, and others like that.

The experience of Germany is interesting in terms of practical application.

In the construction industry, there is the Chamber of Engineers, which unites in its staff engineers, engineers-consultants, authorized engineers for construction projects, etc. According to the Law on the Establishment of the Chamber of Engineers and the Procedure for the Professional Activities of the Consultant Engineer, their liability must be insured. The Board of the Chamber sets the minimum amount of damage. For example, in Hessen, the minimum coverage is from 250,000 to 500,000 euros. The Chamber member must annually provide the Chamber with a warranty statement of a specified amount. The presence of this provision can increase the responsibility of the consultant engineer for the work performed and guarantee the customer in case of improper performance

of construction work to obtain some compensation. Therefore, the law on the size of the minimum coverage of harm should be foreseen in the legislation of Ukraine.

Also, noteworthy is the experience of New Zealand as the next level of development of the institute of self-regulatory organizations. In New Zealand, non-profit self-regulatory organizations have the right to accredit state institutions or individuals that issue building permits and carry out inspections.

Another example of recognition of the social status of self-regulatory organizations is the change in the roles of regulators and regulated parties, that is, the principle of dichotomy is in force. The principle of dichotomy involves the presence of two opposite functions in one and the same organ. In some cases, the authorities perform a regulatory role, in others – act as regulators. This is especially evident in the accreditation process for the work of local authorities in the United States of Construction Supervision and Control. Thus, the local building supervisory authority, which passes the accreditation procedure, acts in the regulated status, and the functions of the regulatory, accrediting body are performed by a non-governmental organization, a subsidiary of the Council of International Codes [17].

Summing up all the above, the use of the model of delegated self-regulation allows the state to create conditions for the fulfillment of certain state functions of management of other persons (organizations of professional self-government) by the forces of carriers of a certain profession and at their expense. That is, creating a public-law organization, which includes all the carriers of the same profession without exception, the state establishes procedures for their decision-making without budget spending on management, also under the supervision and control of the state.

Voluntary self-regulation is the second model of self-regulation. The application of this model allows public associations to obtain the status of self-regulatory organizations that are initially created by representatives of the profession or type of activity and which should establish high standards of work quality and ensure their compliance with their members.

Self-regulatory organizations created on the model of civic organizations, in contrast to the organizations of professional self-government, are founded on the initiative of private law subjects (individuals and legal entities belonging to the same or related professions) on the principles of voluntariness and membership.

The purpose of their creation is to provide a high professional level of market participants' activity; Representation of participants of the self-regulatory organization and protection of their professional interests; professional training and professional development of specialists – members of self-regulatory organization; developing rules of operation and monitoring compliance with rules and standards of conduct by members of a self-regulatory organization, ethical norms in their relationship with clients and other documents provided by law, etc. [17].

Therefore, one of the main functions of self-regulatory organizations is to determine the compliance of the subjects of urban planning with the requirements that are presented to market participants.

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Therefore, one of the main functions of self-regulatory organizations is to determine the compliance of the subjects of urban planning with the requirements that are presented to market participants.

Obtaining self-regulatory organizations with powers to regulate a certain range of issues is, on the one hand, evidence of the maturity of the professional environment and the growth of the democratic nature of society as a whole, while, on the other hand, it imposes additional responsibility, involves increasing the requirements and objectivity in determining the professional specialization, level of qualification and knowledge responsible executors during their

professional certification [20]. But anyway. society will benefit by expanding opportunities for self-realization in a safe environment; creation and preservation of a healthy living environment. This goal, as a priority task of the world community, is formulated in the goals of sustainable development (2015-2030), which was approved at the UN Summit in September 2015 [21] and is enshrined in the Law of Ukraine „On the Basics of Urban Development".

Mixed self-regulation combines the two models described above. According to this model, non-profit organizations formed voluntarily by the subjects of a certain type of economic activity or profession, in the case of compliance with legally established requirements, receive from the state powers to perform traditionally due to it only regulatory functions (first of all, admission to the execution of works and suspension from their implementation) [1].

A striking example is the creation of a balanced self-regulation model for the construction industry in the UK. On the one hand, rather detailed, clear legislative regulation of construction activity, and on the other hand, a large number of rights are transferred to self-regulatory structures. Thus, the legislator clearly outlines the circle of relations that are the monopoly of the state and therefore subject to mandatory state regulation, and outlines the range of issues that are passed to the decision of society in the face of self-regulating non-state organizations.

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The system of UK self-regulatory organizations includes: a) the National House of Commons of Great Britain – the main participant; b) other non-state entities, which, in the process of interaction with the state authorities, were delegated powers for the analysis and coordination of activities of controlled organizations; on improvement of activity of participating companies; organization of training of personnel and conducting process of attestation and advanced training of personnel of the construction industry; representation of interests of the branch in the authorities; the establishment of own additional criteria and in-

dicators for companies and organizations intending to become a member of the association, awarding the „Quality Mark".

The UK House of Commons is a self-regulating non-governmental organization whose functions include setting standards for the construction of new real estate and considering complaints from their buyers by eliminating defects and defects in residential buildings [17].

Standards are developed by the Board of the UK House of Commons, taking into account the requirements contained in UK building codes, regulations and standards. To ensure the protection and representation of the interests of all participants in the construction market, the Committee shall include: a) representatives of consumers; b) representatives of construction companies; c) representatives of other professional organizations

Conclusions to Section XI

The Institute of Self-Regulatory Construction Activity in Ukraine, as a mechanism of social regulation and collective responsibility, is innovative in terms of regulating market relations.

The emergence of such an institution is connected, on the one hand, with the processes of liberalization, on the other, with the processes of increasing the role of public and professional associations in Ukraine.

The aim of the Institute for self-regulation in the Ukrainian construction industry is the need to improve the quality and reliability of construction products and to weaken the level of state regulation in this area.

A promising direction for the development of the construction industry in Ukraine may be the formation of a system of professional self-government, which should combine various self-regulatory organizations in the specialization.

Important issues that require legislative consolidation are the nature of the relationship between the state regulator and self-regulatory organizations. In order to take full advantage of their functioning, they must have clearly defined responsibilities, including the development and enforcement of their own rules. In this case, the state regulator should perform supervisory functions predominantly.

International and national experience confirms the thesis that a developed system of self-regulation allows to reduce the level of interference with professional activity of state authorities and to increase the level of responsibility of

participants for the final results and to increase the guaranteed level of quality of the final result of activity by admitting to the appropriate market of professionals.

It is possible to distinguish three basic models of creation and functioning of self-regulatory organizations: delegated; voluntary; mixed up

Delegated self-regulation implies that the state delegates certain functions of market regulation (for example, accreditation of market participants) delegates self-regulation organizations and establishes general restrictions and rights of the activity of similar organizations. Thus, voluntary self-regulation implies the establishment and maintenance of rules by system participants without any approval or special protection from the state.

In mixed self-regulation, self-regulatory organizations only transfer part of their functions, whereas only certain powers, mainly of a coercive nature, are held by the state, that is, the power to bring to justice the failure to comply with standards.

In Ukraine, professional self-regulation is formed in the form of voluntary self-government, that is, public organizations carry out functions of establishing rules of professional ethics and standards of activity, as well as representing the common interests of its members before the state authorities and delegating them certain powers.

The transition from centralized regulation to self-regulation is in line with the European approach to building management, and will allow Ukraine to move closer to the international model for building construction.

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