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Editors office address:
National University of Life and Environmental Sciences of Ukraine
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E-mail: info@environmentalscience.com.ua

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International experience in legal support of freedom of speech on the Internet

Liudmyla Golovko*
PhD in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0002-3742-2827

Viktor Ladychenko
Doctor of Law, Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0002-7823-7572

Olga Kapplová
PhD in Law
Tomas Baty University
760 01, 5555 T.G. Masaryk Sq., Zlin, Czech Republic
https://orcid.org/0000-0003-4213-5168

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Abstract

The relevance of the studied subject lies in the fact that freedom of speech is a fundamental human right that should be ensured at the legislative level. However, in the era of rapid development of information and communication technologies, it is necessary to find a balance between such provision and the protection of the rights of others. The purpose of the paper is to investigate the legal support of freedom of speech at the international level, and the experience of foreign countries in the legal regulation of this issue. The study utilises general theoretical methods of research, namely historical,

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*Corresponding author

abstract-logical, systemic-functional, analysis and synthesis, the method of theoretical generalisation to generalise the theoretical and legal foundations of ensuring freedom of speech existing in foreign countries and to systematise the components of the right to freedom of speech and criteria and conditions for restricting the right to freedom of speech and the right to express views and beliefs. Comparative legal method is used for the analysis and comparison of foreign legislation regulating freedom of speech and the right to express views and beliefs on the Internet. The paper substantiates that the problem of legal regulation of ensuring freedom of speech lies in the complexity of achieving an optimal balance between guaranteeing the right to freedom of speech and protecting others. It is revealed that the implementation of the right to freedom of speech on the Internet and in social networks in the United States, Japan, China, and Germany is regulated differently on the legislative level and various approaches are used. Special attention is paid to legislative provision of responsibility for spreading false information, protection of public safety, and protection of copyright on the Internet. The opinion is justified that the experience of Japan and Germany is the most acceptable for Ukraine. The practical importance of the study lies in the fact that the analysis of the legislation of foreign countries allowed identifying the features of legal regulation of the right to freedom of speech in individual states and establishing the advantages and disadvantages that may exist in this field

Keywords: freedom of expression; right to express views and beliefs; global information society; right to a fair trial; copyright; criminalisation

Introduction

The issue of legal protection of freedom of speech, the right to express views and beliefs, becomes increasingly relevant in all countries around the world, including Ukraine. This relevance has been driven by the development of information and communication technologies. The creation of the Internet network has led to the formation of a unified informational space in which citizens from different countries can instantly and freely communicate, share information, their views, and beliefs. Freedom of speech is one of the most important values that democratic society is built upon. Therefore, it is key to the formation of the information society. In a global information society, freedom of speech and the right to express views and beliefs must be fully ensured. This should be reflected in legislation that guarantees the right to freedom of speech, including prohibiting censorship, not recognising any ideology as mandatory, and promoting ideological, political, and economic diversity. However, it is important to remember that ensuring the rights of some individuals should not violate the rights of others. Thus, the right to freedom of speech cannot be absolute.

The rapid development of information and communication technologies, in addition to enormous advantages, strengthening and facilitating the realisation of the right to freedom of speech, has also given rise to a number of new problems. Cases of abuse of freedom of speech and the right to express views and beliefs are becoming more frequent. This situation necessitates a reevaluation of priorities in state information policies and the legislative establishment of criteria for limiting freedom of speech, information, and the right to express views.

O. Yara *et al.* (2021) consider freedom of speech as a human right that allows individuals to express their views on past, present, or future events, facts, etc., and provide their assessment of them.

L. Yarmol (2017) emphasised that freedom of expression is a fundamental human right and proposes constitutional changes in Ukraine to provide citizens with more opportunities to express a probabilistic attitude to any phenomena, processes, events, and facts of the past, present, and future in any form.

V.C. Brannon (2019), L. Golovko *et al.* (2021), G. Spiegel (2018), focused on the need to implement legislative reforms in the field of ensuring the right to express views in social networks. S. Matsui (2021) argues for the need to restrict access of certain "undesirable" users to the Internet.

E. Ricknell (2020) highlights the importance of avoiding the promotion of harmful information on the Internet. B. Sander (2020) focused on the need to consider not only the private interests of owners of online platforms but also broader public interests.

Despite substantial coverage, there has been limited attention to investigating international legal regulation of freedom of speech in the context of the global information society. Therefore, this issue remains relevant.

Developed economies that entered the process of building an information society earlier have encountered the problem of misuse of freedom of speech and the right to express views on the Internet. Thus, analysing positive international experiences in balancing the right to express views and protecting the rights of others online is pertinent.

The purpose of the paper is to analyse the legal regulation of the right to express views and beliefs on the Internet in international documents and legislation of foreign countries to identify features, advantages, and drawbacks of such legal regulation in different countries.

The study employs various theoretical research methods, including historical, abstract-logical, systemic-functional, analysis and synthesis, and theoretical generalisation. The systemic-functional method, abstract-logical method, analysis and synthesis, and theoretical generalisation facilitated the summarization of theoretical and legal principles of ensuring freedom of speech existing in foreign countries, the systematisation of components of the right to freedom of speech, criteria and conditions for restricting the right to freedom of speech and the right to express views and beliefs.

The comparative legal method was used in the analysis and comparison of foreign legislation regulating freedom of speech and the right to express views and beliefs on the Internet. Key attention is paid to the legislation of the United States, Japan, China, and Germany. Through the analysis of foreign countries' legislation, particularities of legal regulation concerning the right to freedom of speech in specific nations were identified, including the advantages and disadvantages that might exist. Special attention was paid to the legislative consolidation of responsibility for the dissemination of false information on the Internet, the protection of public safety, and copyright protection on the Internet.

Legal support of freedom of speech in international treaties

According to Article 19 of the Universal Declaration of Human Rights (1948), every individual has the right to freedom of thought and the expression of those thoughts. This right encompasses the freedom to uphold one's beliefs and to seek, receive, and disseminate information and ideas by any means and regardless of national borders. Moreover, the document does not provide for restrictions on this right.

In line with Article 19 of the International Covenant on Civil and Political Rights (1966), every person possesses the right to express their views freely. This right includes the freedom to seek, obtain, and share information and ideas across borders, whether orally, in writing, through print, artistic expressions, or any other means of their choice. The paper specifies that exercising this right carries responsibilities, necessitating a heightened level of accountability. Moreover, the International Covenant permits states to impose restrictions on the exercise of the right to expression on a legislative level when necessary to protect the rights and reputations of others or for the preservation of national security, public order, health, or morality.

According to the Human Rights Committee General Comment No. 34 (2011), freedom of thought and the right to express views are essential conditions for the full development of the individual. They form the foundation for any democratic society. Freedom of thought and the right to express views are closely linked, and freedom of expression is a means of exchanging opinions and developing them.

In 2016, the United Nations Human Rights Council adopted the "Promotion, Protection and Enjoyment of Human Rights on the Internet" resolution, aiming to safeguard the right to express views online. According to the resolution, the rights that belong to a person offline should also be protected on the Internet.

Simultaneously, international documents have been adopted by the global community to prohibit expressions that propagate hatred and hostility on the Internet. For instance, the Additional Protocol to the Convention on Cybercrime concerning the criminalization of racist and xenophobic acts committed through computer systems (2003) prohibits any written or other material that advocates, promotes, or incites discrimination or violence against any individual or group based on any characteristic.

Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Article 10 provides for freedom of expression, which includes the freedom to adhere to one's views, receive and transmit information and ideas without interference from state authorities and regardless of borders. Similar to other international agreements, the Convention also allows for limitations established by law that are necessary in a democratic society for national security, territorial integrity, public safety, prevention of disorder or crime, protection of health or morals, protection of reputation or rights of others, prevention of disclosure of confidential information, or maintaining the authority and impartiality of the judiciary.

The Charter of Fundamental Rights of the European Union (2000) is an integral part of the legal system of the European Union. The Charter is binding on European institutions and member states and provides for the protection of freedom of speech in Article 11: "Everyone has the right to freedom of expression." This right encompasses the freedom to hold one's opinion, obtain and disseminate information and ideas without interference from public authorities and regardless of national borders. Furthermore, the Charter of EU Fundamental Rights requires the observance of freedom and pluralism of media outlets.

Thus, freedom of speech as a key right necessary in a democratic society is enshrined in a number of international treaties adopted within the UN, the Council of Europe, and the European Union. Nonetheless, the realisation of this right necessitates a sense of responsibility and the establishment of legislative constraints to safeguard the rights of others and maintain public safety.

Legal support of freedom of speech on the Internet in foreign countries

One of the first countries to adopt legislation in the field of legal regulation of freedom of speech on the Internet is the Federal Republic of Germany (hereinafter – Germany). On October 1, 2017, Germany adopted the Law of the Federal Republic of Germany "Network Enforcement Act" (2017). The Law defines a "social media provider" as a provider of telemedia services that operates an internet platform to allow users to share views with other users or make content publicly accessible. Exceptions apply to platforms that offer journalistic or editorial content, for which the service provider is responsible; platforms intended for individual communication or sharing specific content, and professional networks like LinkedIn. The law obliges providers of telemedia services to establish and ensure the operation of a system for handling complaints about illegal content. If the content is clearly illegal, the provider must block it within 24 hours. Other illegal content should usually be blocked within seven days of receiving a complaint. The seven-day period may be extended if the user who uploaded the content is given the opportunity to respond to the complaint or if a self-regulatory body is involved. Illegal content includes content that corresponds to certain violations of the Criminal Code of the Federal Republic of Germany (1998), including incitement to hatred, insults, and deliberate defamation. Fines for violating the obligation provided for by law can reach 50 million euros. In addition, providers of telemedia services are required to publish reports on their activities twice a year.

The Law of the Federal Republic of Germany "Network Enforcement Act" prompted providers of telemedia services to take measures against expressions that incite hatred or contain threats, etc. Therefore, the positive effect of this regulation should not be underestimated. Meanwhile, German researchers have raised a number of critical points. For example, W. Schulz (2018) raises the question of the unclear status of providers of telemedia services. Furthermore, the main question, according to the researchers, is whether the creation of a complaint system provided for by law does not violate the basic rights of the provider. The main criticism from researchers relates to potential violations of freedom of speech in various ways. In practice, the obligation of social media platforms to remove clearly illegal content within 24 hours raised questions about potential over-blocking of content and the privatisation of judicial power through the interpretation and application of criminal law by private companies. These two elements together, in turn, could result in a significant restriction of freedom of speech, according to K. Klonick (2018) and N. Guggenberger (2017). A. Heldt (2019) argues that the question of whether content can be removed, as required by the "Consumer Protection in Social Media Act", is not the main issue. Firstly, because the law requires the removal of illegal content, and secondly, because removal is still the most effective tool used by providers of telemedia services when it comes to expressions that incite aggression.

The Constitution of Japan (1946) prohibits censorship and protects freedom of speech, the press, and all other forms of expression, including the confidentiality of communication means. However, there are legal limitations established to protect the rights of others.

Japan has a number of regulatory acts aimed at safeguarding the country's security, public order, and the rights of others on the Internet, through civil and criminal liability. For example, in 2014, the law on the protection of a specially defined secret came into force (Cabinet Secretariat, n.d.). The law grants certain officials the authority

for an unlimited period to restrict public information related to defence, diplomatic relations (the content of negotiations with the government of a foreign country or international organisation that is important for national security; prohibition on the import or export of goods or other measures taken by Japan for national security; important information related to protecting citizens' lives, maintaining territorial integrity, peace, and security of the international community, or information requiring protection based on a treaty or other international agreement gathered in connection with national security), prevention of certain harmful activities (important information related to protecting citizens' lives or information from the government of a foreign state or international organisation gathered in connection with preventing certain harmful activities), and prevention of terrorist activities (Cabinet Secretariat, n.d.). Those who possess such state classified information and have caused its deliberate leakage are punishable by up to 10 years imprisonment, and for unintentional leakage of information – up to 2 years. Persons who knowingly received such classified information from an administrative body are punishable by up to 5 years imprisonment for intentional disclosure and 1-year imprisonment for negligent disclosure (Freedom on the Net, 2016).

The protection of copyright on the Internet has gained particular importance. In 2020, the Japanese government made amendments to the Copyright Act, making it illegal to download or upload content that infringes on copyrights (Cabinet Secretariat, n.d.). Previously in 2010, the downloading or uploading of videos and music was criminalised if the person knew that they were doing so illegally. However, this area was limited to "videos and music" and did not cover books, magazines, and comics (manga). The 2020 amendment expanded the scope to cover all types of copyrighted works (e.g., comics, books, documents, computer programmes) (Nakazaki *et al.*, 2023). Violators of the revised law face up to two years of imprisonment and/or a fine of up to 2 million yen (18,000 USD) (Freedom on the Net, 2021). In addition, Article 175 of the Penal Code of Japan (1907) prohibits the dissemination of indecent content. The distribution, sale, or display of indecent content (images, objects, etc.) is punishable by imprisonment for up to 2 years or a fine of up to 2.5 million yen.

The United States ranks third in the world in terms of the number of internet users. However, the regulation of the right to freedom of speech on the Internet and social media platforms is not governed by legislation there. Social networks are private companies. They themselves establish their own usage rules, which can include content censorship and restrictions on community membership rights.

In the United States, free speech infringement lawsuits filed against social media are usually dismissed. The main reason for rejection is that social networks are not state entities and their platforms are not public forums. Therefore, the First Amendment to the United States Constitution, which guarantees general citizen freedoms including freedom of speech (Constitution of The United States of America, 1787), does not apply to them. The overarching principle of freedom of speech under the First Amendment is that its protection is aimed at preventing restrictions on expression by the government. The First Amendment only prohibits the U.S. Congress from enacting laws that limit freedom of speech. This provision also applies to certain states and local authorities but does not extend to private companies. As noted by B.M. Pinkus (2021), only in rare cases have U.S. courts recognised social media platforms as public forums. An example of this is the decision

by a district court and subsequently an appeals court in the case of the Knight First Amendment Institute v. Donald Trump, where the courts ruled that the blocking of certain critical comments by the U.S. President on his official Twitter page violated citizens' right to freedom of speech as protected by the First Amendment to the Constitution, as the page was considered a public forum (Knight First Amendment Institute..., 2019).

Publication of false facts about an individual that damage their reputation can lead to civil (and very rarely criminal) defamation lawsuits in the United States. As noted by K.S. Park and A. Kuczerawy (n.d.), the legislation still considerably varies across individual states. However, to file a defamation lawsuit today, the plaintiff usually needs to prove, among other things, (1) that the defendant published a statement; (2) that the statement was a false fact (as opposed to true facts or opinion); and (3) that the defendant acted with a certain level of fault (this can be negligence or actual malice, meaning it is necessary for the defendant to have known that the statement was false at the time of its publication).

D. Wakabayashi (2020) draws attention to another flaw in US law. Section 230 of the federal Law of the United States of America, known as the "Communications Decency Act" (1995), has contributed to the prosperity of companies like Facebook, YouTube, Twitter, and numerous other internet companies. While the First Amendment to the Constitution of the United States of America (1787) safeguards freedom of speech, including hostile expressions, Section 230 shields websites from liability for content created by their users. This allows internet companies to moderate their sites without being responsible for the information they host. However, Section 230 does not provide complete protection from legal responsibility for certain criminal actions, such as posting child pornography or infringing on intellectual property rights. Grounds for legal accountability can arise, for instance, with the passage of the Law of the United States of America "Allow States and Victims to Fight Online Sex Trafficking" (2018), which creates an exception to the application of Section 230 for websites that knowingly assist, promote, or support prostitution. However, it is necessary to note the complexity of legislative regulation of this issue. As noted by M. Sableman (2013), if internet service providers were potentially liable for every message posted on their platforms, it would be expensive and challenging for them to remove unacceptable or illegal content from the vast volume of information. In such a situation, service providers will probably simply delete most of the messages created by users. This general self-censorship could lead providers to delete any content that might trigger complaints, potentially resulting in the Internet not fulfilling its intended functions and advantages.

An example of a country that significantly restricts freedom of speech on the Internet is the people's Republic of China. Since 2015, the dissemination of false information that seriously disrupts public order is considered a crime in China, punishable by up to seven years in prison (Moynihan & Patel, 2021). In 2017, the government introduced the "Law of the People's Republic of China on Cybersecurity" (2017), requiring social media platforms to republish and reference news articles from state-approved media. Online platforms are required to adhere to state restrictions and cooperate in implementing strict limitations on political, social, and religious discourse in order to obtain operating permits. According to Article 6 of the Order of the Cyberspace Administration of China "Provisions on the Governance of the Online Information Content Ecosystem" (2019), which came into effect on March 1, 2020, producers of

online information content should not create, copy, or publish any unlawful information that includes violations of fundamental principles outlined in the Constitution of the People's Republic of China (1982), poses a threat to national security, undermines the reputation or interests of the state, distorts, slanders, defiles, or denies heroic deeds and spirit, propagates terrorism or extremism, incites any terrorist or extremist activities, fuels ethnic hostility or discrimination, promotes ideas harmful to state religious policies, spreads rumors to disrupt economic and social order, spreads indecent information, promotes criminal activity, demeans, slanders others or infringes on their reputation, confidentiality, and other lawful rights and interests, or any other content prohibited by laws and administrative regulations (Order of the Cyberspace Administration..., 2019). Network Information Departments at all levels monitor and verify the performance of information content management responsibilities on network information content service platforms and, if necessary, conduct special checks on the platforms. The Chinese cyberspace administration may suspend or close online platforms that are considered to violate the requirements contained in the regulation.

According to Article 176 of the Criminal Code of Ukraine (2001), unlawful reproduction, use, and distribution of scientific, literary, and artistic works, computer programmes and databases, other works, unlawful reproduction, use, and distribution of performances, phonograms, videograms, and broadcasting programs, their unlawful reproduction and distribution on audio and video cassettes, floppy disks, other information carriers, camcording, cardsharing, or other intentional copyright infringement and related rights, financing such actions, if they have caused significant material damage, are punishable by a fine ranging from three hundred to one thousand untaxed minimum incomes, corrective labour for up to two years or imprisonment for the same term. The study concluded that this provision is insufficient, and it Is proposed to adopt the experience of Japan and criminalise the uploading or downloading of videos and music if the person was aware that they were uploaded unlawfully. The experience of the United States is seen as not worth emulating, as internet companies in that country have the right to moderate their websites without being held responsible for the information they host. The responsibility model of Germany is worth considering.

Conclusions

The study examined the legal framework for the realisation of freedom of speech on the Internet and the experiences of foreign countries in ensuring its implementation at the national level. It has been established that at the international level, a considerable number of documents have been adopted to ensure the implementation of freedom of speech as a key element inherent in democratic societies. However, the development of information and communication technologies and the formation of a global information society have led to the need for further refinement and expansion of legal regulations in this area. Analysis of legislation in different countries confirms the existence of various approaches to addressing important tasks such as protecting the rights of others, respecting private life, morality, maintaining public order, security, preventing crimes and disturbances, and safeguarding copyright.

Copyright protection on the Internet remains relevant. Japan is a leader in this field, having made amendments to copyright protection legislation that render the unauthorised uploading or downloading of any copyright-infringing content illegal. It is worth agreeing with the necessity of

criminalising copyright infringements. Nevertheless, the question of the type and extent of penalties remains a subject of debate and requires further analysis.

In China, where substantial restrictions on the content of information posted on the Internet are legislatively established, these limitations concern not only information that threatens national security and public order but also harmful information for state religious policies and rumours that could disrupt economic and social order, among others. For violation of the law, serious sanctions are provided – up to seven years of imprisonment. The validity of such severe sanctions also remains debatable.

In the United States, social networks themselves set rules for using their communities, which may provide for censorship of the content of statements, and also have the right to restrict membership in communities. At the same time, the issue of preventing false statements remains unresolved, which is a prospect for further research.

The scientific originality of the study is that the analysis of foreign legislation in the field of legal support for the implementation of freedom of speech is conducted to identify positive experiences that can be used in Ukraine. It is concluded that it is necessary to borrow the experience of Japan in the field of copyright protection and the experience of Germany in the field of control by internet companies of information that they post in order to prevent violations of the rights of others and public order.

The study is of practical value for researchers and practitioners who deal with the problems of legal support of freedom of speech, the right to express views and beliefs, for forecasting and planning scientific research, improving legislation, for teachers of higher education institutions in educational activities, and all interested parties.

With the development of information-communication technologies and the increasing use of the internet, new problems arise related to the implementation of this right online: protection of the rights of others, national security, public order, copyright protection, etc. All these issues require legislative regulation, and therefore can become topics for future research.

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Conflict of Interest

None.

References

[1] Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. (2003, January). Retrieved from https://rm.coe.int/168008160f.

[2] Brannon, V.C. (2019). *Free speech and the regulation of social media content*. Retrieved from https://crsreports.congress.gov/product/pdf/R/R45650/2.

[3] Cabinet Secretariat. (n.d.). *Overview of the Act on the Protection of Specially Designated Secrets (SDS).* Retrieved from https://www.cas.go.jp/jp/tokuteihimitsu/gaiyou_en.pdf.

[4] Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

[5] Constitution of Japan. (1946, November). Retrieved from https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.

[6] Constitution of the People's Republic of China. (1982, December). Retrieved from http://www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml.
[7] Constitution of the United States of America. (1787, September). Retrieved from https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm.
[8] Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf.
[9] Criminal Code of the Federal Republic of Germany. (1998, November). Retrieved from https://adsdatabase.ohchr.org/IssueLibrary/GERMANY_Criminal%20Code.pdf.
[10] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[11] Freedom on the Net. (2016). *Japan*. Retrieved from https://freedomhouse.org/country/japan/freedom-net/2016.
[12] Freedom on the Net. (2020). *Japan*. Retrieved from https://freedomhouse.org/country/japan/freedom-net/2020.
[13] Golovko, L., Uliutina, O., Davydovych, I., & Ilina, O. (2021). Legal regulation of combating domestic violence in Eastern Europe. *European Journal of Sustainable Development*, 10(3), 253-261. doi: 10.14207/ejsd.2021.v10n3p253.
[14] Guggenberger, N. (2017). Das Netzwerkdurchsetzungsgesetz – schön gedacht, schlecht gemacht. *Zeitschrift für Rechtspolitik*, 4, 98-101.
[15] Heldt, A. (2019). Reading between the lines and the numbers: An analysis of the first NetzDG reports. *Internet Policy Review*, 8(2). doi: 10.14763/2019.2.1398.
[16] Human Rights Committee General Comment No. 34. (2011, July). Retrieved from https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.
[17] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
[18] Klonick, K. (2018). The New Governors: The people, rules, and processes governing online speech. *Harvard Law Review*, 131(6), 1598-1670.
[19] Knight First Amendment Institute v. Donald J.Trump. (2019). Retrieved from https://globalfreedomofexpression.columbia.edu/cases/knight-first-amendment-institute-v-donald-j-trump-2/.
[20] Law of the Federal Republic of Germany "Network Enforcement Act". (2017, September). Retrieved from https://germanlawarchive.iuscomp.org/?p=1245.
[21] Law of the People's Republic of China on cybersecurity. (2017, June). Retrieved from https://www.dataguidance.com/sites/default/files/en_cybersecurity_law_of_the_peoples_republic_of_china_1.pdf.
[22] Law of the United States of America "Communications Decency Act". (1995, February). Retrieved from https://www.congress.gov/bill/104th-congress/senate-bill/314/text.
[23] Law of the United States of America No. 115-164 "Allow States and Victims to Fight Online Sex Trafficking". (2018, November). Retrieved from https://www.congress.gov/bill/115th-congress/house-bill/1865/text.

[24] Matsui, S. (2021). Freedom of expression in Japan: The constitutional framework of protection. In S. Higaki & Y. Nasu (Eds.), *Hate speech in Japan: The possibility of a non-regulatory approach* (pp. 35-57). Cambridge: Cambridge University Press. doi: 10.1017/9781108669559.003.

[25] Moynihan, H., & Patel, C. (2021). *Restrictions on online freedom of expression in China: The domestic, regional and international implications of China's policies and practices*. London: Chatham House.

[26] Nakazaki, T., Inoue, K., Oishi, Y., & Sumi, A. (2023). *Data protection & privacy trends and developments in Japan*. Retrieved from https://practiceguides.chambers.com/practice-guides/data-protection-privacy-2023/japan/trends-and-developments/O12793.

[27] Order of the Cyberspace Administration of China No. 5 "Provisions on the Governance of the Online Information Content Ecosystem". (2019, December). Retrieved from https://wilmap.stanford.edu/entries/provisions-governance-online-information-content-ecosystem.

[28] Park, K.S., & Kuczerawy, A. (n.d.). *Good practices in online intermediary liability regimes.* Retrieved from ttps://publixphere.net/i/noc/page/Online_Intermediaries_Research_Project_Good_Practice_Document.html.

[29] Penal Code of Japan. (1907, April). Retrieved from https://www.japaneselawtranslation.go.jp/en/laws/view/3581/en.

[30] Pinkus, B.M. (2021) The limits of free speech in social media. *Accessible Law*, 9. Retrieved from https://untdlaw.wixsite.com/accessible-law/post/the-limits-of-free-speech-in-social-media.

[31] Resolution of the United Nations Human Rights Council A/HRC/32/L.20 "Promotion, Protection and Enjoyment of Human Rights on the Internet". (2016, June). Retrieved from https://www.article19.org/data/files/Internet_Statement_Adopted.pdf.

[32] Ricknell, E. (2020). Freedom of expression and alternatives for Internet governance: Prospects and pitfalls. *Media and Communication,* 8(4), 110-120. doi: 10.17645/mac.v8i4.3299.

[33] Sableman, M. (2013). *ISPs and content liability: The original Internet law twist*. Retrieved from https://www.thompsoncoburn.com/insights/blogs/internet-law-twists-turns/post/2013-07-09/isps-and-content-liability-the-original-internet-law-twist.

[34] Sander, B. (2020). Freedom of expression in the age of online platforms: The promise and pitfalls of a human rights-based approach to content moderation. *Fordham International Law Journal*, 43(4), 939-1006.

[35] Schulz, W. (2018). Regulating intermediaries to protect privacy online – the case of the German NetzDG. *HIIG Discussion Paper Series*, 1. Retrieved from https://www.hiig.de/wp-content/uploads/2018/07/SSRN-id3216572.pdf.

[36] Spiegel, G. (2018). *Germany's Network Enforcement Act and its impact on social networks*. Retrieved from https://www.taylorwessing.com/synapse/article-germany-nfa-impact-social.html.

[37] Universal Declaration of Human Rights. (1948, Desember). Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[38] Wakabayashi, D. (2020). *Legal shield for social media is targeted by lawmakers*. Retrieved from https://www.nytimes.com/2020/05/28/business/section-230-internet-speech.html.

[39] Yara, O., Brazheyev, A., Golovko, L., & Bashkatova, V. (2021). Legal regulation of the use of artificial intelligence: Problems and development prospects. *European Journal of Sustainable Development*, 10(1), 281-289. doi: 10.14207/ejsd.2021.v10n1p281.

[40] Yarmol, L.V. (2017). The notion, meaning, types of views and beliefs of a person (theoretical legal research). *State and Regions. Series: Law*, 4, 8-14.

Міжнародний досвід правового забезпечення свободи слова в мережі «Інтернет»

Людмила Олександрівна Головко
Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0002-3742-2827

Віктор Валерійович Ладиченко
Аспірант
Доктор юридичних наук, професор
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0002-7823-7572

Ольга Капплова
Кандидат юридичних наук
Університет Томаша Баті
760 01, площа ім. Т. Г. Масарика, 5555, м. Злін, Чеська Республіка
https://orcid.org/0000-0003-4213-5168

Анотація

Актуальність теми дослідження полягає в тому, що свобода слова – це природне право людини, яке має бути забезпеченим на законодавчому рівні, проте в період стрімкого розвитку інформаційно-комунікаційних технологій необхідно знайти баланс між таким забезпеченням і захистом прав інших осіб. Мета статті – провести дослідження правового забезпечення свободи слова на міжнародному рівні, а також досвіду зарубіжних країн щодо правового регулювання цієї проблематики. У роботі використано загальнотеоретичні методи наукових досліджень, а саме: історичний, абстрактно-логічний, системно-функціональний, аналізу і синтезу, а також метод теоретичного узагальнення, які дали змогу узагальнити теоретико-правові засади забезпечення свободи слова, які існують в зарубіжних країнах, а також систематизувати компоненти права на свободу слова й критерії та умови обмеження права на свободу слова й права на вираження поглядів та переконань. Порівняльно-правовий метод використано для аналізу й порівняння зарубіжного законодавства, що регулює свободу слова й право на вираження поглядів та переконань в мережі «Інтернет». У дослідженні обґрунтовано, що проблема правового регулювання забезпечення свободи слова полягає у складності досягнення

оптимального балансу між гарантуванням права на свободу слова й захистом інших осіб. Виявлено, що реалізація права на свободу слова в мережі «Інтернет» і в соціальних мережах США, Японії, Китаю, Німеччини на законодавчому рівні регулюється не однаково й використовуються різні підходи. Особливу увагу присвячено законодавчому закріпленню відповідальності за поширення неправдивої інформації, захисту громадської безпеки та захисту авторських прав в мережі «Інтернет». Обґрунтовано думку, що найбільш прийнятний для України досвід Японії та Німеччини. Практичне значення статті полягає в тому, що аналіз законодавства зарубіжних країн дав можливість виявити особливості правового регулювання права на свободу слова в окремих державах та встановити переваги та недоліки, які можуть існувати в цій сфері

Ключові слова: свобода вираження поглядів; право вираження поглядів і переконань; глобальне інформаційне суспільство; право на справедливий суд; авторське право; криміналізація

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Contractual obligations in Roman law: The genesis of the main forms

Yuliia Kanaryk*
PhD in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0003-3222-7827

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Abstract

Roman law is the basis for many modern Western European legal systems, and it is used by the vast majority of modern researchers and lawyers. Obligations are one of the main legal means by which trade turnover was regulated at various stages of human development. The relevance of the subject of the study lies in the fact that the examination of the grounds for the emergence of obligations in Roman law allows for determining ways to improve the legal regulation of relevant legal relations in modern realities. The purpose of this study is to investigate the emergence of the institution of contractual obligations and its individual types in Roman private law. Using the method of analysis and synthesis, the differences in the system of grounds for the emergence of obligations at different stages of the development of this institution are highlighted. The study analyses the concept of a contract as one of the grounds for the emergence of obligations in Roman private law. The system of obligations of Ancient Rome is briefly described. The main stages of the evolution of binding legal relations of the historical period under consideration are highlighted. The views of various researchers on the grounds for the emergence of obligations in Roman private law are examined. It is concluded that the first types of obligations in Ancient Rome were those

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*Corresponding author

that arose from offences (torts), and contractual obligations appeared later as a result of improving the legal system. The study examines how views on the grounds for the emergence of an obligation have changed, in which the leading role is no longer assigned to torts, as it was in early Roman law, but to contracts (deals). The practical value of the study lies in the fact that after the analysis conducted, it became possible to compare and improve the modern system of obligations under Roman private law

Keywords: contracts; pacts, claims; torts; stipulation; innovation

Introduction

The special role of Roman law in the modern legal system is that it became common law throughout the ancient world, and certain branches of Roman law are still used today. One of these branches is the Roman law of obligations under contracts. Through contracts, commodity and economic operations were fixed in Ancient Rome.

Today, interest in Roman law in Ukraine is growing due to the European integration processes. Therefore, Roman law should be examined in detail precisely in the aspect of the basis for the development of civil law. Obligations are one of the main legal means regulating trade turnover, so examining it allows identifying the dynamics of civil circulation and ways to improve the legal regulation of Civil Relations in Ukraine.

Contractual obligations were created to regulate legal relations in relation to foreign and internal trade. The treaty system, which was created in Ancient Rome, gave an impetus to the development of the economy and the improvement of national law.

Roman law characterised contractual obligations as regulatory rather than protective measures. However, during their development, these relations acquired a law enforcement function. Such a system had a perfect character, so in the future most European states began to be guided by it.

Therefore, this approach also allows using national traditions, enriching them with the pan-European idea of Roman law and the nature of its interpretation in modern conditions. Therefore, there is a need for a detailed study of the main institutions of Roman law, in particular, the obligations and grounds under which they arose.

V. Novosad (2022) refers to the following types of legal methods of securing obligations: real security of the creditor at the expense of the debtor (pledge, deposit); personal security of the creditor at the expense of the debtor (stipulation, oath); security of creditors at the expense of third parties (surety).

After analysing the dissertation by N. Dykhta (2018), it can be concluded that Roman private law gave rise to the right to reimbursement of expenses, which was later implemented in Ukrainian legislation.

V. Selska (2018) focuses on subsidiary liability from Roman law to modern civil law. After analysing the data of the paper, it is noted that the concept of "subsidiary liability" was partially borrowed from Roman contract law, but the current legislation of Ukraine still does not contain a clear definition of this concept, which requires further research.

V. Dzhugan (2018) investigated the formation of the Institute of legal liability in Roman law, including for violation of contractual obligations. The author determined that due to the reception of Roman law, it can be considered fundamental for the

development of many legal systems in Europe and the world, and is currently important for research.

In the dissertation by V. Sloma (2020), the formation of this type of obligation in Ukrainian civil legislation based on Roman law was analysed. The author defines that genealogical obligations with multiple subjects originate from Roman law, namely from the stipulation "sponsion", according to which other persons (sponsors) could be involved in the performance of the obligation, provided that the principal debtor fails to fulfil the obligation.

Despite the existence of these fundamental studies, the question of the grounds for the emergence of obligations in Roman law has not been covered, which determines the relevance of this study.

Thus, the purpose of the study is to analyse the concept and grounds for the emergence of contractual obligations in Roman law.

Materials and Methods

When investigating the norms of Roman law, the methods of specific humanities play an important role, since the object of study is quite multifaceted. An integrated approach to determining the essence of Roman legal phenomena makes it necessary to use many sciences: philosophy, philosophy of law, sociology, cultural studies, anthropology, semiotics, civil studies, history, etc.

Researchers who were engaged in the study of Roman law and civil law, in general, tried to develop a universal methodology for investigating Roman law, but due to the versatility of the subject, it cannot be exhausted by a well-established system of methods and techniques.

It is necessary to use a systematic approach to the examination of the public aspect of Roman law to thoroughly study contractual obligations in its system, which combines philosophical, general scientific, and special scientific research methods. Through a systematic approach, it is possible to examine the dual nature of Roman law based on the unity of concrete historical facts corresponding to the period of Roman rule and the logical connection between private and public law.

The historical method allowed determining the features, patterns, and trends in the development of contractual obligations in Ancient Rome.

Through the formal-logical method, the legislation on contractual obligations and termination of their performance was examined; the method of comparative analysis was used to clarify the features and differences of the system of grounds for the occurrence of obligations at different stages of the development of this institution.

The analysis primarily allows tracing the formation of a general picture of legal relations that were associated with the conclusion, modification, and termination of obligations under Roman law.

The legal basis of the study was the primary sources of Roman law, which include the Law of Twelve Tables (450 B.C.), the Institutes of Gaius (170), the Institutes of Justinian (535), and the norms of Ukrainian legislation, namely the Civil Code of Ukraine (2003).

The scientific basis of the study includes the papers of Ukrainian and foreign researchers on Roman treaty law.

Results and Discussion

The most well-known source of Roman law, which mentioned contractual obligations, is the Laws of the Twelve Tables (451-450 BC). It is worth agreeing with the opinion of Ye. Orach and B. Tyshchyk (2012) that this source did not provide comprehensive information about obligations and showed that during this period the existence of contractual obligations was not widespread enough.

In Gaius institutes, Book 3 was devoted to obligations, which described the specific features

of concluding binding and classifying contracts (Kozub & Bodnaruk, 2020).

The Institutes of Justinian (535) compared the opinions of various scholars on the grounds for the emergence of obligations, determined the specific features of payment under a contract of employment, so they are considered the main source of reception of Roman law. However, it is necessary to agree with Ye. Kharytonov (2019) on the fact that Justinian's Digests were created not only based on Roman law but also through Byzantine adaptation to the norms of another state.

Ukrainian civilists conducted research on Roman law of obligations. The study of V. Goncharenko (2005) on the reception of Roman law rules governing a loan agreement and of R. Gongalo (2000) on the reception of Roman law on superficies are notable.

It is worth agreeing with the opinion of S. Grynko (2012) discusses the essence of methods for ensuring the fulfilment of obligations in two moments: firstly, alongside the debtor, any third party assumes personal responsibility for their debt, which constitutes personal credit; secondly, the allocation of a separate object from the property of a known person, the value of which can be used to satisfy the creditor in case the debtor fails to fulfil their obligation, constitutes real credit.

The stydy by V.F. von Zeller showed the limits of the right of the co-owner of a thing to transfer detentio over it to another person, and N.D. Fustel-de Culange – an opportunity to establish the relationship between the contract of employment and the legal relationship of the colonnate (Mynyo, 2015).

The creation of the contract law of obligations in Ancient Rome allowed to improve commodity circulation, while not violating the existing conservatism that was characteristic of Roman quirite law. Sources of Roman law first defined the term "obligatio" in the 3rd century BC. This term literally meant legal handcuffs, which determine the obligation to perform a certain action in accordance with the law. According to the opinion of the Roman jurist Paul (III century AD): "The essence of the obligation is not to make any object ours, but to bind another before us in such a way that he gives, does, or provides us something" (Maydanyk, 2021). This means that any person is free in their actions until the moment when they have an obligation. After the appearance, the person conditionally put on handcuffs, which to a certain extent restricted their will and made them feel someone else's power over themselves.

Therefore, it can be concluded that the term "obligation" in Roman private law was understood as a legal relationship according to which one party (the creditor) has the right to demand that the other party (the debtor) perform a certain action or abstain from it, and the debtor undertakes to perform certain actions in favour of the creditor to satisfy their interest.

Unlike responsibilities, obligations are not accidental, they arise as a consequence of a certain circumstance or legal fact that establishes a connection between two persons. This circumstance in Roman law was called *causa obligationis*.

Roman private law gives obligations the following features: a personal legal relationship; the subject of legal relations is a specific action; the content of the obligation is the obligation of the debtor to "give", "do", "provide", and the right of the creditor is the requirement to fulfil the obligation imposed on the debtor; the presence of a property interest for the creditor.

The Roman scholar T. Marezol argued that an obligation arises from the expression of the will of an obliging person when they promise another person to provide a certain service or perform a certain action, and the other person, in turn, accepts the offer and makes the promised an

integral element of his property. The researcher convinces of the need to define a system of obligations in Roman law, which consists of four parts, in accordance with the grounds for their occurrence (Gryshko & Vinnychuk, 2019).

It is worth agreeing with the opinion that personal forms of claims prevailed in Roman law (*actiones in personam*), and not claims on the right of ownership (*actiones in rem*) (Maydanyk, 2021). This means that Roman private law had a division of rights into property and binding. However, Roman private law did not always distinguish real and binding rights into different categories. According to the author, the main inherent feature of the obligation is the consolidation, movement of property, property benefits. It is on this basis that proper and binding relations differ substantially since property legal relations fix the appropriation of material goods, and not their movement.

Roman jurists pointed out that an obligation arises from two main legal facts: a contract and a tort. However, according to practice, the most important and widespread basis of obligations in Ancient Rome was a contract. The contract (*contractus*) refers to an agreement (expression of will) of two or more parties that aims to achieve certain legal results, such as the emergence, modification, or termination of rights and obligations. Obligations also arose as a result of the illegal behaviour of the person. An offence that results in property damage generates a tort obligation.

According to Yu. Baron, the following bases for the emergence of obligations were indentified: unilateral will of the debtor; contract; positive prescriptions; by the will of the judge; intervention of one party into the field of rights of another party (Kutateladze, 2006).

B. Windsteid proposed a different view of the system of obligations that existed in Roman law. It includes: rights of a person arising from a contract; obligations arising from misdemeanours; obligations under quasi-agreements; liability for obligations of others (Davydova, 2018).

Notably, the theory of separation of obligations, which was proposed by Y. Pokrovsky (1998), cannot be considered as a basis since the division of obligations into contractual and non-contractual ones does not provide precise justifications for exactly how non-contractual obligations should arise. G. Shershenevich (1994) calls the category of non-contractual obligations groundless (Ryabokon, 2021).

The author highlights as the main feature of the obligation its personal nature: the obligation concerns only those persons between whom it arose, but the subject of the obligation is defined as an action consisting in the right of claim of the creditor and the obligation of the debtor to give something (dare), do something (*facere*), or provide something (*praestare*)

In Roman law, all obligations were divided into the following categories: based on their occurrence – obligations under contracts and torts (quasi-agreements and quasi-disputes); on the law regulating obligations – civil and Praetorian; on the subject of obligations – divisive and indivisible, alternative and optional, one-time and permanent.

Before the concept of "contract" appeared in Roman law, there was a concept of "nexum", which meant that the debtor personally subjected themselves to the creditor until the repayment of their debt. "Nexum" is the only known agreement that was spelt out in the Laws of the Twelve Tables, based on which the obligation arose.

The next well-known legal form was *sponsio*, or *stipulatio*. This form became a unifying factor between old and new civil law in Ancient Rome, as it existed in a formal form, such as *nexum* however, it was based only on a conditional promise from the debtor. Stipulation could be concluded

orally in any language that both parties could understand. This type of contract predetermined the fact that the debtor could only be required to promise, without additions, without penalties for late or non-fulfilment of the terms of the contract.

Later, the system of contracts in Roman private law began to operate. Contracts are formal deals that are recognised in civil law and secured through claim protection. Over time, pacts also gained appellative protection (Bezklubyi, 2021). However, this system also had some drawbacks. There were types of contracts that, although grouped into a general system, had different forms of conclusion and distinctions in the moments of contract formation.

In addition to contracts, the system of treaties of Ancient Rome included pacts (*pactum*). Gaius called this division *summa division* (Pidopryhora & Kharytonov, 2022). However, in another book called "Seven Books of Common Matters", also known for its popularity as *"Aureorum",* Gaius adds another category *"aut proprio quodam jure ex variis causarum figuris"*, which translates to "from other kinds of legal grounds" (Pidopryhora & Kharytonov, 2022). The third edition of this study shows the classification of "other types of legal grounds" into quasi-contracts and quasi-credits.

However, this division is also considered imperfect, because the exact basis for the occurrence of the obligation is not determined. The concept of "debtor" in both types is endowed with legal liability.

During the improvement of the system of treaties in private Roman law, the formal process was important, according to which the Praetor could, at their own discretion, give relations legal meaning. Due to these actions, agreements that were previously not protected by a lawsuit obtained the possibility of full protection. The debtor and creditor themselves also played an important role in establishing contractual obligations.

The main features of the development of contractual obligations in Roman private law were the deprivation of formalism, giving treaties a real or consensual form. However, it is also worth highlighting as a distinctive feature the focus on the internal will of the parties when concluding a contract. This means that the transaction could be considered contested or invalid only if it was concluded in an inappropriate way, using coercion, etc.

During the formula process, the principle of *condemnatio recipiagia* was formed, according to which contractual obligations have the right to exist only if there is a property value. In Roman private law, contractual obligations developed gradually and various types of contracts were gradually created. They were divided into contracts (i.e., a standard contract) and pacts (contracts without legal force) to determine which type of claim can be applied to a particular type of contract.

It is considered that the subject of the obligation is a person. It is worth challenging the reasonableness of this theory, because the subject should be defined as the activity that the debtor performs in favour of the creditor, and liability arises both as a result of non-performance and incomplete performance of this action.

When concluding contracts, they can involve not only two persons, but also several debtors or creditors. Such cases usually occurred as a result of obtaining the right to common property by inheritance (Metzger, 2020). According to which of the parties to the contract is plural, there are the following varieties: active multiplicity of subjects – when there are several creditors; passive multiplicity of subjects – when there are several debtors; mixed multiplicity of subjects – there are several representatives from both parties.

Such multiplicity of any party to the contract, as a result, gives rise to the division of obligations between all parties. According to this distribution, partial and joint (solidary) obligations are distinguished.

A solidary obligation is a type of contractual obligation where all creditors can demand the debtor's performance in full, and each debtor must fully fulfil their obligation. Solidary obligations also include two types: in the narrow sense and coreality. The difference between them lies in the grounds on which they arise. The reason for establishing a solidary obligation in a narrow sense was a special resolution of the law (Spasibo-Fateeva, 2022). The reason for establishing a coreal obligation is the transaction and the actual will of the parties to the agreement.

A partial obligation is a type of contractual obligation where creditors can demand compensation from the debtor only for their share, and debtors can only fulfil a certain share of the obligation.

It is advisable to consider the types of contracts on the subject of the obligation. An alternative is an obligation, according to which the debtor can choose one of several actions to repay the obligation. The contract may or may not provide for the right to choose a certain party to the contract. If such a choice is not provided, this choice is automatically passed to the debtor (Goncharova, 2018). Obligations are termed facultative when the debtor has the option to fulfill their obligation with a different object instead of the one specified in the contract. As a result of such a replacement, the debtor can use the benefit to change the subject matter of the obligation.

In addition, in accordance with the subject matter, contractual obligations were divided into permanent and one-time, respectively, during a permanent obligation, the debtor had to perform certain actions on a permanent basis, in the case of one-time obligations-only once to perform an action or once to transfer a thing.

Contractual obligations provided for the possibility of replacing a person by succession. This was mostly about inheritance. The Law of the Twelve Tables describes that the rights of claim and debts of the testator must be distributed among his heirs according to their shares in the inheritance (Pylypchuk, 2018). The next factor according to which it was possible to replace a party to the contract was the institution of innovation. According to it, when determining a new obligation between the debtor and the new party to the contractual obligation, it was necessary to terminate all existing obligations of the debtor to the creditor. Such an institution was applied only with the consent of the debtor. If the original obligation was made based on a surety or pledge, it was necessary to conclude a new agreement with the new creditor participant.

The innovation existed in several types: one that was concluded by the same persons who previously concluded the agreement, and the change is made in the terms or terms of the contract; an innovation that replaces the creditor or debtor. Notably, during the innovation, termination took place through an oral contract in the form of stipulation. There was another form of innovation – literal contracts. The conditions under which the innovation terminated the obligation were: it was concluded to repay previous obligations, the contract under discussion is valid, the definition of a new element of the obligation, and the identity of the debtor's obligation (Samusieva, 2020).

Summarising, it is worth highlighting the following conditions for the existence of an innovation: the actual existence of the initial obligation (*prius debitum*); the actual existence and validity of the new obligation (*nova obligatione*); distinguishing features between the original and new

obligations (*aliquid novi*); the parties' desire to make an innovation.

If the debtor did not fulfil their obligation within a certain time frame, this was called late fulfilment. This happens when there are such conditions as the term of performance of duties, the absence of good reasons for non-performance of duties, and the fault of the debtor due to the lack of valid reasons for non-performance of obligations. However, the debtor is obliged to fulfil its obligation even after the expiration of the terms of its performance, even if the value of the subject of the obligation decreases, the debtor must pay monetary compensation for it, which is defined in the contract, moreover, the creditor can charge interest for late performance of obligations.

The Ukrainian legal system is aimed at European integration, so the norms of Roman law regarding market relations are beginning to be actively used. Therefore, there was a need for a precise formulation of Roman law, in particular, in the field of regulating relations of obligations. Now Roman law manifests itself as the most developed and complete law, containing regulators necessary for society in general and for its main groups in particular. Therefore, Ukrainian civil legislation borrows verbal and literal forms of contracts.

Classical Roman law does not provide that the conclusion and execution of a contract takes place simultaneously. However, according to Article 668 of the Civil Code of Ukraine (2003), the buyer is responsible for accidental destruction or damage to the object of the contract from the date when the contract was concluded. Contracts were classified into paid ones, which included a purchase and sale agreement, and gratuitous ones (a loan agreement). This classification is also partly borrowed from Roman treaty law. The loan agreement (*commodatum*) according to Roman law, there is a real contract according to which one person (the commodore) must transfer a certain item to another person (the commodore) for temporary and gratuitous use for the period provided for in the agreement (Sloma, 2019). According to the Civil Code of Ukraine, the parties to a loan agreement are the lender and the user. A loan agreement is an ancient type of real contracts that has been preserved in domestic civil legislation.

In Roman contract law, an obligation was a personal concept that gave the creditor the right to demand its fulfilment from the debtor. In the civil legislation of Ukraine, obligations consist of legal relations between the parties to the contract, which in turn divide the relations into two groups, in each of which the obligations are assigned to both the creditor and the debtor.

In general, the specific features of the implementation of the contractual norms of Roman law in the civil legislation of Ukraine require a detailed study, which should be devoted to a separate scientific study.

Conclusions

In the course of the study, it was concluded that during the formation of Roman law, a transition was made from the leading role of torts to giving preference to contracts (contractual obligations).

Obligations are classified according to a four-member structure: contracts, torts, quasi-contracts, and quasi-contracts. Contracts appeared later, but for a long time in terms of liability for non-compliance with the conditions defined in contracts, they were no different from torts and became more perfect only during the time of classical Roman private law.

Contractual obligations in Roman private law were formed based on the terms *contractus*, which means an agreement that aims to create obligations, and *pacta conventa*, which meant an

informal agreement that was not endowed with call sign protection. However, in ancient Roman law, these terms did not have full legal force and provided only for those duties that differed from offences and had an objective meaning.

With the development of economic relations in Ancient Rome, the contract in its previous forms ceased to be relevant. Consequently, new forms of contractual obligations began to emerge that lacked solemn components and formalities in their content. Currently, these new forms cannot keep up with the rapid increase in their quantity and can impede the reform of economic life. Due to the economic crisis, changes were made in the legislation to support debtors, and a ban on charging too much interest was established.

Notably, these changes had a negative impact on contractual obligations in general. This led to the emergence of new types of contracts, devoid of burdensome formalism and solemnity of their implementation. Accordingly, it was possible to observe the consolidation of all existing obligations into a certain system.

In the course of a comparative analysis of Roman contract law and the civil law of Ukraine, their common and distinctive features were determined. It is concluded that such legal categories as ownership, emphyteusis, superficies, and easement were borrowed from the norms of Roman law. Certain differences can be observed in the loan agreement, which was also borrowed from Roman contract law. The difference in the loan agreement under civil legislation lies in the fact that this type of agreement can be defined as both a consensual and a real contract, whereas under Roman law, this type of contract was defined as consensual. According to previous practice, the implementation of the norms of Roman law in Ukrainian legislation takes place both in full and with the application of certain changes.

In the future, it is planned to examine in detail the implementation of the norms of treaty Roman law to improve the current civil legislation of Ukraine in the context of European integration.

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Conflict of Interest

None.

References

[1] Bezklubyi, I.A. (2021). General characteristics of Roman private law. In R.A. Maydanyk, & Ye.O. Ryabokon (Eds.), *Roman private law. Practicum* (pp. 9-22). Kyiv: Alerta.

[2] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/go/435-15.

[3] Davydova, I. (2018). Faults of will in a deal as a condition of its invalidity: From the Roman law to present. *Lex Portus*, 1, 144-152.

[4] Dykhta, N.M. (2018). *Contract of agency in Roman private law and its reception in modern civil legislation of Ukraine* (PhD thesis, National University "Odesa Law Academy", Odesa, Ukraine).

[5] Dzhugan, V. (2018). Genesis of legal responsibility in Roman law. *Entrepreneurship, Economy and Law*, 2, 165-170.

[6] Goncharenko, V.O. (2005). *Reception of the roman contract of loan for use in modern Ukrainian civil legislation* (PhD thesis, National University "Odesa Law Academy", Odesa, Ukraine).

[7] Goncharova, A.V. (2018). Inheritance by law: Historical background is modern life. *Legal Horizons*, 8, 28-32.

[8] Gongalo, R.F. (2000). *Superficies in Roman law and its reception in modern civil law of Ukraine* (PhD thesis, Odesa State Law Academy, Odesa, Ukraine).

[9] Grynko, S.D. (2012). *Tort obligations of Roman private law: Concept, system, reception*. Khmelnytskyi: Khmelnytskyi University of Management and Law.

[10] Gryshko, V.I., & Vinnychuk, I.V. (2019). The system of contracts in Roman law and their reception. *Young Scientist*, 12.1, 38-41.

[11] Institutes of Gaius (170). Retrieved from http://thelatinlibrary.com/law/gaius.html.

[12] Institutes of Justinian. (535). Retrieved from http://thelatinlibrary.com/law/institutes.html.

[13] Kharytonov, Ye.O. (Ed.). (2019). *Roman law and modernity. Codification and recodification of civil legislation in Ukraine: Experience and prospects: Materials of the international science and practice conference*. Odesa: Phoenix.

[14] Kozub, I.H., & Bodnaruk, M.I. (2020). *Basics of Roman civil law*. Chernivtsi: Yuriy Fedkovych Chernivtsi National University.

[15] Kutateladze, O.D. (2006). *The legal grounds of a rise of obligations in roman private law and modern Ukrainian civil legislation* (PhD thesis, National University "Odesa Law Academy", Odesa, Ukraine).

[16] Law of Twelve Tables. (c. 450 B.C.). Retrieved from https://avalon.law.yale.edu/ancient/twelve_tables.asp.

[17] Maydanyk, R.A. (2021). Possession in Roman private law. In R.A. Maydanyk, & Ye.O. Ryabokon (Eds.), *Roman private law. Practicum* (pp. 102-112). Kyiv: Alerta.

[18] Metzger, E. (2020). Roman law. In Y. Kasai, & V. Cazzato (Eds.), *Koten no Chosen*. Tokyo: Chisen Shokan. doi: 10.2139/ssrn.3680599.

[19] Mynyo, M.M. (2015). *The contract of employment under Roman law and its reception in the law of Ukraine* (PhD thesis, Ivan Franko National University of Lviv, Lviv, Ukraine).

[20] Novosad, I.V. (2022). Contract under roman private law and its implementation in modern legislation. *Scientific Journal of the M.P. Dragomanov National Pedagogical University. Series 18. Law*, 37, 21-26. doi: 10.31392/NPU-nc.series18.2022.37.04.

[21] Orach, Ye.M., & Tyshchyk, B.Y. (2012). *Roman private law*. Kyiv: In-Jure.

[22] Pidopryhora, O.A., & Kharytonov, Ye.O. (2022). *Roman law* (5th ed.). Kyiv: Yurinkom Inter.

[23] Pylypchuk, O.O. (2018). The origin and development of law in Ancient Rome (middle of the VIII–VI centuries B.C.). *History of Science and Technology*, 8(1), 179-190. doi: 10.32703/2415-7422-2018-8-1(12)-179-19026.

[24] Ryabokon, Ye.O. (2021). Persons in Roman private law. In R.A. Maydanyk, & Ye.O. Ryabokon (Eds.), *Roman private law. Practicum* (pp. 53-65). Kyiv: Alerta.

[25] Samusieva, K.V. (2020). Novation as a way of termination of obligations. *Juridical Scientific and Electronic Journal*, 8. doi: 10.32782/2524-0374/2020-8/36.

[26] Selska, V. (2018). History of the formation and development of subsidiary legal liability. *Lex Portus*, 2, 202-212.

[27] Sloma, V.M. (2019). Liability in obligations with multiple persons: Separate civil law aspects. In R.A. Maydanyk, E.M. Hramatskyi, and V.V. Tsiura (Eds.), *Modernization of civil liability (Matveev's civic readings): Materials of the international science and practice conference* (pp. 272-274). Kyiv: Taras Shevchenko National University of Kyiv.

[28] Sloma, V.M. (2020). *Obligations with the plurality of entities in the civil law of Ukraine* (Doctoral thesis, West Ukrainian National University, Ternopil, Ukraine).
[29] Spasibo-Fateeva, I.V. (Ed.). (2022). *Roman law through the prism of tradition and judicial practice*. Kyiv: ECUS.

Договірні зобов'язання в римському праві: генеза основних форм

Юлія Сергіївна Канарик
Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0003-3222-7827

Анотація

Римське право – це основа для багатьох сучасних західноєвропейських правових систем, ним керується переважна більшість науковців та юристів сьогодення. Зобов'язання – один з головних правових засобів, за допомогою яких регулювався торговий обіг на різних етапах розвитку людства. Актуальність теми наукового дослідження полягає в тому, що вивчення підстав для виникнення зобов'язань в римському праві дають змогу визначити шляхи вдосконалення правового регулювання відповідних правовідносин у сучасних реаліях. Мета цієї статті – дослідити виникнення інституту договірних зобов'язань та його окремих видів у римському приватному праві. За допомогою методу аналізу та синтезу виокремлено відмінності системи підстав виникнення зобов'язань на різних етапах розвитку цього інституту. У статті проаналізовано поняття договору як однієї з підстав для виникнення зобов'язань у римському приватному праві. Коротко схарактеризовано систему зобов'язань Стародавнього Риму. Виділено основні етапи еволюції зобов'язальних правовідносин розглянутого історичного періоду. Досліджено погляди різних науковців на підстави виникнення зобов'язань у римському приватному праві. Зроблено висновки, що першими видами зобов'язань у Стародавньому Римі були ті, що виникали з правопорушень (делікти), а договірні зобов'язання з'явилися пізніше в результаті удосконалення системи права. Досліджено, як змінювалися погляди на підстави виникнення зобов'язання, у якому провідна роль відводиться вже не деліктам, як це було в ранньому римському праві, а контрактам (договорам). Практична цінність роботи полягає в тому, що після аналізу, проведеного в дослідженні, з'явилася можливість порівняти та вдосконалити сучасну систему зобов'язань відповідно до римського приватного права

Ключові слова: контракти; пакти, позовний захист; делікти; стипуляція; новація

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The features of the legal regulation of state veterinary and sanitary control over the movement of animals

Yuliia Krasnova*
Doctor of Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0001-7898-9603

Rastislav Funta
PhD in Law
Danubius University
925 21, 1171 Richter Str., Sladkovichevo, Slovak Republic
https://orcid.org/0000-0003-4510-4818

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Abstract

The relevance of the study is driven by the need to elucidate the essence of veterinary and sanitary control over the movement of animals at the national level to facilitate its further correlation with the experiences of European countries. The purpose of the study is to analyse the state of the legal provision in the defined sphere and formulate suggestions for enhancing the legal regulation of state veterinary and sanitary control over the movement of animals. The paper uses a system of general scientific methods of cognition (dialectical, formal-logical, analysis, and synthesis), and a special formal-legal method. The paper analyses the national experience of legal regulation of state veterinary and sanitary control over the movement of animals through the disclosure of its features. The essence of state veterinary and sanitary control during the movement of animals is established and its place in the legal

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*Corresponding author

system is determined. The boundaries of the legal regulation of this issue are outlined, legal forms of implementing such control, subjects and objects of such activity, the sequence of procedures required by veterinary-sanitary legislation for animal movement, and the specificities of legal responsibility for violations of veterinary and sanitary requirements during animal transportation are defined. The need to develop normatively established requirements for the safe movement of animals is substantiated, which encompass not only the procedures for protecting animals from epizootics and cruel treatment during their preparation for transportation or during transportation itself but also ensure the population's access to quality and safe food products while guaranteeing the well-being of the animals. The practical importance of the paper lies in a number of proposals for improving Ukrainian legislation in this area

Keywords: biological safety; epizootics; state control; veterinary medicine; inspection; inventory; expert (laboratory) report; accounting

Introduction

It is the duty of modern society to preserve all species of animals that exist on the planet for future generations and safeguard its own species from hunger and various diseases, some of which are also transmitted by animals. Therefore, within the framework of implementing the principle of sustainable development in international and national legislation, a special area has been formed – veterinary legislation. Its purpose is to record various epizootics, define means and methods for animal prevention, diagnosis, and treatment, and determine veterinary and sanitary quality and safety of animals and animal products at different stages of their use, to ensure biological security.

One of the effective legal measures in this field is the implementation of veterinary and sanitary control in animal husbandry, which includes various checks, observations, examinations, inventory, record-keeping, inspection, supervision, expert analysis, etc., performed by specially authorised bodies of state executive power.

State veterinary and sanitary control over the movement of animals is an integral part of state control in animal husbandry, but it has its own specific features, which this paper addresses.

The preparation of this study occurred during a period when considerable changes were made to veterinary legislation due to the Eurointegration processes. In particular, the Law of Ukraine "On Veterinary Medicine" (2021) was adopted in a new edition. However, due to the military aggression by the Russian Federation in 2022, the effective date of the law was postponed to the post-war period. Meanwhile, the state is actively developing bylaws to implement the provisions of the new version of the law and regulations that govern the implementation of state veterinary and sanitary control during the war period. Considering this, when disclosing the specifics of this issue, the paper will analyse all the current legislation on this issue.

Certain aspects of the legal foundations of state control during the movement of animals have been the subject of several studies. In particular, L. Weber and D. Meemken (2018) conducted an analysis of the status quo of current measures related to cleaning and disinfection of transport vehicles used for animal transportation at five different industrial slaughterhouses in Germany. This allowed the authors to draw practical

conclusions about the effectiveness of veterinary legislation concerning this issue. A. van Soom *et al.* (2007) elucidate the features of moving embryos of cattle due to major risks of pathogen contamination originating from donor animals and the surrounding natural environment. N. Bachelard (2022) conducted a legal analysis of the practical application of EU directives and regulations regarding the protection of animals during transportation, highlighting the frequent non-compliance with the requirements outlined in these documents, resulting in animal deaths. He attributes this to ineffective veterinary and sanitary control conducted before and during animal transportation, and the absence of legislative definitions for maximum travel durations for animals. The author supports legislative novelties in New Zealand and the United Kingdom prohibiting the export of animals for slaughter. Meanwhile, M.S. Herskin and T. Duffield (2020) explored the global experience of legal provisions ensuring the well-being of animals during their transportation for slaughter. A. Tateo *et al.* (2022) devoted their paper to the analysis of scientific literature on compliance with the requirements for the well-being of dogs and cats during their transportation in Europe. S.S. Nielsen *et al.* (2022) investigated the specific features of legal regulation of the welfare of cattle during transportation and the practice of its implementation. An interdisciplinary analysis of the damage caused by legal and illegal sales of wild animals is conducted by T. Wyatt *et al.* (2022), who provide examples of animal mistreatment during their preparation for transportation for the purpose of subsequent sales. They propose introducing the principle of "species justice" into international and national legislation, a principle also endorsed by the authors of this study.

In Ukrainian legal science, individual aspects of this type of control have been the subject of study. I.V. Luchko (2021) examined the concept of veterinary and sanitary control and supervision, although not providing her own scientific definition, she established a correlation between the concepts of "supervision" and "control". A.I. Hodiak (2018) analysed Ukrainian legislation regulating the procedures for state veterinary and sanitary control in export-import operations, assessing its effectiveness and the need for improvement. A.H. Bondar (2015) and M.Yu. Kravchuk (2011) formed the general theoretical foundations of such control and supervision, including specific aspects of state control and supervision during animal transportation, in their dissertations focusing on the legal nature of control and supervision activities in Ukrainian agriculture.

The specific features of veterinary and sanitary control have been the subject of studies by experts from various fields. For example, the features of veterinary radiological control are presented in the joint work of T.O. Prokopenko *et al.* (2009). The impact of epizootics on the country's biological security and the main principles of overcoming them are discussed by M.V. Velichko (2021).

However, a comprehensive examination of the legal aspects of state veterinary and sanitary control over the movement of animals has not yet been addressed, making the relevance of this study evident.

The purpose of the study is to characterise the state of legal provisions concerning state veterinary and sanitary control over the movement of animals and provide suggestions for its improvement.

Materials and Methods

Among the general scientific methods used, dialectical, formal-logical, analysis and synthesis

methods were primarily applied, and the formal-legal method was used from the special legal methods. The dialectical method was used to identify methodological approaches to examining the legal foundations of state veterinary and sanitary control over the movement of animals. The formal-logical method facilitated the characterisation of the content of the categorical framework of the study. The analysis method was employed in describing the legislation in the field of state veterinary and sanitary control over the movement of animals. The synthesis method helped determine the place of regulations governing relations in the sphere of state veterinary and sanitary control over the movement of animals in Ukrainian legislation. The formal-legal method aided in investigating the content of legal norms in the relevant legislation and outlining prospects for its development.

The main provisions and results of the study are formulated based on an analysis of the norms of international and national legislation. In particular, the following provisions were used in the study: United Nations Convention on the Carriage of Goods by Sea (1978), Convention on the International Road Carriage of Passengers and luggage (1997), Agreement on International Passenger Traffic by Rail (1951), Laws of Ukraine "On Veterinary Medicine" (1992; 2021), "On State Control over Compliance with the Legislation on Food Products, Feed, By-Products of Animal Origin, Animal Health and Welfare" (2017), "On By-Products of Animal Origin, not Intended for Human Consumption" (2015), "On Feed Safety and Hygiene" (2017), "On Identification and Registration of Animals" (2009), "On the Protection of Personal Data" (2010), "On the Protection of Animals from Cruelty" (2006), code of Ukraine on administrative offences (1984), Criminal Code of Ukraine (2001), and a considerable number of bylaws.

Results

Scientific approaches to defining the concept of state veterinary and sanitary control over the movement of animals

In modern conditions, the function of state veterinary and sanitary control over the movement of animals is becoming increasingly significant. It is believed to have been initiated in the early 1990s, particularly with the adoption of Council Directive 91/628/EEC on the Protection of Animals During Transport (1991) within all EU member states, which was later amended by Council Regulation (EC) No. 1/2005 on the Protection of Animals During Transport and Related Operations (2004) (Corson & Anderson, 2008; Cussen, 2008).

This Regulation establishes a set of requirements for animal transport, including: the fitness of animals for transport; the availability of necessary means for transportation, loading, and unloading of animals; properly trained personnel for handling animals; adequate vehicle movement and proper care for animals (space, food, and water); a list of animals eligible for transportation; types of transportation, and more. All of these requirements are subject to mandatory veterinary and sanitary control and supervision by specially authorised entities. The main goal of this Regulation is to prevent injuries or undue suffering of animals during their transport, to minimize long journeys for animals, and to protect the welfare and health of animals before, during, or after their transport, which are now quite common in practice (Padalino *et al.*, 2018; Boada-Saña *et al.*, 2021).

As part of the European integration processes in Ukraine, measures related to the adaptation of Ukrainian legislation to EU requirements in various areas of society, including veterinary and sanitary control over the movement of animals, are of immense importance (Order of the Cabinet of Ministers of Ukraine No. 228-r..., 2016).

The Ukrainian Law "On Identification and Registration of Animals" (2009) elaborates on this process, the result of which is a change in the ownership or keeper of an animal, or a change in the animal's place of residence. Moreover, it is important to differentiate the procedure of "animal movement" from the process of "animal migration" (from Latin "migration" – migration, movement) (Lanovenko & Ostapishyna, 2013). Animal movement is an external influence by humans on animal liberty, whereas animal migration occurs in accordance with their natural instincts and is not subject to legal regulation, only legal protection.

This distinction is crucial for this study since state veterinary and sanitary control applies to both domestic and wild animals. According to Article 1 and Article 15 of the current Law of Ukraine "On Veterinary Medicine" (1992), the term "animals" includes mammals, domestic birds, birds, bees, insects, fish, crustaceans, molluscs, frogs, amphibians, and reptiles.

However, Article 45 of the Law of Ukraine "On Veterinary Medicine" (2021) in its revised version narrows down the list of animals to which requirements for their movement apply. This study exclusively pertains to domestic animals. This might be because the handling of wild animals that are in captivity or semi-captive conditions is extensively regulated by nature conservation legislation. Nonetheless, veterinary and sanitary control is also obligatory for such animals (Order of the Ministry of Environmental Protection of Ukraine No. 429…, 2010). Thus, the scope of state veterinary and sanitary control encompasses both domestic and wild animals.

Article 45, Part 2 of the Law of Ukraine "On Veterinary Medicine" (2021) in its revised version establishes specific requirements for the movement of domestic terrestrial animals. According to these requirements, an animal can be moved only if it originates from an approved and registered animal facility, is identified and registered in special registries, and possesses relevant veterinary and identification documents.

To understand the veterinary and sanitary requirements imposed on the movement of domestic and wild animals at each stage, a detailed legal analysis is necessary.

Features of state veterinary and sanitary control at the stage of approval and registration of animal facilities

Veterinary legislation provides the definition of "animal facility", which encompasses any territory, fixed objects, equipment, or vehicles, intended for breeding, rearing, keeping, quarantine, movement, training, competitions, exhibitions, contests, capture, slaughter, or circulation of animals, their biological products, reproductive material, veterinary drugs, medicinal feeds, and handling of by-products of animal origin.

Such animal facilities are subject to mandatory state approval and registration, which confirms their veterinary and sanitary compliance for conducting animal husbandry. Currently, only those animal facilities that pose significant risks of disease outbreaks and spread are subject to state approval (Resolution of the Cabinet of Ministers of Ukraine No. 478…, 2022). The approval of such facilities is an essential element of their subsequent operation. Without such approval, the operation of the facilities is prohibited.

It is important to note that the legislation also defines specific requirements for animal collection centres (Order of the Ministry of Agrarian Policy and Food of Ukraine No. 323…, 2022). According to these requirements, during inspections, veterinary inspectors should focus on compliance with isolation and biosecurity requirements for the premises, structures, equipment of such cen-

tres, and personnel. One of the methods of state veterinary and sanitary control at this stage is the inspection of livestock facilities for the purposes of their approval. Such inspections are a mandatory component of the process of approving animal facilities, conducted by the territorial authority of the state consumer service, during which the compliance of these facilities with the requirements of the current legislation is confirmed.

During such inspections, state veterinary inspectors conduct special sampling (Order of the Ministry of Agrarian Policy and Food of Ukraine No. 131..., 2012; Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine No. 689..., 2020; Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine No. 224..., 2021) for further laboratory analysis. During the sampling process, state veterinary inspectors fill out a special form of an act (Order of the Ministry of Agrarian Policy and Food of Ukraine No. 490..., 2018).

Based on the results of the conducted laboratory analysis, a decision is made to approve the animal facility, and a registration number is assigned, which should be entered into the State Register of Animal Facilities and Market Operators.

It is considered that from this moment, the procedure of state registration of such facilities begins (Resolution of the Cabinet of Ministers of Ukraine No. 461..., 2022), which is performed by the State Consumer Service based on the operator's application and may include direct registration of the facility, and registration of animals, anti-epizootic measures, or even the results of state control. In addition, both individual animal facilities and their groups are subject to state registration (Order of the Ministry of Agrarian Policy and Food of Ukraine No. 511..., 2022).

The procedure for registering such animal facilities involves entering relevant data into the State Register of Animal Facilities (Order of the Ministry of Agrarian Policy and Food of Ukraine No. 211..., 2022). However, it should be noted that this procedure only started in Ukraine on March 21, 2023, indicating the absence of prior legal regulation of such relationships and consequently the lack of implementation practice.

The next important step for the unhindered movement of pets is to bring such facilities in line with the requirements of the legislation on animal identification and registration.

According to Article 4 of the Law of Ukraine "On Identification and Registration of Animals" (2009), the object of identification and registration is farm animals: cattle, horses, pigs, sheep, goats. Each animal is assigned an individual identification number, which makes it easier to identify the animal during various procedures (veterinary checks on facility premises, movement, sale, slaughter of animals, etc.) and determine its health status. This identification number is mandatory and is entered into the Unified State Register of Animals (Order of the Ministry of Agrarian Policy and Food of Ukraine No. 578..., 2012). The process of animal identification and registration is conducted by the State Enterprise "Animal Identification and Registration Agency" (Order of the Ministry of Agrarian Policy of Ukraine No. 213..., 2002). After identification and registration, the animal owner is provided with identification documents of a prescribed format (Resolution of the Cabinet of Ministers of Ukraine No. 857..., 2013; Order of the Ministry of Agrarian Policy and Food of Ukraine No. 288 ..., 2014).

It should also be noted that besides data about the identified animal, information about its owner and farm is entered into the Animal Register. The collection, accumulation, and processing of data about animal owners are performed in accordance with the requirements of the Law

of Ukraine "On the Protection of Personal Data" (2010). Furthermore, legislation defines special requirements for the identification and registration of specific types of animals (Order of the Ministry of Agrarian Policy and Food of Ukraine No. 642…, 2017; Order of the Ministry of Agrarian Policy of Ukraine No. 496…, 2004; Order of the Ministry of Agrarian Policy and Food of Ukraine No. 639…, 2017; Order of the Ministry of Agrarian Policy and Food of Ukraine No. 20…, 2018).

The specificity of state veterinary and sanitary control during the identification and registration of domestic animals is determined by legislation on animal protection from cruelty. For example, according to the Decision of the Kyiv City Council No. 1079/3912 (2007), such identification within the territory of Kyiv is performed by the municipal enterprise "Animal Identification Center", which issues a registration certificate and an individual identification mark (token) for the animal. In addition, state veterinary medicine inspectors acquaint the animal owner with veterinary-sanitary requirements for its keeping, especially during movement.

Special requirements for registration are also established for wild animals (Order of the Ministry of Environmental Protection and Natural Resources of Ukraine No. 206…, 2020). These requirements concern animals that have been removed from their natural habitat for the purpose of providing assistance to regional rescue and rehabilitation centres and information about which is recorded in the Journal of Registration of Influx of Wild Animals. The identification of such animals is performed through microchipping and/or visual identification methods (clipping, banding, etc.).

It is worth noting that due to the introduction of martial law in Ukraine, which led to the inability to import or produce two-component ear tags for the identification of farm animals, a decision was made to perform the identification of pigs, cattle, sheep, and goats using one-component ear tags produced in Ukraine until the end of martial law and one year after its conclusion (Order of the Ministry of Agrarian Policy and Food of Ukraine No. 264…, 2022). The situation with microchipping wild animals during the state of emergency remains unknown, but mass injuries and fatalities of such animals due to combat actions in Ukraine are already a fact (Andreikovets, 2022).

Current legislation clearly prohibits the movement of animals in the absence of confirming documents for their identification and permits issued by the Chief State Veterinary Medicine Inspector (Part 5 and Part 6 of Article 15 of the Law of Ukraine "On Veterinary Medicine", 1992).

Therefore, the next crucial step for animal movement is the preparation of accompanying documentation.

Features of state veterinary-sanitary control during the preparation of accompanying documentation for animal movement

Depending on the type of animal movement, the legislation specifies the necessity to present the following documents to the carrier of animals and the veterinary inspector: 1) an international veterinary certificate; 2) a veterinary certificate (within Ukraine); or 3) a veterinary reference (within a district) (Resolution of the Cabinet of Ministers of Ukraine No. 857…, 2013). These documents are issued by specialised subjects of veterinary medicine (state veterinary medicine inspectors, authorised veterinary doctors: heads of the State Service of Ukraine for Food Safety and Consumer Protection in regions and Kyiv city, state veterinary medicine institutions, regional services of state veterinary-sanitary control and supervision at state borders and transportation, or licensed veterinary doctors).

As for wild animals, Ukrainian legislation defines a separate procedure for issuing accompanying documents for their transportation (Resolution of the Cabinet of Ministers of Ukraine No. 953..., 2007). According to this regulation, permits for the import and export of samples, and certificates for mobile exhibitions, re-export, and introduction of marine samples, are issued by the Ministry of Environmental Protection and Natural Resources of Ukraine and the State Agency for Land Reclamation and Fisheries of Ukraine for sturgeon fish and products made from them. However, for these animals, the issuance of accompanying veterinary documents, specifically veterinary-sanitary passports or veterinary certificates, is also required (Resolution of the Cabinet of Ministers of Ukraine No. 1402..., 2011). The relevant requirements also apply to pets. According to the provisions of the current Law of Ukraine "On Veterinary Medicine" (1992) and Order of the Ministry of Environmental Protection of Ukraine No. 429 (2010), the list of such documents is more comprehensive. It includes an international veterinary certificate, a veterinary certificate, a veterinary card, and a veterinary and sanitary passport for an animal.

This situation raises the question of the need to harmonise various regulations in terms of defining a unified list of veterinary documents issued to animals for their subsequent movement. Therefore, at the moment of moving the animals described in this section, their owner (carrier) is obliged to have the following documents:

- certificate of registration of livestock facilities and market operators in the relevant state register for pets;
- certificate of assignment of an identification number to an animal in the Unified State Register of Animals;
- veterinary certificate / card / reference / veterinary and sanitary passport for the animal.

Features of state veterinary-sanitary control during the transportation stage of animals

The rules for animal transportation are defined by Article 15, Paragraph 4 of the Law of Ukraine "On Veterinary Medicine" (1992), Article 11 of the Law of Ukraine "On the Protection of Animals from Cruelty" (2006), the Rules for the Transportation of Animals (Resolution of the Cabinet of Ministers of Ukraine No. 1402..., 2011), and the Rules for the Transportation of Animals, Birds, and Other Goods Subject to State Veterinary-Sanitary Control (Order of the Ministry of Transport of Ukraine No. 873..., 2002).

These regulations prohibit the export of animals from a region or herd where, due to suspicion of an epizootic or its manifestations, restrictions on cattle movement have been imposed. From the herd, only clinically healthy animals that are identified and registered in the appropriate manner are allowed to be exported.

According to point 23 of the Rules for the Transportation of Animals (Resolution of the Cabinet of Ministers of Ukraine No. 1402..., 2011), transportation of animals is allowed only after the carrier receives veterinary documents for the animals to be transported from the sender. These documents must be attached to the transportation document. Additionally, according to point 24 of the mentioned Rules, the conditions of animal transportation are verified by a specialist in the field of veterinary medicine. When importing into Ukraine or exporting beyond its borders, objects of the animal world are subjected to both veterinary-sanitary and ecological control, which includes monitoring compliance with animal protection from cruelty requirements (Resolution of the Cabinet of Ministers of Ukraine No. 275...,

2017). Such transportation can be conducted by road, rail, sea, and air transport, each of which has its own characteristics.

In addition to the above-mentioned rules for the transportation of animals, the specifics of such types of animal transportation are regulated by a considerable list of regulatory documents: United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) (1978); Convention on the International Road Carriage of Passengers and Baggage (1997); Agreement on International Passenger Traffic by Rail (SMPS) (1951) with updates; Order of the Ministry of Transport and Communications of Ukraine No. 1196 "On the Approval of the Rules for the Transportation of Passengers, Baggage, Cargo and Mail by Railway Transport of Ukraine" (2006); Order of the State Aviation Service of Ukraine No. 1239 "On the Approval of the Aviation Rules of Ukraine "Rules of Air Transportation and Passenger and Baggage Service" (2018); Order of the Ministry of Agrarian Policy and of Food of Ukraine No. 553 " On the Approval of the Requirements for Importing (Forwarding) into the Customs Territory of Ukraine Live Animals and Their Reproductive Material, Food Products of Animal Origin, Fodder, Hay, Straw, as well as by-Products of Animal Origin and Products of Their Processing" (2018), etc.

According to Article 15, Paragraph 4 of the Law of Ukraine "On Veterinary Medicine" (1992), "loading, unloading, or transhipment of animals onto a transport vehicle is allowed only in places that have facilities that comply with veterinary-sanitary measures." Article 11 of the Law of Ukraine No. 3447-IV "On the Protection of Animals from Cruelty" (2006) requires adherence to animal welfare rules during their transportation (providing for their food, water, protection from harmful external influences, preventing injury or death, etc.).

The Rules for the Transportation of Animals establish specific requirements for the transportation of domestic animals (points 40-44), livestock (points 45-54), and wild animals (points 55-64). Special requirements for transportation are also established for species of wild fauna that are under threat of extinction (Resolution of the Cabinet of Ministers of Ukraine No. 953…, 2007).

For example, when transporting animals by rail, veterinary-sanitary control is conducted by veterinary inspectors both at the sending station and at the destination station. Veterinary inspection at the sending station is conducted before and during loading onto the wagon, and at the destination station – during unloading. In this process, the veterinary inspector examines the accompanying documentation, and if it corresponds, special markings regarding the inspection of animals are placed on the veterinary certificate / document.

In the case of transporting animals by multiple modes of transportation, the inspection of goods with animals can be conducted both during transportation and at transfer points to other modes of transportation.

Specific features of implementing state veterinary-sanitary control over the transportation of animals during the period of martial law in Ukraine are also outlined in the Resolution of the Cabinet of Ministers of Ukraine No. 537 "Some Issues of State Control over Compliance with the Legislation on Food Products, Feed, By-Products of Animal Origin, Animal Health and Welfare, State Veterinary and Sanitary Control and the Import of Goods into the Customs Territory of Ukraine during Martial Law" (2022).

Therefore, the legislation defines various procedures for animal transportation, which depend on the type of animal, its population, the type of transport used, transportation conditions, and more.

Discussion

Even at the European level, researchers (Dinu *et al.*, 2018) and government officials (Council of the European Union, 2021) acknowledge that it is still impossible to obtain complete and reliable information about compliance with even minimal animal welfare requirements during their transportation, despite numerous efforts to improve legislation in this field.

For instance, some researchers argue that the notion of "animal adaptability to transportation" does not exist a priori (Herskin *et al.*, 2020), which means that the established list of cases in which animals are not subject to transportation (such as when injured, physiologically weak, or experiencing pathological processes) is questionable (Dahl-Pedersen *et al.*, 2018). Researchers demonstrate that even the usual treatment of animals, the quality and safety of the premises, the size of the group in which the animal is kept before transportation (Šímová *et al.*, 2016), and introducing the animal into a new environment and mixing it with unfamiliar individuals, can cause extreme stress in the animal, possibly leading to death (Broom, 2019; Hubbard *et al.*, 2021). Furthermore, there are currently no official statistics on animal mortality during transportation, which affects the determination of the effectiveness of the established legislative requirements (Dinu *et al.*, 2018). Official data on animal transportation is also limited (Padalino *et al.*, 2018) and not sufficiently reliable (European Court of Auditors, 2018), indicating potential issues with the quality of veterinary-sanitary control during animal transportation.

Therefore, in 2020-2021, both the European Commission (2020) and the European Farmers' Organization (Animal transport: The revision..., 2021) raised the issue of the necessity for a further review and improvement of legislation regarding animal transportation. Furthermore, the European Commission has established a special Platform for Animal Welfare to bring together governments from different countries, scientists, businesses, and non-governmental organisations to exchange advanced experiences in the field of animal protection (EU Platform on Animal Welfare, n.d.), allowing Ukrainian representatives to join discussions related to further enhancing legislation in this area.

Key legal measures to enhance the effectiveness of legislation in this field should include the establishment of proper information institutions and legal accountability mechanisms concerning animal transportation.

Such responsibility can be based on both the ordinary prohibition of animal transportation without mandatory accompanying documents or with falsified documents and their return to the sender (Order of the Chief State Inspector of Veterinary Medicine of Ukraine No. 49..., 1999), as well as on retrospective liability. These types of liability should apply to both individuals and legal entities involved in animal transportation, and to officials responsible for veterinary-sanitary control.

In Ukraine, retrospective liability is currently defined within the general norms related to violations of animal registration and identification requirements, veterinary standards, and norms regarding animal protection from cruelty, including: Article 89 of the Code of Ukraine on Administrative Offenses (1984) (hereafter – the Code) (responsibility for animal cruelty); Article 107 of the Code (violation of animal quarantine rules and other veterinary-sanitary requirements); Article 107-2 of the Code (violation of legislation on animal identification and registration); Article 188-22 (failure to comply with lawful requirements of officials of the state sanitary-epidemiological service and the state veterinary medicine service);

Article 251 of the Criminal Code of Ukraine (2001) (hereafter – CCU) (violation of veterinary rules leading to an epizootic outbreak); Article 299 of the CCU (responsibility for animal cruelty), etc.

It is also important to note the legal norms outlined in the Law of Ukraine "On State Control over Compliance with the Legislation on Food Products, Feed, by-Products of Animal Origin, Animal Health and Welfare" (2017), particularly the provisions of Articles 65 and 66 of this law that define the specifics of legal responsibility for violations within the designated sphere, and the procedure for conducting investigations in such cases. However, due to the absence of criteria for animal welfare in Ukrainian legislation, the application of legal measures for violations of such laws during animal transportation is quite problematic. In addition, in Ukraine and at the European level, it is challenging to find statistical information regarding the quantity and reasons for violations of veterinary-sanitary legislation during animal transportation, which underscores the necessity for the development of an informational policy in this field.

Conclusions

Based on the conducted study, the following observations can be made. State veterinary-sanitary control during animal transportation represents a type of state veterinary-sanitary control, which forms the basis for state oversight in animal husbandry and the veterinary sector. It encompasses the enforcement of control and supervisory functions by specially authorised bodies of state executive authority during the movement of animals, involving changes in ownership or custodianship. Such movement can occur within a single animal husbandry facility or between several facilities, including intraregional, intranational, and international movements. This control is realised through various forms such as inspection, approval, inventory, expert (laboratory) assessments, record-keeping, verification, observation, and examination. Entities responsible for the control and supervisory functions in this area may include the Ministry of Agrarian Policy and Food of Ukraine, the State Enterprise "Animal Identification and Registration Agency", the State Service of Ukraine on Food Safety and Consumer Protection, the Ministry of Environmental Protection and Natural Resources of Ukraine, the State Environmental Inspection, state veterinary inspectors, and veterinarians. The objects of state veterinary-sanitary control during animal transportation are domestic and wild animals.

For unobstructed animal transportation, not only accompanying veterinary and identification documents for the animals are required (veterinary certificate, certificate of assignment of identification number to the animal), but also documents proving origin from approved or registered animal husbandry facilities (certificate of state registration of the animal husbandry facility). In case of violation of legislation on state veterinary-sanitary control during animal transportation, responsible individuals are subject to legal liability according to the general norms of violating animal registration and identification requirements, veterinary standards, and norms for animal protection from cruelty, which are provided for in administrative and criminal legislation.

The provisions of the Law of Ukraine "On Veterinary Medicine" need to be aligned with existing legislation in terms of expanding the list of animals subject to state veterinary-sanitary control. It is proposed to maintain the current version of the Law of Ukraine "On Veterinary Medicine", in which it is stated that the scope of the law applies to all animals (mammals, domestic birds, birds, bees, insects, fish, crustaceans, molluscs, frogs, amphibians, and reptiles).

Moreover, there is a need for harmonisation in the regulations defining a unified list of veterinary documents issued for animals for their subsequent movement.

The Ukrainian legislation on ensuring animal welfare also requires refinement in terms of defining the criteria for such welfare, which would enable more effective implementation of state veterinary-sanitary control in this regard.

Ultimately, the enhancement of the information policy in the field of veterinary-sanitary control over animal transportation is necessary since the current policy inadequately reflects the quantity and reasons for violations in this sphere.

The identification of gaps in current legislation and the formulation of proposals for its improvement offer prospects for investigating pressing issues related to state veterinary-sanitary control.

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None.

Conflict of Interest

None.

References

[1] Agreement on International Passenger Traffic by Rail (SMPS). (1951, November). Retrieved from https://en.osjd.org/api/media/resources/1596247.

[2] Andreikovets, K. (2022). *At least three thousand dolphins have died in the Black Sea since the beginning of the war*. Retrieved from https://babel.ua/news/80471-vid-pochatku-viyni-u-chornomu-mori-zaginuli-shchonaymenshe-tri-tisyachi-delfiniv.

[3] Animal transport: The revision should be based on solid science, focusing on the quality of the journey and tackling the shortcomings in the application of the legislation. (2021). Retrieved from https://www.agroportal.pt/animal-transport-the-revision-should-be-based-on-solid-science-focusing-on-the-quality-of-the-journey-and-tackling-the-shortcomings-in-the-application-of-the-legislation/.

[4] Bachelard, N. (2022). Animal transport as regulated in Europe: A work in progress as viewed by an NGO. *Animal Frontiers*, 12(1), 16-24. doi: 10.1093/af/vfac010.

[5] Boada-Saña, M., Kulikowska, K., Baumgärtner, I., Romańska, M., Dronijc, T., Engwald, N., Porta, F., & Weidinger, G. (2021). *Animal welfare on sea vessels and criteria for approval of livestock authorisation: Workshop on animal welfare during transport of 25 May 2021: Research for ANIT Committee*. Brussels: European Parliament. doi: 10.2861/014626.

[6] Bondar, A.H. (2015). *Control and supervisory activities in Ukrainian agriculture: Agrarian law aspect* (Doctoral thesis, National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine).

[7] Broom, D.M. (2019). Welfare of transported animals: Welfare assessment and factors affecting welfare. In T. Grandin (Ed.), *Livestock handling and transport* (5th ed.; pp. 12-29). Wallingford: CABI. doi: 10.1079/9781786399151.0012.

[8] Bytiak, Yu.P. (Ed.). (2001). *Administrative law of Ukraine*. Kharkiv: Pravo.

[9] Code of Ukraine on Administrative Offenses. (1984, December). Retrieved from https://zakon.rada.gov.ua/laws/show/80731-10#Text.

[10] Convention on the International Road Carriage of Passengers and Baggage. (1997, October). Retrieved from https://zakon.rada.gov.ua/laws/show/997_034#Text.

[11] Corson, S., & Anderson, L. (2008). Europe. In M.C. Appleby, V. Cussen, L. Garcés, L.A. Lambert, & J. Turner (Eds.), *Long distance transport and welfare of farm animals* (pp. 355-386). Wallingford: CABI Publishing. doi: 10.1079/9781845934033.0355.

[12] Council Directive 91/628/EEC on the Protection of Animals During Transport and Amending Directives 90/425/EEC and 91/496/EEC. (1991, November). Retrieved from http://data.europa.eu/eli/dir/1991/628/oj.

[13] Council of the European Union. (2021). *Conclusions on animal welfare during maritime long distances transport to third countries*. *Statement by the Netherlands, Germany and Luxembourg. 10086/21 ADD 1.* Retrieved from https://data.consilium.europa.eu/doc/document/ST-10086-2021-ADD-1/en/pdf.

[14] Council Regulation (EC) No 1/2005 on the Protection of Animals during Transport and Related Operations and Amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97. (2004, December). Retrieved from http://data.europa.eu/eli/reg/2005/1/oj.

[15] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

[16] Cussen, V.A. (2008). Enforcement of transport regulations: The EU as case study. In M.C. Appleby, V. Cussen, L. Garcés, L.A. Lambert, & J. Turner (Eds.), *Long distance transport and welfare of farm animals* (pp. 113-133). Wallingford: CABI Publishing. doi: 10.1079/9781845934033.0113.

[17] Dahl-Pedersen, K., Foldager, L., Herskin, M.S., Houe, H., & Thomsen, P.T. (2018). Lameness scoring and assessment of fitness for transport in dairy cows: Agreement among and between farmers, veterinarians and livestock drivers. *Research in Veterinary Science*, 119, 162-166. doi: 10.1016/j.rvsc.2018.06.017.

[18] Decision of the Kyiv City Council No. 1079/3912 "On the Regulation of the Maintenance and Treatment of Dogs and Cats in the City of Kyiv". (2007, October). Retrieved from https://ips.ligazakon.net/document/MR072242.

[19] Dinu, A. (Ed.), Baltussen, W., van Wagenberg, C., Spoolder, H., & Ouweltjes, W. (2018). *Regulation (EC) No 1/2005 on the protection of animals during transport and related operations*. Brussels: EPRS European Parliamentary Research Service, Ex-Post Evaluation Unit. doi: 10.2861/15227.

[20] EU Platform on Animal Welfare. (n.d.). Retrieved from https://food.ec.europa.eu/animals/animal-welfare/eu-platform-animal-welfare_en.

[21] European Commission. (2020). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system*. Retrieved from https://eur-lex.europa.eu/resource.html?uri=cellar:ea0f9f73-9ab2-11ea-9d2d-01aa75ed71a1.0001.02/DOC_1&format=PDF.

[22] European Court of Auditors. (2018). *Special report No. 31 "Animal welfare in the EU: Closing the gap between ambitious goals and practical implementation"*. doi: 10.2865/950259.

[23] Herskin, M.S., & Duffield, T. (2020). Editorial: Animal transport and related management. *Frontiers in Veterinary Science*, 7. doi: 10.3389/fvets.2020.614317.

[24] Herskin, M.S., Overstreet, K., & Anneberg, I. (2020). Are veterinary inspections the best way to improve animal welfare during transport? *Veterinary Record*, 187(6), 242. doi: 10.1136/vr.m3647.

[25] Hodiak, A.I. (2018). Legal principles of state veterinary-sanitary control in carrying out export-import transactions. *Scientific Bulletin of the Lviv State University of Internal Affairs. Legal series*, 1, 115-124.

[26] Hubbard, A.J., Foster, M.J., & Daigle, C.L. (2021). Impact of social mixing on beef and dairy cattle – A scoping review. *Applied Animal Behaviour Science*, 241, article number 105389. doi: 10.1016/j.applanim.2021.105389.

[27] Kravchuk, M.Yu. (2011). *State control in agriculture of Ukraine* (PhD thesis, National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine).

[28] Lanovenko, O.H., & Ostapishyna, O.O. (2013). Migration. In *Dictionary-handbook on ecology* (p. 122). Kherson: PE Vyshemirskyi V.S.

[29] Law of Ukraine No. 1206-IX "On Veterinary Medicine". (2021, February). Retrieved from https://zakon.rada.gov.ua/laws/show/1206-20#Text.

[30] Law of Ukraine No. 1445-VI "On Identification and Registration of Animals". (2009, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1445-17#Text.

[31] Law of Ukraine No. 2042-VIII "On State Control over Compliance with the Legislation on Food Products, Feed, by-Products of Animal Origin, Animal Health and Welfare". (2017, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2042-19#Text.

[32] Law of Ukraine No. 2264-VIII "On Feed Safety and Hygiene". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2264-19#Text.

[33] Law of Ukraine No. 2297-VI "On the Protection of Personal Data". (2010, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2297-17#Text.

[34] Law of Ukraine No. 2498-XII "On Veterinary Medicine". (1992, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2297-17#Text.

[35] Law of Ukraine No. 287-VIII "On By-Products of Animal Origin, not Intended for Human Consumption". (2015, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2297-17#Text.

[36] Law of Ukraine No. 3447-IV "On the Protection of Animals from Cruelty". (2006, February). Retrieved from https://zakon.rada.gov.ua/laws/show/3447-15#Text.

[37] Luchko, I. (2021). The concept of state veterinary and sanitary control and supervision. *Entrepreneurship, Economy and Law*, 5, 74-77. doi: 10.32849/2663-5313/2021.5.13.

[38] Marchenko, S.I. (2012). Peculiarities of legal regulation of control in the field of use, reproduction and protection of the animal world. In M.V. Krasnova (Ed.), *Legal forms of environmental control* (pp. 454-473). Kyiv: Alerta.

[39] Nielsen, S.S., Alvarez, J., Bicout, D.J., Calistri, P., Canali, E., Drewe, J.A., Garin-Bastuji, B., Gonzales Rojas, J.L., Gortázar Schmidt, C., Michel, V., Miranda Chueca, M.A., Padalino, B., Pasquali, P., Roberts, H.C., Spoolder, H., Stahl, K., Velarde, A., Viltrop, A., Winckler, C., Earley, B., Edwards, S., Faucitano, F., Marti, S., Miranda de La Lama, G.C., Nanni Costa, L., Thomsen, P.T., Ashe, S., Mur, L., Van der Stede, Y., & Herskin, M. (2022). Welfare of cattle during transport. *EFSA Journal*, 20(9), article number e07442. doi: 10.2903/j.efsa.2022.7442.

[40] Order of the Cabinet of Ministers of Ukraine No. 228-r "On the Approval of the Comprehensive Implementation Strategy of Chapter IV (Sanitary and Phytosanitary Measures) of Chapter IV 'Trade and Trade-Related Matters' of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand". (2016, February). Retrieved from https://faolex.fao.org/docs/pdf/ukr179428.pdf.

[41] Order of the Chief State Inspector of Veterinary Medicine of Ukraine No. 49 "On the Approval of the Procedure for the Passage of Goods under the Control of the State Veterinary Medicine Service Across the State Border of Ukraine". (1999, December). Retrieved from https://zakon.rada.gov.ua/laws/show/z0009-00#Text.

[42] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 323 "Requirements for Animal Collection Centers". (2022, May). Retrieved from https://zakon.rada.gov.ua/laws/show/z0699-22#Text.

[43] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 131 "On Approval of the List of Maximum Permissible Levels of Undesirable Substances in Feed and Feed Raw Materials for Animals". (2012, March). Retrieved from https://zakon.rada.gov.ua/laws/show/z0503-12#Text.

[44] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 490 "On the Approval of the Procedure for the Selection of Samples and their Transportation (Forwarding) to Authorized Laboratories for the Purposes of State Control and the Form of the Sample Selection Act". (2018, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z1464-18#n67.

[45] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 511 "On the Approval of Criteria for Determining the Presence of a Significant Impact of the Proposed Veterinary-Sanitary Measure or the Approved Emergency Veterinary-Sanitary Measure on the Export Opportunities of Foreign Countries, Approval of the Types of Facilities for Keeping Domestic Land Animals, Keeping and Growing Aquaculture Animals that Pose a High Risk of Spreading Animal Diseases, and Limit Volumes of Aquaculture Animal Breeding, for which Capacity Approval is not Required". (2022, August). Retrieved from https://zakon.rada.gov.ua/laws/show/z0925-22#Text.

[46] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 211 "On the Approval of the Procedure for the Formation and Maintenance of the State Register of Livestock Facilities and Market Operators, Application Forms for Approval of Livestock Facilities, State Registration of Livestock Facilities / Market Operators". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/z0450-22#Text.

[47] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 578 "On the Approval of the Regulation on the Unified State Register of Animals". (2012, September). Retrieved from https://zakon.rada.gov.ua/laws/show/z1713-12#Text.

[48] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 288 "On the Approval of the Rules for Filling Out, Storing, Writing Off Veterinary Documents and Requirements for Their Accounting". (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/z1202-14#Text.

[49] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 642 "On Approval of the Procedure for the Identification and Registration of Cattle and the Procedure for Processing and Issuing a Passport for Cattle". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/z0166-18#Text.

[50] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 639 "On the Approval of the Procedure for Identification and Registration of Pigs". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/z0154-18#Text.

[51] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 20 "On the Approval of the Procedure for Identification and Registration of Sheep and Goats". (2018, January). Retrieved from https://zakon.rada.gov.ua/laws/show/z0155-18#Text.

[52] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 264 "On Ensuring the Functioning of the Animal Identification and Registration System". (2022, May). Retrieved from https://zakon.rada.gov.ua/laws/show/z0498-22#Text.

[53] Order of the Ministry of Agrarian Policy and of Food of Ukraine No. 553 "On the Approval of the Requirements for Importing (Forwarding) into the Customs Territory of Ukraine Live Animals and Their Reproductive Material, Food Products of Animal Origin, Fodder, Hay, Straw, as well as by-Products of Animal Origin and Products of Their Processing". (2018, November). Retrieved from https://zakon.rada.gov.ua/laws/show/z0346-19#Text.

[54] Order of the Ministry of Agrarian Policy of Ukraine No. 213 "On the Establishment of the State Enterprise "Animal Identification and Registration Agency". (2002, July). Retrieved from https://zakon.rada.gov.ua/rada/show/v0213555-02#Text.

[55] Order of the Ministry of Agrarian Policy of Ukraine No. 496 "On Introduction of Identification and Registration of Horses". (2004, December). Retrieved from https://zakon.rada.gov.ua/laws/show/z0362-05#Text.

[56] Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine No. 689 "On the Approval of the Procedure for the Destruction, Utilization of Fodder, their Return to Circulation for Animal Feeding or for Purposes other than Animal Feeding". (2020, April). Retrieved from https://zakon.rada.gov.ua/laws/show/z0519-20#Text.

[57] Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine No. 224 "On the Approval of Requirements for the Well-Being of Farm Animals during their Keeping". (2021, February). Retrieved from https://zakon.rada.gov.ua/laws/show/z0206-21#Text.

[58] Order of the Ministry of Environmental Protection and Natural Resources of Ukraine No. 206 "On the Approval of the Procedure for Registration and Maintenance of Wild Animals that are Removed from the Natural Environment for the Purpose of Providing Them with Assistance". (2020, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z1171-20#Text.

[59] Order of the Ministry of Environmental Protection of Ukraine No. 429 "On Approval of the Procedure for Keeping and Breeding Wild Animals in Captive or Semi-Free Conditions". (2010, September). Retrieved from https://zakon.rada.gov.ua/laws/show/z1384-10#Text.

[60] Order of the Ministry of Environmental Protection of Ukraine No. 429 "On Approval of the Procedure for Keeping and Breeding Wild Animals in Captive or Semi-Free Conditions". (2010, September). Retrieved from https://zakon.rada.gov.ua/laws/show/z1384-10#Text.

[61] Order of the Ministry of Transport and Communications of Ukraine No. 1196 "On the Approval of the Rules for the Transportation of Passengers, Baggage, Cargo and Mail by Railway Transport of Ukraine". (2006, December). Retrieved from https://zakon.rada.gov.ua/laws/show/z0310-07#Text.

[62] Order of the Ministry of Transport of Ukraine No. 873 "On the Approval of the Rules for the Transportation of Animals, Poultry and Other Cargo Subject to State Veterinary and Sanitary Control". (2002, December). Retrieved from https://zakon.rada.gov.ua/laws/show/z1032-02#Text.

[63] Order of the State Aviation Service of Ukraine No. 1239 "On the Approval of the Aviation Rules of Ukraine "Rules of Air Transportation and Passenger and Baggage Service". (2018, November). Retrieved from https://zakon.rada.gov.ua/laws/show/z0141-19#Text.

[64] Padalino, B., Tullio, D., Cannone, S., & Bozzo, G. (2018). Road transport of farm animals: Mortality, morbidity, species and country of origin at a Southern Italian control post. *Animals (Basel)*, 8(9), article number 155. doi: 10.3390/ani8090155.

[65] Piddubny, O.Yu. (2015). Legal regulation of state veterinary and sanitary control and supervision. In V.M. Yermolenko (Ed.)., *Veterinary law of Ukraine* (pp. 82-102). Kyiv: NULES of Ukraine.

[66] Prokopenko, T., Kravtsiv, R., & Salata, V. (2009). Veterinary radiological control. *Scientific Messenger of Lviv National University of Veterinary Medicine and Biotechnologies. Series "Veterinary sciences"*, 11(2; Pt 4), 236-243.

[67] Resolution of the Cabinet of Ministers of Ukraine No. 1402 "On the Approval of the Rules for the Transportation of Animals". (2011, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-2011-%D0%BF#Text.

[68] Resolution of the Cabinet of Ministers of Ukraine No. 275 "On the Approval of the Regulation on the State Environmental Inspection of Ukraine". (2017, April). Retrieved from https://zakon.rada.gov.ua/laws/show/275-2017-%D0%BF#Text.

[69] Resolution of the Cabinet of Ministers of Ukraine No. 461 "On the Approval of the Procedure for State Registration of Livestock Facilities and Market Operators". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/461-2022-%D0%BF#Text.

[70] Resolution of the Cabinet of Ministers of Ukraine No. 478 "On the approval of the Procedure for the Approval of Animal Breeding Facilities for the Purposes of Export, Import and High-Risk Activities". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/478-2022-%D0%BF#Text.

[71] Resolution of the Cabinet of Ministers of Ukraine No. 537 "Some Issues of State Control over Compliance with the Legislation on Food Products, Feed, by-Products of Animal Origin, Animal Health and Welfare, State Veterinary and Sanitary Control and the Import of Goods into the Customs Territory of Ukraine during Martial Law". (2022, May). Retrieved from https://ips.ligazakon.net/document/kp220537?an=1.

[72] Resolution of the Cabinet of Ministers of Ukraine No. 857 "On Approval of the Procedure for Issuing Veterinary Documents". (2013, November). Retrieved from https://zakon.rada.gov.ua/laws/show/857-2013-%D0%BF#Text.

[73] Resolution of the Cabinet of Ministers of Ukraine No. 857 "On Approval of the Procedure for Issuing Veterinary Documents". (2013, November). Retrieved from https://zakon.rada.gov.ua/laws/show/857-2013-%D0%BF#Text.

[74] Resolution of the Cabinet of Ministers of Ukraine No. 953 "On Approval of the Procedure for Issuing Permits for the Import and Export of Specimens of Wild Fauna and Flora, Certificates for Mobile Exhibitions, Re-export and Introduction from the Sea of Specified Specimens, which are Objects of Regulation of the Convention on International Trade in Species of Wild Fauna and Flora, which are under Threatened with Extinction, in Terms of Sturgeon Fish and Their Products". (2007, July). Retrieved from https://zakon.rada.gov.ua/laws/show/953-2007-%D0%BF#Text.

[75] Resolution of the Cabinet of Ministers of Ukraine No. 953 "On the Approval of the Procedure for Issuing Permits for the Import and Export of Specimens of Wild Fauna and Flora Species, Certificates for Mobile Exhibitions, Re-Export and Introduction from the Sea of Specified Specimens, which are Objects of Regulation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, in Terms of Sturgeon Fish and Products Made from Them". (2007, July). Retrieved from https://zakon.rada.gov.ua/laws/show/953-2007-%D0%BF#Text.

[76] Šímová, V., Večerek, V., Passantino, A., & Voslářová, E.. (2016). Pre-transport factors affecting the welfare of cattle during road transport for slaughter – a review. *Acta Veterinaria Brno*, 85(3), 303-318. doi: 10.2754/avb201685030303.

[77] Tateo, A., Costa, L.N., & Padalino, B. (2022). The welfare of dogs and cats during transport in Europe: A literature review. *Italian Journal of Animal Science*, 21(1), 539-550. doi: 10.1080/1828051X.2022.2043194.

[78] United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules). (1978, March). Retrieved from https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/hamburg_rules_e.pdf.

[79] Van Soom, A., Imberechts, H., Delahaut, Ph., Thiry, E., Van Roy, V., Walravens, K., Roels, S., & Saegerman, C. (2007). Sanitary control in bovine embryo transfer: How far should we go? A review. *Veterinary Quarterly*, 29(1), 2-17. doi: 10.1080/01652176.2007.9695223.

[80] Velichko, M.V. (2021). Principles of biological safety and biological protection as fundamentals of the fundamental basis of the state system against biological disease. *Legal Ukraine*, 2, 19-30. doi: 10.37749/2308-9636-2021-2(218)-3.

[81] Weber, L., & Meemken, D. (2018). Hygienic measures during animal transport to abattoirs – a status quo analysis of the current cleaning and disinfection of animal transporters in Germany. *Porcine Health Management*, 4, article number 1. doi: 10.1186/s40813-017-0078-x.

[82] Wyatt, T., Maher, J., Allen, D., Clarke, N., & Rook, D. (2022). The welfare of wildlife: An interdisciplinary analysis of harm in the legal and illegal wildlife trades and possible ways forward. *Crime, Law and Social Change*, 77, 69-89. doi: 10.1007/s10611-021-09984-9.

Особливості правового регулювання державного ветеринарно-санітарного контролю за переміщенням тварин

Юлія Андріївна Краснова
Доктор юридичних наук, доцент
Національний університет біоресурсів і природокористування України,
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0001-7898-9603
Растіслав Фунта
Кандидат юридичних наук
Університет Данубіус
925 21, вул. Ріхтера, 1171, м. Сладковічово, Словацька Республіка
https://orcid.org/0000-0003-4510-4818

Анотація

Актуальність роботи зумовлено потребою розкрити сутність ветеринарно-санітарного контролю за переміщенням тварин на національному рівні для можливості його подальшого співвідношення з досвідом європейських країн. Мета дослідження – проаналізувати стан правового забезпечення окресленої сфери та сформулювати авторські пропозиції щодо удосконалення правового регулювання державного ветеринарно-санітарного контролю за переміщенням тварин. У роботі використано систему загальнонаукових методів пізнання (діалектичний метод, формально-логічний метод, метод аналізу та синтезу), а також спеціальний формально-юридичний метод. Проаналізовано національний досвід правового регулювання державного ветеринарно-санітарного контролю за переміщенням тварин через розкриття його особливостей. Розкрито сутність державного ветеринарно-санітарного контролю під час переміщення тварин та визначено його місце в системі права, окреслено межі правового регулювання цього питання, правові форми здійснення такого контролю, суб'єкти та об'єкти такої діяльності, послідовність процедур, які вимагаються ветеринарно-санітарним законодавством для переміщення тварин, особливості юридичної відповідальності за порушення ветеринарно-санітарних вимог під час переміщення тварин. Обґрунтовано потребу розробити нормативно встановлені вимоги щодо безпечного переміщення тварин, які містять не лише порядок захисту тварин від епізоотій та жорстокого поводження під час їх підготовки до переміщення або самого переміщення, а й забезпечують населення якісною та безпечною харчовою продукцією та гарантують благополуччя тваринам. Практичне значення статті полягає в низці пропозицій щодо удосконалення українського законодавства в окресленій сфері

Ключові слова: біологічна безпека; епізоотія; державний контроль; ветеринарія; інспектування; інвентаризація; експертний (лабораторний) висновок; облік

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Analysis of international experience in the legal regulation of posthumous consent for donation and its implementation in Ukraine

Anna Melnyk*
PhD in Law, Assistant Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0001-8613-1965

Svitlana Avramenko
PhD in Law, Assistant Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0001-9507-2565

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Abstract

The relevance of this study is associated with the acute shortage of organs for transplantation, which is a widespread issue in healthcare systems worldwide. The purpose of the study is to identify potential ways to increase the number of individuals providing posthumous consent for donation and, consequently, the availability of donor material in Ukraine, based on the experience of foreign countries. The study utilises general scientific methods (formal-logical, analysis, synthesis, comparison) and specific legal methods (formal-legal, comparative-legal) to gather, process, and present information. The paper analyses the international experience in the legal regulation of posthumous consent for donation and explores its implementation in Ukraine. The study establishes that some countries have partially addressed the problem of organ

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*Corresponding author

shortage through legislative provisions allowing for the transplantation of organs from deceased donors. Ukraine has also conducted operations using posthumous donor material. During the investigation, it was found that in certain countries, including Ukraine, there is a presumption of donor dissent, meaning that a person is considered not willing to be a donor if they have not expressed their consent during their lifetime. Conversely, the concept of presumed consent considers a person to be a posthumous donor if they have not explicitly refused to be one during their lifetime. The study proposes and justifies the expediency of potential solutions to the organ shortage problem, including conducting extensive public awareness campaigns to promote the idea of posthumous donation, implementing presumed consent for posthumous donation, and continuing efforts to provide individuals with the option to make their choices regarding posthumous donation electronically. The results of this paper can be utilised to improve Ukrainian legislation in the field of posthumous donation and can be directly applied in the practices of legal professionals working in civil and medical law, and medical practitioners

Keywords: presumption of consent; active disagreement; presumption of disagreement; active consent; transplantation

Introduction

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008) begins with the following words: "Organ transplantation, one of the greatest medical success stories of the twentieth century, has prolonged and improved the lives of hundreds of thousands of patients worldwide." Each day, organ transplantation truly saves the lives of people, and with the development and expansion of deceased donor transplants, the number of saved lives has significantly increased.

According to the International Registry in Organ Donation and Transplantation 2021 (IRODaT, 2022), in Ukraine, the number of individuals agreeing to posthumous donation is 7.71 per 1 million population. The global leaders in this indicator are the United States with 41.60 per 1 million population, followed by Spain with 40.80 individuals and Iceland with 36.70 individuals. The lowest rates are found in the Philippines with 0.02 individuals, Guatemala with 0.10 individuals, and Jordan with 0.19 individuals.

According to information from the Cabinet of Ministers of Ukraine in 2022, Ukrainian doctors performed 384 organ transplants, which is 20% more than in 2021. It is important that the percentage of organ transplants from a deceased donor is gradually increasing: from 53.7% in 2021 to 55% in 2022 (Ministry of Health of Ukraine, 2023).

Despite the positive trend of increased surgeries, including those from deceased donors, there still exists a severe shortage of donor organs for transplantation in Ukraine and worldwide, making this topic issue relevant.

The issue of posthumous consent for donation has been a subject of study for many Ukrainian and foreign researchers. In Ukraine, the legal regulation of consent for posthumous donation was studied by M. Novytska in 2019, who concluded that "due to such a critical situation with the transfer of anatomical materials and in view of the European integration course of our country, Ukraine should borrow and implement the successful experience of foreign countries to create a truly effective system of transplantation."

L. Shepherd *et al.* (2022) investigated the benefits and drawbacks of a presumed consent

system, where a deceased person is considered willing to be a posthumous donor if they have not expressed their dissent during their lifetime. The researchers concluded that "it is important to target the negative affective attitudes that family members and long-standing friends may hold to support the advance directive of the deceased, improve approval of donation, and thus increase organ donation rates."

Ethical decisions regarding the organ shortage problem have become the subject of study by A. Sterri *et al.* (2022), where researchers found that promoting posthumous donation as an act of altruism can increase the number of individuals who express their consent for posthumous donation during their lifetime since "it facilitates praise by the community and gives the donors security in the conviction that they did the right thing."

An urgent issue among researchers is the establishment of ways to increase the number of potential posthumous donors. Thus, J.A. Parsons (2021) suggested that the success of Spain in posthumous donation is due to the educational efforts of doctors. X. Symons and B. Poulden (2022) concluded on the necessity of mandatory expression of a person's position on organ donation after their death.

Every year, the number of organ transplantation surgeries in Ukraine is increasing, as is the number of individuals consenting to posthumous donation. However, the number of posthumous donors does not meet the demand of the country. Hence, the purpose of this paper is to analyse the international experience in the legal regulation of posthumous consent for donation and explore its implementation in Ukraine. To achieve this purpose, the following tasks were performed: analysis of the state of legal regulation of posthumous donation in Ukraine; investigation of the legal regulation of posthumous consent in countries where presumed donor dissent is applied; examination of the legal regulation of posthumous consent in countries where presumed donor consent is applied; analysis of the experience of foreign countries for possible implementation in Ukraine; development of proposals for implementing the legal regulation of posthumous donation from foreign countries into Ukraine.

Materials and Methods

During the study, the main regulations regarding posthumous donation in Ukraine and posthumous consent in foreign countries, including Spain, the United Kingdom, Germany, the Netherlands, Austria, and others, are analysed.

Most attention is paid to Civil Code of Ukraine (2003), Law of Ukraine "On the Application of Tansplantation of Anatomical Materials to Humans" (2018), Law of Ukraine "On Making Changes to Some Laws of Ukraine Regulating the Issue of Transplantation of Anatomical Materials into Humans" (2021), Declaration of Istanbul on organ trafficking and transplant tourism (2008), etc.

In investigating the legal regulation of granting consent to posthumous donation in foreign countries and the possibility of its implementation in Ukraine, a number of research methods are used: description, comparison, system-structural approach, ascending from abstract to concrete, induction, deduction, analysis, synthesis, and the historical method.

Using the comparative method, the global systems of obtaining consent for posthumous donation, namely presumed consent and presumed dissent of the donor, were investigated, and conclusions were drawn regarding the impact of each system on the development of transplantation in the respective country. The descriptive method provided a general understanding of the state and development of posthumous donation worldwide.

The systemic-structural approach was used to investigate the main regulations regarding posthumous consent in Ukraine and some foreign countries. The analysis method helped examine specific elements of the legal system of certain foreign countries concerning the regulation of posthumous donation. Through synthesis, an understanding of the legal system of specific countries as a whole was achieved.

The deductive method facilitated the transition from investigating the legal system of some foreign countries to the regulation of specific legal relations – posthumous consent for donation. The inductive method was applied to elucidate the impact of specific legal phenomena, such as the introduction of presumed donor consent, on the legal system and citizens of the country as a whole.

The historical method was employed to examine the process of some countries transitioning from one system of posthumous consent to another, including additional actions taken by the governments of these countries (writing letters, surveys when obtaining a driver's license, etc.).

Results and Discussion

As of today, there are two global systems for obtaining consent regarding posthumous donation: the opt-in system (active consent) and the opt-out system (active dissent). Under the opt-in system, it is assumed that if a person has not expressed consent for posthumous donation during their lifetime, they are considered not willing to become a posthumous donor. In contrast, under the opt-out system, if a person has not expressed dissent for posthumous donation during their lifetime, they are considered willing to become a posthumous donor. It is known that "both systems are approved by the World Health Organization and both are used in practice in different countries of the world" (Silchenko & Volodina, 2018).

In Ukraine, the right to donation, including an individual's right to independently allow or prohibit the use of their organs and other anatomical materials after death, is established in the Civil Code of Ukraine (2003). A person can provide written consent for the donation of their organs and other anatomical materials in case of their death or prohibit it.

If a person has not expressed consent or dissent for posthumous donation during their lifetime, their consent is requested from their relatives. Law of Ukraine "On the Application of Tansplantation of Anatomical Materials to Humans" (2018) defines the list of persons who can provide consent for organ retrieval – the spouse or one of the close relatives of the deceased (children, parents, siblings). In the absence of a spouse or close relatives, consent is requested from the person who undertook to bury the deceased.

Thus, in Ukraine, the presumption of dissent for posthumous donation is in effect, which means that a person is considered not willing to become a posthumous donor if they have not consented to it during their lifetime according to the established legislation.

To register their consent for posthumous donation in Ukraine, a person must personally fill out the relevant paperwork at one of the medical facilities in Ukraine. However Law of Ukraine "On Making Changes to Some Laws of Ukraine Regulating the Issue of Transplantation of Anatomical Materials into Humans" (2021) allows individuals to provide their consent or dissent for organ retrieval in electronic form.

According to the information posted on the website of the specialised state institution Ukrainian Transplant Coordination Centre, "before the full-scale invasion, work had been made on the development of the submission of lifetime consent or disagreement for posthumous donation in

the Diia system. Due to the ongoing war, the development of the mechanism for submitting applications regarding organ donation in electronic form has not been completed in Ukraine" (Ukrainian Transplant Coordination Centre, 2023). However, there are reasons to believe that the possibility of expressing one's position regarding posthumous donation electronically would increase the number of posthumous donors in Ukraine.

In Australia, the opt-in system, which allows active consent during an individual's lifetime, is also in effect. However, when a registered posthumous donor passes away, "their family or next-of-kin must also be consulted and give consent for organs and tissues to be donated. Families also have the right to choose for their loved ones to become donors after their death even if they are not registered" (Symons & Poulden, 2022). This system may not be as effective in potentially increasing the number of posthumous donors since relatives have the authority to prohibit the use of a person's organs after their death, even if the individual expressed consent during their lifetime.

In Denmark, there is also an opt-in model with the possibility for family members to veto the individual's intention to become a donor. The issue of the persuasive arguments for the existence of the family veto in cases of genuine conflict, where the wishes of registered organ donors are rejected if family members object to donation, has been covered by A. Albertsen (2020). He argues that "arguments for upholding the family veto in cases of genuine conflict follow one of two paths: It is argued either that upholding the veto is in tune with some important value or that removing it would produce unfavourable consequences." However, there can be objections to the family's right to override an individual's posthumous donation intention, as it is an unethical approach towards the deceased person and should not be applied.

As emphasised by D.M. Shaw (2017), three types of veto can be distinguished: new evidence provided by an authorised person demonstrating the deceased's own refusal; assumptions by authorised persons that the deceased would be against donation under certain circumstances; and objections based on the wishes of authorised persons. However, in practice, it may be challenging to distinguish between these types, making the wishes of authorised persons akin to the deceased person's own desires. Besides, Shaw notes four harmful consequences of the unclear position on posthumous donation: "first, the information provided to most people registering as organ donors is very vague in terms of what is actually involved in donation. Second, the vagueness regarding consent to donation increases the distress of families of patients who are potential organ donors, both during and following the discussion about donation. Third, vagueness also increases the chances that the patient's intention to donate will not be fulfilled due to the family's distress. Fourth, the consequent reduction in the number of donated organs leads to avoidable deaths and increased suffering among potential recipients, and distresses them and their families" (Shaw, 2017). One can agree with this perspective, as the issue of organ utilisation from a deceased donor is time-sensitive (physicians have a limited window to use such organs for transplantation), and the individuals authorised to make the decision are generally in a state of shock after receiving news of the death of their close relative. Moreover, they may have different views on posthumous donation and may disagree with each other, potentially jeopardising the use of the deceased person's organs and, as a result, saving lives.

In Germany, there is a system for expressing active consent (refusal) during a person's lifetime. If there is no agreement or objection from a

potential organ donor, their closest relative is asked if they are aware of their position on organ donation. If the potential donor's position remains unknown, the closest relatives make the decision at their discretion (Englbrecht & Holling, 2023). However, this system is also not perfect, as the authorised person may impose their own opinion as the potential donor's position.

A comparison of the approaches to posthumous organ donation in Belgium and Greece was conducted by M. Novytska (2019), according to which "the Belgian Law about the removal and transplantation of organs says that the consent of the donor must be expressed in writing and signed in the presence of a capable witness." Regarding posthumous donation in Greece, "a written form with a notaries certificate, a written form with a donor signature in the police and an oral form of consent in the presence of two witnesses with a record in the special register" is required (Novytska, 2019). Moreover, in both Belgium and Greece, obtaining consent for the use of a person's organs after their death requires not only the individual's agreement but also the agreement of their spouse. It should be noted that the necessity of involving witnesses and recording the consent procedure for posthumous donation may potentially reduce the number of people who agree to become posthumous donors during their lifetime. Furthermore, the requirement for mandatory spousal consent for posthumous donation may also potentially decrease the number of posthumous organ and material donors in these countries.

Another approach to post-mortem donation involves a system based on the presumption of consent (opt-out, active refusal). Presumed consent has long been discussed as a potential solution to the problem of organ shortages for transplantation. According to M. Briukhovetska (2016), "presumed consent is based, on the one hand, on the recognition that causing additional emotional suffering to family members is inhumane and, on the other hand, on the assumption that in the current stage of transplantology, it is impossible to ascertain the will of these individuals after the death of the person within the time frame required to preserve the transplant." It is reasonable to agree with this perspective, as time is often critical in transplantology matters.

Statistical data (IRODaT, 2021; 2022) indicate an increase in consent rates and transplantations after the introduction of presumed consent, and the success of organ donation in Spain is often attributed to its envisaged consent. However, some question whether it is solely the responsibility of the legislation, suggesting that "it is the role of transplant coordinators in Spanish hospitals that has improved transplantation figures and that the law itself is dormant" (Briukhovetska, 2016). Nevertheless, there is a direct correlation between the system of consent for posthumous donation in Spain and its leading position in this matter. In addition, Spanish law does not require additional conditions for posthumous donation, such as spousal consent or notarisation of their lifelong consent.

Currently, the UK is in the process of transitioning from one system of posthumous organ donation to another. Wales was the first country in the UK to introduce the presumed consent system, which was implemented in 2015. Under this system, "any deceased adult who is not excepted is deemed to consent to organ donation" (Parsons, 2021), and exceptions include cases where the person did not express their objection or appointed an authorised person to decide on this matter. Wales legislation also allows close relatives of the deceased to prove that the deceased had expressed opposition to posthumous organ donation during their lifetime. This is a reasona-

ble position since other individuals may influence whether their close relative becomes a posthumous donor, but the basis for this influence should be the will of the deceased, not the personal opinions of those close (authorised) individuals.

In England, the presumed consent system (deemed consent) was implemented in May 2020. According to the new system in England, in the absence of officially registered objection, any person aged 18 and above is considered to have consented to donation unless the person who was in a close relationship with the potential donor just before their death provides information that would lead to the conclusion that the person would not have given consent. However, if it is not possible to speak with those who have a relevant relationship with the deceased, "donation should not proceed" (Parsons, 2021). This position is not very successful, since the country may lose a potential posthumous donor just because they could not find one's close relatives (authorised persons).

In Scotland, the opinion of the close relatives of the potential posthumous donor carries less weight, as in cases where communication with them is not possible, the requirement to cease donation is absent. Such formulation of the legislation is more sensible from the perspective of increasing the number of posthumous donors in the country.

Posthumous donation in Mexico operates on the principle of "presumed" or "explicit consent". "Presumed consent" is applied if a person did not express their refusal for the use of their body for transplantation during their lifetime and consent is obtained from any of the following present individuals: wife, concubine, descendants, descendants in the ascending line, brothers and sisters, adopted or adoptive parents (Zamora Torres & Díaz Barajas, 2021). The drawback of such an approach is that the necessity of obtaining permission for the use of a deceased person's organs essentially negates the principle of presumed consent by potentially reducing the number of posthumous donors.

The main idea of presumed consent models is that explicit consent is not required. In the absence of a clearly recorded wish of the deceased, the donation is considered legal. However, J.A. Parsons (2021) distinguishes hard deemed consent and soft silent consent, while "hard deemed consent is, in a sense, pure deemed consent. Where such a law operates, all that can prevent an individual becoming an organ donor upon their death is a formally recorded objection made by them prior to their death." In soft deemed consent, in addition to the absence of written objection, the consent of the deceased's family members is required.

Some researchers (Shepherd *et al.*, 2023) also support the implementation of presumed consent for organ donation, where individuals have to express their refusal to be donors after death during their lifetime. The possibilities of increasing organ donation rates are seen in "targeting the negative affective attitudes that family members and long-standing friends may hold to support the advance directive of the deceased, improve approval of donation and thus increase organ donation rates". These authors express reasonable opinions because increasing the level of approval of donation in society directly affects the number of posthumous donors.

Some researchers emphasise the need to consider the family's opinion when applying a presumed consent system, especially if the person is not registered as a donor. "The family opinion should be considered in these situations to reduce the probability of injustices. Organ donation should be avoided if the family is unanimously against it" (Formoso *et al.*, 2021). The disadvantage of this position is that the attitude of a person

and their relatives to posthumous donation may differ fundamentally.

There is an opinion (Shepherd *et al.*, 2023) that the decision of relatives to grant or deny permission for organ retrieval after a person's death is not always based on the deceased's desires. When people have a negative attitude towards donation, they are less likely to decide based on the deceased's wishes and instead rely on their own attitudes. However, "when people have a negative attitude towards donation, they are less likely to decide based on the deceived's wishes and instead use the heuristic of relying on their own attitudes".

The issue of post-mortem organ donation has been considered by the European Court of Human Rights. In the case of Elberte v. Latvia in 2015, the Court opined that if the deceased's wishes are not sufficiently clear, the state must make reasonable inquiries to ascertain whether the deceased objected to the donation. The failure of the state to do so in the Elberte case led to a successful claim by the deceased's wife for a violation of her right to respect for private and family life and an award of €16,000 in moral damages (Judgment of the European Court…, 2015).

The experience of the Netherlands, where the system changed from "active consent" to "active refusal", is interesting. In 2020, all citizens who were not registered as donors or non-donors were sent a letter asking them to make a choice and register it in the donor registry. "That is, people receive a letter in which they are asked to make a choice; six weeks later they receive a reminder letter and another six weeks a notification letter that they are defaulted into the 'no objection' group" (Wachner *et al.*, 2022). This experience, particularly the use of letters (paper or electronic) to ascertain people's real wishes, can be beneficial to apply in Ukraine, as it allows discovering the person's true will during their lifetime.

Some researchers (Silchenko & Volodina, 2018) propose the implementation of a compulsory choice system to increase the number of potential donors, where individuals are required to officially express their position on organ donation after death. They suggest that consent or refusal should be expressed during political elections. In contrast to this proposal, there is an opinion that when people are asked whether they want to donate an organ while waiting for their driver's license, they may respond "no" only to avoid being forced to do something they had not properly considered, not because they are against post-mortem organ donation Thaysen & Albertsen, 2021).

The conclusion of the study is that the introduction of a compulsory choice system should be preceded by a broad public awareness campaign, which would explain to the population the importance of post-mortem organ donation and assure them of the safety of such donation. Without these preparatory measures, the result may be counterproductive, leading to an increase in refusals for post-mortem donation. For example, when Chile introduced a compulsory choice system in 2010, it resulted in a 29% decrease in deceased donors in the following year. This was likely due to serious misinformation about the system, including the belief that only wealthy people would receive kidneys (Domínguez & Rojas, 2013).

Another reason that deters people from giving consent for post-mortem donation is the imperfection of legal regulation. In China, for example, "deceived donors account for a substantial portion of organ donations, but brain death was not adopted as a standard until now" (Mi *et al.*, 2022). Furthermore, the main problems with the transplantation system in China are "the lack of publicity and education and the difficulty of standardizing legislation about ethical issues arousing ethical problems" (Wu *et al.*, 2022).

Consequently, to increase the level of post-mortem donation in this country, it is necessary to improve national health legislation.

A study conducted in Jordan showed that religious beliefs (36%) and the absence of financial incentives (44%) are significant reasons for refusing organ donation (Hammad *et al.*, 2017). To improve the situation with organ donation in this country, it is necessary to conduct educational activities, with the mandatory involvement of religious organisations. Special attention should be given to investigating the possibility of providing financial incentives to people for giving consent to the use of their organs after death for transplantation purposes.

A study conducted in Saudi Arabia showed that humanitarian reasons (68%) and religious beliefs (62%) are the most important factors influencing the decision to become an organ donor, while financial reasons account for only 0.6% (Alam, 2007). This could be related to the high standard of living in the country, where the financial factor does not considerably influence a person's decision regarding donation.

The attitude to donation in Syria was the subject of a cross-sectional study by a group of researchers in 2020. While the first kidney transplantation from a living donor was performed in Syria in 1979, and the country granted permission for the use of organs from deceased donors legislatively in 2003, "the majority of these organs have been donated from living donors, mostly related, while deceived organ donation is still an unmet need" (Tarzi *et al.*, 2020). This can be attributed to the lack of public awareness on this topic, so the situation can be affected by the conduct of appropriate educational work among the population.

The position of this paper is that to improve the situation and increase the number of post-mortem donors in Ukraine, it is advisable to implement the experience of the United Kingdom (including Wales, England, and Scotland) in transitioning from presumed refusal to presumed consent of the donor without the need for additional permission from the deceased's relatives.

The transition should be gradual, following the example of the Netherlands, with prior notice to the population and providing citizens with the opportunity to actively express their position on post-mortem organ donation. For those who do not utilise this option, presumed consent of the donor should be applied.

A crucial means of increasing the number of post-mortem donors is to adopt the experience of Spain in the widespread promotion of donation and conduct various explanatory discussions, implement educational projects on this issue for the entire population and medical professionals, including nurses and transplant coordinators.

The application of the principle of compulsory choice regarding post-mortem organ donation when exercising free will (e.g., during general elections) or obtaining documents (e.g., driver's licenses) may be premature at this stage and should be implemented after conducting campaigns to promote donation.

Furthermore, the Ukrainian government needs to continue its efforts to enable the legislative possibility of expressing consent for post-mortem donation without physically visiting a healthcare facility, by allowing the submission of electronic consent applications using information technology.

Conclusions

The purpose of the paper, which was to find possible ways to increase the number of post-mortem donors in Ukraine based on the experience of foreign countries, can be considered fully achieved. The study analysed the legislation of foreign

countries regarding the forms and methods of granting consent to post-mortem donation. There are two main systems in the world: the presumed refusal, where a person is considered not willing to become a post-mortem donor unless they have explicitly expressed consent during their lifetime, and the presumed consent of the donor, where a person is considered willing to become a post-mortem donor if they have not expressed refusal during their lifetime. The study concluded that the rate of donors per population unit is higher in countries with the presumed consent of the donor, making it advisable to implement such a system in Ukraine.

The study also analysed the experience of foreign countries in transitioning from presumed refusal to presumed consent of the donor and emphasised the appropriateness of implementing the experience of the Netherlands, which involves repeatedly inviting citizens to make their choice before the legislative change in the system of providing consent for post-mortem donation.

Special attention was paid to other ways to increase the number of post-mortem donors in Ukraine. The experience of Spain was examined, where success in this field is attributed not only to the existing presumed consent of the donor but also to the quality work of healthcare professionals and other social workers who conduct awareness and explanatory campaigns. The reasons for the low number of post-mortem donors in some countries were also analysed, with the main factors being the imperfection of medical legislation, lack of financial incentives, and religious beliefs. The conclusion was made that in Ukraine, a broad awareness campaign on post-mortem donation should be conducted to encourage citizens to make their choice. Another way to increase the number of donors in Ukraine is by simplifying the process of providing consent for post-mortem donation, including the option of making such a choice in electronic form.

The prospects for further studies on forms and methods to increase the popularity of donation among the population of Ukraine and foreign countries remain promising.

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Conflict of Interest

There is no conflict of interest.

References

[1] Alam, A.A. (2007). Public opinion on organ donation in Saudi Arabia. *Saudi Journal of Kidney Diseases and Transplantation*, 18(1), 54-59.

[2] Albertsen, A. (2020). Against the family veto in organ procurement: Why the wishes of the dead should prevail when the living and the deceased disagree on organ donation. *Bioethics*, 34(3), 272-280. doi: 10.1111/bioe.12661.

[3] Briukhovetska, M.S. (2016). Posthumous organ donation: Presumption of concent or presumption of disagreement. *Scientific Bulletin of the Uzhhorod National University. Series: Law*, 36 (Vol. 1), 91-94.

[4] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

[5] Declaration of Istanbul on organ trafficking and transplant tourism. (2008, May). Retrieved from https://www.declarationofistanbul.org/the-declaration.

[6] Domínguez, J., & Rojas, J.L. (2013). Presumed consent legislation failed to improve organ donation in Chile. *Transplantation Proceedings*, 45(4), 1316-1317. doi: 10.1016/j.transproceed.2013.01.008.

[7] Englbrecht, J.S., & Holling, M. (2023). Organspende nach irreversiblem Hirnfunktionsausfall. *Anaesthesiologie*, 72, 67-78. doi: 10.1007/s00101-022-01241-5.

[8] Formoso, V., Marina, S., & Ricou, M. (2021). Presumed consent for organ donation: An incoherent justification. *Acta Bioethica*, 27(1), 27-35. doi: 10.4067/S1726-569X2021000100027.

[9] Hammad, S., Alnammourah, M., Almahmoud, F., Fawzi, M., & Breizat, A.H. (2017). Questionnaire on brain death and organ procurement. *Experimental and Clinical Transplantation*, 15(S1), 121-123. doi: 10.6002/ect.mesot2016.O115.

[10] IRODaT. (2021). *International Registry in Organ Donation and Transplantation. Final numbers 2020*. Retrieved from https://www.irodat.org/img/database/pdf/Irodat%20December_final%202020.pdf.

[11] IRODaT. (2022). *International Registry in Organ Donation and Transplantation. Final numbers 2021*. Retrieved from https://www.irodat.org/img/database/pdf/Irodat%20year%202021%20_%20Final.pdf.

[12] Judgment of the European Court of Human Rights in the case of Elberte v. Latvia (application no. 61243/08). (2015, January). Retrieved from https://hudoc.echr.coe.int/fre?i=002-10354.

[13] Law of Ukraine No. 1967-IX "On Making Changes to Some Laws of Ukraine Regulating the Issue of Transplantation of Anatomical Materials into Humans". (2021, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1967-20#Text.

[14] Law of Ukraine No. 2427-VIII "On the Application of Tansplantation of Anatomical Materials to Humans". (2018, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2427-19#Text.

[15] Mi, S., Jin, Z., Qiu, G., Xie, Q., Hou, Z., & Huang, J. (2022). Liver transplantation in China: Achievements over the past 30 years and prospects for the future. *Bioscience Trends*, 16(3), 212-220. doi: 10.5582/bst.2022.01121.

[16] Ministry of Health of Ukraine. (2023). *In 2022, Ukrainian doctors performed 20% more organ transplants than in the pre-war year 2021*. Retrieved from https://www.kmu.gov.ua/news/u-2022-rotsi-ukrainski-likari-provely-na-20-bilshe-orhannykh-transplantatsii-nizh-u-dovoiennomu-2021-rotsi.

[17] Novytska, M.M. (2019). Specific aspects of normative legal regulation of anatomical materials' transplantation in Ukraine and foreign countries. *Wiadomosci Lekarskie*, 72(7), 1331-1336.

[18] Parsons, J.A. (2021). Deemed consent for organ donation: A comparison of the English and Scottish approaches. *Journal of Law and the Biosciences*, 8(1), article number lsab003. doi: 10.1093/jlb/lsab003.

[19] Shaw, D.M. (2017). The consequences of vagueness in consent to organ donation. *Bioethics*, 31(6), 424-431. doi: 10.1111/bioe.12335.

[20] Shepherd, L., O'Carroll, R.E., & Ferguson, E. (2023). Assessing the factors that influence the donation of a deceased family member's organs in an opt-out system for organ donation. *Social Science & Medicine*, 317, article number 115545. doi: 10.1016/j.socscimed.2022.115545.

[21] Silchenko, V., & Volodina, O. (2018). Legal regulation of postmortem organ donation in Ukraine. *International Scientific Journal "Internauka"*, 22 (Vol. 3), 29-32.

[22] Sterri, A., Regmi, S., & Harris, J. (2022). Ethical solutions to the problem of organ shortage. *Cambridge Quarterly of Healthcare Ethics*, 31(3), 297-309. doi: 10.1017/S0963180121000955.

[23] Symons, X., & Poulden, B. (2022). An ethical defense of a mandated choice consent procedure for deceased organ donation. *Asian Bioethics Review*, 14, 259-270. doi: 10.1007/s41649-022-00206-5.

[24] Tarzi, M., Asaad, M., Tarabishi, J., Zayegh, O., Hamza, R., Alhamid, A., Zazo, A., & Morjan, M. (2020). Attitudes towards organ donation in Syria: A cross-sectional study. *BMC Medical Ethics*, 21, article number 123. doi: 10.1186/s12910-020-00565-4.

[25] Thaysen, J.D., & Albertsen, A. (2021). Mandated choice policies: When are they preferable? *Political Research Quarterly*, 74(3), 744-755. doi: 10.1177/1065912920936361.

[26] Ukrainian Transplant Coordination Center. (2023). *How to give consent on readiness to be a donor*. Retrieved from https://utcc.gov.ua/yak-nadaty-zgodu-pro-gotovnist-buty-donorom.

[27] Wachner, J., Adriaanse, M., van den Hoven, M., & de Ridder, D. (2022). Does default organ donation registration compromise autonomous choice? Public responses to a new donor registration system. *Health Policy*, 126(9), 899-905. doi: 10.1016/j.healthpol.2022.07.002.

[28] Wu, X., Wang, W., Li, Q., Peng, Z., & Zhu, J. (2022). Current situation with organ donation and transplantation in China: Application of machine learning. *Transplantation Proceedings*, 54(7), 1711-1723. doi: 10.1016/j.transproceed.2022.03.067.

[29] Zamora Torres, A.I., & Díaz Barajas, Y. (2021). A public policy proposal: Organ donation culture program in Morelia, Michoacán, México. *Población y Salud en Mesoamérica*, 19(2). doi: 10.15517/psm.v19i2.47453.

Аналіз зарубіжного досвіду правового регулювання надання згоди на посмертне донорство та можливість його імплементації в Україні

Анна Романівна Мельник
Доктор філософії з права, асистент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0001-8613-1965

Світлана Михайлівна Авраменко
Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0001-9507-2565

Анотація

Актуальність роботи пов'язана з тим, що гостра нестача органів для проведення операцій з трансплантації – поширене явище систем охорони здоров'я в усьому світі. Метою роботи було на підставі досвіду зарубіжних країн віднайти можливі шляхи збільшення кількості осіб, які нададуть свою згоду на посмертне донорство, і як наслідок – донорського матеріалу в Україні. Під час дослідження використано загальнонаукові (формально-логічний, аналізу та синтезу, порівняння) та спеціально-юридичні (формально-юридичний, порівняльно-правовий) методи – для отримання, обробки та викладення інформації. У статті проаналізовано зарубіжний досвід правового регулювання надання згоди на посмертне донорство та можливість його імплементації в Україні. За результатами дослідження виявлено, що частково проблему нестачі донорського матеріалу вдалося вирішити шляхом закріплення на законодавчому рівні можливості трансплантації органів від померлих донорів. В Україні також проводяться операції з використанням матеріалу посмертного донорства. У процесі дослідження також з'ясовано, що в деяких країнах світу, зокрема й в Україні, діє презумпція незгоди донора, за якої особа вважається такою, яка не бажає бути донором, якщо за життя вона не висловила свою згоду. Протилежна за суттю концепція – це презумпція згоди, за якої особа вважається такою, яка бажає стати посмертним донором, якщо за життя вона не висловила своєї незгоди. Запропоновано та обґрунтовано доцільність можливих шляхів розв'язання проблеми нестачі донорського матеріалу, а саме: проведення широкої правопросвітницької роботи серед населення, з метою популяризації ідеї посмертного донорства, упровадження презумпції згоди на посмертне донорство, а також продовження роботи з надання населенню можливості зробити власний вибір щодо посмертного донорства в електронному вигляді. Результати цього дослідження можуть бути використані для вдосконалення українського законодавства в сфері посмертного донорства, а також застосовані безпосередньо в практиці юристів, що працюють у сфері цивільного та медичного права, й медичних працівників

Ключові слова: презумпція згоди; активна незгода; презумпція незгоди; активна згода; трансплантація

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Stimulating the development of entrepreneurship in rural areas: Theoretical-legal characteristics

Tamara Novak*
PhD in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0003-2371-3014

Myroslava Dudash
Postgraduate Student
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0009-0003-0390-2659

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Abstract

The relevance of the study is due to the urgent need to form a qualitatively updated legal field in entrepreneurship development in rural areas as one of the determining factors for the growth of the welfare of the population and the motivation of the economically active stratum to employment in rural areas. The purpose of the study is to define the category "stimulating the development of entrepreneurship in rural areas" and determine the tasks and fundamental principles of this activity. Achieving this goal was made possible by a comprehensive analysis of theoretical sources and provisions of current and future legislation. As a result of the study conducted, the author's definition of the concept of "stimulating the development of entrepreneurship and rural areas" is formulated through its understanding as a set of measures of legal regulation and national policy. The purpose of these measures is to simplify

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*Corresponding author

the procedure for creating business entities and the procedure for conducting business activities within rural areas, which will increase the economic attractiveness of business in rural areas. The expansion of the field of stimulating business activities in rural areas that are not related to the production of agricultural products is considered promising, which is especially important in the realities of finding additional ways to support the population in the conditions of war and post-war reconstruction. The principles of stimulating the development of entrepreneurship in rural areas, on which legislation in this area and the regulation of relevant relations should be based, are defined. The practical importance of the study lies in the fact that it can become a source for formulating the content of regulatory acts in the field of stimulating the development of entrepreneurship in rural areas

Keywords: state support; legal regulation; rural areas; agri-industrial complex; agricultural activities; employment of the population; economic attractiveness

Introduction

Effective solutions to the problems of current legal regulation and national policy in the field of stimulating the development of entrepreneurship in rural areas should be based on the best practices of theoretical-legal content. The current place in this is occupied by the formulation at the theoretical level of a clear categorical apparatus, basic principles and tasks. Ultimately, the lack of a clear understanding on the part of the state of what exactly should be the stimulation of the development of entrepreneurship in rural areas, what is its ultimate goal, and what principles should be subordinated to the state's activities to implement such incentives, is one of the factors of imperfect national policy and legal regulation in this area.

The problem of legal terminology in the field of stimulating the development of entrepreneurship in rural areas remains out of due attention of researchers. Existing writings focus on defining a tangent, but not identical area – state support for agriculture. In a comprehensive study by Kh. Hryhorieva (2019), devoted to the problems of legal support for state support for agriculture, detailed attention is paid to the concept of "state support for agriculture" with the formulation of its definition by the author. The development of entrepreneurship in rural areas, based on the very essence of entrepreneurial activity, attracts the attention of researchers – representatives of economic sciences. In particular, considerable attention is paid to this by T. Balanovska and O. Gogulya (2018). In his study, D. Titov (2020) describes the realisation of the potential of entrepreneurship in rural areas, identifies the features of entrepreneurship in rural areas, and formulates a list of priority measures to support such activities. In the paper of V. Krupa and O. Krupa (2018), the most promising areas of entrepreneurship in rural areas are identified (the authors justify belonging to such non-conventional and sparsely distributed types of activities) and named the promotion of entrepreneurship as measure for their implementation.

The analysis of foreign sources also shows a shift in the attention of researchers towards the practical component of the development of entrepreneurship in rural areas and a certain disregard for the theoretical foundations of this area. The bulk of the papers is devoted to identifying promising areas of entrepreneurship in rural areas. For example, a study by D. Barber III

et al. (2021), draws conclusions about the need to equalise opportunities for the development of entrepreneurship in the city and in rural areas and substantiates the need to consider the specific features of rural areas. In the paper by S. Polbitsyn and A. Earl (2022), the necessity to create an integral system of rural entrepreneurship is substantiated, and when developing and implementing programmes to support entrepreneurship in rural areas, it is necessary to involve not only state authorities and local self-government but also rural entrepreneurs, representatives of professional self-regulatory organisations, and directly the rural population. In their study, J. Freiling *et al.* (2022) focus on such a new area in supporting entrepreneurship in rural areas as business incubators. The strategic vector of the national policy for the development of entrepreneurship in rural areas is defined as the stimulation of entrepreneurial activity in the study of I. Forkun *et al.* (2021). The paper on the economic socialisation of entrepreneurship in rural areas as a factor of ensuring the well-being of the population, conducted by V. Radko *et al.* (2022), also deserves attention, the main conclusion of which was the statement about the substantial impact of entrepreneurial activity on the well-being of people living in rural areas and their quality of life.

The list of papers devoted to the development and promotion of entrepreneurship in rural areas can be continued, but from the above, it can be concluded that researchers do not pay enough attention to the issue of general theoretical characteristics of the legal regulation of stimulating entrepreneurship in rural areas. The purpose of filling this gap, in particular, to form an appropriate conceptual framework, will be fulfilled by this study. The achievement of this goal will be realised through the solution of the following tasks: the formulation of the concept of "stimulating the development of entrepreneurship in rural areas" and the definition of tasks and principles for stimulating the development of entrepreneurship in rural areas.

Materials and Methods

A comprehensive and objective examination of the problem was made possible by the use of a set of methods of scientific knowledge, which included the dialectical method, the formal-logical method, methods of analysis and synthesis, and the formal-legal method. The dialectical method allowed examining the concept of "stimulating entrepreneurship in rural areas" in the relationship between legal and social factors. The formal and logical method was used as the basis for the concept of "stimulating the development of entrepreneurship in rural areas", and the definitions "state support for entrepreneurship", "stimulation", "entrepreneurship", "rural territory", and "rural area". The method of analysis has become useful in investigating scientific approaches to the definition of the concept of "stimulating the development of entrepreneurship in rural areas" and related categories. The method of analysis was also used in the study of the content of normative acts containing legal definitions of the concepts of "rural area", "rural areas", "entrepreneurship", "agricultural entrepreneurship", "agricultural commodity production" and other similar concepts. The synthesis method in combination with the formal legal method defines the main tasks of stimulating business activity in rural areas and identifies the main principles and basics of promotion of business activities in rural areas.

It became possible to achieve the goal set by the authors of the study through the use of a number of regulatory legal acts as the basis for research. First of all, economic legislation – Economic Code of Ukraine (2003) and Law of Ukraine

"On Development and State Support of Small and Medium Business in Ukraine" (2012) were used as a basis for the legal regulation of entrepreneurship in Ukraine in general. Acts of Agrarian legislation became the basis for investigating the specific features of stimulating entrepreneurship in rural areas, considering the characteristic features of agricultural production, the subject-object composition of the relevant relations, and when formulating the principles of stimulating entrepreneurship in rural areas among them: Law of Ukraine "On Agricultural Advisory Activity" (2004) in terms of defining the concept "rural area", Law of Ukraine "On State Support of Agriculture of Ukraine" (2004) on the definition of the concepts of "agricultural enterprise" and "subject of the agri-industrial complex", Law of Ukraine "On Agricultural Cooperation" (2020) on defining the types of activities of agricultural cooperatives, Law of Ukraine "On Stimulating the Development of Agriculture for the Period 2001-2004" (2001) in terms of such incentive measures.

Conclusions about the need to review the existing approach, according to which entrepreneurship in rural areas is reduced exclusively to agricultural activities, are largely based on the provisions of such a programme document as the Concept of the Development of Rural Areas (Order of the Cabinet of Ministers of Ukraine No. 995..., 2015) and the norms of perspective lawmaking – Concept of Stimulating the development of Entrepreneurship in Rural Areas until 2030 (Draft Order of the Cabinet of Ministers of Ukraine..., 2021).

Results and Discussion

The concept of stimulating the development of entrepreneurship in rural areas

As for the concept of "stimulating the development of entrepreneurship in rural areas", given its complexity, to clarify its content, it is necessary first of all to define each of its components separately. In addition, not all components of the concept under study are unambiguous both from the standpoint of their legal definitions and from the standpoint of doctrinal understanding. In particular, this applies to the concept of the term "rural areas".

Firstly, despite a substantial array of legislative acts devoted to rural territories and their development, the administrative-territorial structure of Ukraine, regional policy, etc., today the only legal definition of the concept of "rural area" is reflected in the Law of Ukraine "On Agricultural Advisory Activity" (2004). According to this, the countryside includes territories characterised by two main features. First: location outside of cities. Second, they are represented by rural development and agriculture production zones. Notably, the concept of "rural areas" is operated by the concept of rural development, approved by the corresponding Order of the Cabinet of Ministers of Ukraine (2015), however, it does not provide a definition of this concept.

There are various doctrinal interpretations. In particular, V. Urkevych (2010), developing the above-mentioned legal definition of rural areas, also considers their location outside cities as a key feature of rural areas. The second factor that allows, according to the researcher, classifying territories as rural is their purpose – rural development and agricultural production. However, there are also approaches that are not tied to the regulatory definition. For example, S. Melnyk (2004) states that the definition of rural territory is based on such a factor as the "historically formed element of the settlement network", which, from the researcher's standpoint, is a combination of such units as settlements, villages, farms, etc., with their subordination to village (settlement) councils. According to Ya. Oliynyk

and A. Stepanenko (2003), rural areas connect people and territories. Such small settlements and other landscape resources must necessarily be located outside the borders of large cities and urban centres and not be included in the field of economic activity of the latter.

Therewith, analysing the full range of doctrinal and normative definitions of this concept, it should be noted, that for the most part the concepts of "rural area" and "rural territories" are not delineated and are identical, and that most definitions somehow link rural territories to the territories where agricultural activities are conducted. As N. Khomiuk (2018) notes, this approach is somewhat outdated, and currently, it cannot be considered that the vast majority of the rural population is engaged in agriculture. In addition, the very fact that the territory is located outside the city does not mean that it is automatically classified as rural. The territory must be permanently inhabited or at least be close to populated areas to be rural or urban – otherwise, territories occupied, for example, by forests or mountains that are unsuitable for permanent residence on them, would also be considered rural. Considering this and the administrative-territorial structure of Ukraine (in particular, the presence of united territorial communities), it is advisable to define rural territories as territories that are within the jurisdiction of village and settlement councils, and within the limits of rural united territorial communities defined by law, intended for permanent residence of people or conducting economic activities.

The next component of the content of the category "stimulating the development of entrepreneurship in rural areas" is the concept of entrepreneurship itself. This concept is defined in Article 42 of the Economic Code of Ukraine (2003). The characteristics of entrepreneurship are: independence; initiative; systematic economic activity. The purpose of entrepreneurs' activities is to make a profit. Therewith, the question arises what exactly should be understood by entrepreneurship in rural areas as an object of incentives.

Special legislation in the agricultural sector provides a number of definitions of agricultural entrepreneurship, agricultural commodity production, and other similar concepts. For example, in accordance with paragraph 2.15-2 of Article 2 of the Law of Ukraine "On State Support of Agriculture of Ukraine" (2004) an agricultural enterprise is a legal entity. An agricultural enterprise can only be an agricultural commodity producer. The latter is defined by paragraph 2.15-1 of Article 2 of this law, according to which, to be classified as an "agricultural commodity producer", a subject must meet the following criteria. First: be a legal entity (the legal form does not matter) or have the status of an individual entrepreneur, or be a family farm (which, according to the law, do not have the status of a legal entity), registered as payers of the single tax of the fourth group. Second, the main goal of the activity should be the production of agricultural products, their primary processing (production processing capacities can be either owned or leased), and operations for the supply of such products. In addition, an agricultural producer can be engaged in fish farming (Law of Ukraine No. 1877-IV..., 2004).

A slightly broader meaning is another concept defined in this law – a subject of the agri-industrial complex. By it, the legislator understands a business entity whose activities cover not only the production and processing of agricultural products but also their storage and sale. The possible area of activity of subjects of the agri-industrial complex is also determined by the provision of services for material and technical maintenance of agricultural production (Law of Ukraine No. 1877-IV..., 2004).

However, entrepreneurship in rural areas as an object of state incentives should be understood even more broadly. Ultimately, as noted by O. Gafurova (2015), in the examination of rural social development, the state's efforts should be directed not only to support agricultural producers but also to preserve and develop the rural settlement network, create favourable conditions for living in rural areas, diversify agricultural production, etc. – in other words, to develop the entire rural area.

The authors of the concept of rural development, approved by the Order of the Cabinet of Ministers of Ukraine No. 995-r (2015) also agree with this approach, which, in particular, notes that the increase in gross agricultural production itself was not a factor that positively affected the social and economic development of rural areas, improving the quality of life of the population of villages. Therefore, there remains a need to develop an integrated approach to stimulating rural development based on the basic principles of sustainable development.

The same position is supported by the authors of the project of the Concept of Stimulating the Development of Entrepreneurship in Rural Areas until 2030 (Draft Order of the Cabinet of Ministers of Ukraine..., 2021), developed by the Ministry of Agrarian Policy. In this document, the main component of the process of development of the agricultural sector is defined as rural development of an integrated nature. It should directly cover rural development, entrepreneurship in rural areas, contribute to improving the working and living conditions of the population, and positively influence the environment, ensure the use of natural resources based on sustainability and restoration.

Returning to the question of determining the content of entrepreneurship in rural areas as an object of incentives from the state, it can be concluded that the object of such incentives should be any business activity in rural areas that is not prohibited by law, regardless of its sectoral area, since conducting any business activity on the territory of the village contributes, firstly, to filling local budgets, secondly, to the development of social and commercial infrastructure, and thirdly, to the employment of the rural population.

In this context, it is worth evaluating the rather broad list of activities of agricultural cooperatives provided in Article 5 of the new Law of Ukraine "On Agricultural Cooperation" (2020). These include direct production of agricultural products; their processing; activities for the procurement/purchase and storage of agricultural products; operations for their sale in internal and foreign markets. They also cover a number of types of service provided to members of the cooperative: supply of production facilities, material and technical resources, provision of various services (transportation, land reclamation, repair, construction, veterinary services, breeding work, accounting and audit services, scientific-consulting support). Thus, the list of activities of agricultural cooperatives – and their activities and support from the state is one of the effective levers for stimulating the development of entrepreneurship in rural areas, considers a number of types of services that were not conventional for cooperatives during the period of the previous Law of Ukraine "On Agricultural Cooperation" (1997) (for example, accounting and auditing, scientific-consulting services), but access to which is extremely necessary for entrepreneurs in rural areas. Another advantage of this rule is that the list of activities of agricultural cooperatives given in it is not exhaustive – and therefore, they can provide any other services necessary to support agricultural enterprises (for example, legal support for their activities).

However, most other existing legislative acts that regulate certain aspects of the promotion of entrepreneurship in rural areas, mainly reduce such entrepreneurship to agricultural activities. This applies to the already analysed above Law of Ukraine "On State Support of Agriculture of Ukraine" (2004), which provides for a fairly wide range of support measures, but only for agricultural enterprises, and, for example, Law of Ukraine "On Stimulating the Development of Agriculture for the Period 2001-2004" (2001), Law of Ukraine "On Farming Enterprise" (2003), etc.

Completing the examination of the concept of "stimulating the development of entrepreneurship in rural areas", it is also necessary to identify the content of the very concept of "stimulating", and to distinguish it from another, more commonly used in legislation, the concept of "state support".

In general, the concept of "stimulating" is primarily an economic and philosophical category, given that there are no legal definitions of this concept in the legislation of Ukraine. As for doctrinal definitions, they are quite diverse and mostly depend on the field of knowledge that a particular researcher represents. In particular, as for the representatives of economic sciences, for example, V. Nyzhnyk and O. Drach (2011) define stimulation as an external influence (process) on a person that encourages them to take certain actions. According to the researchers, this process can be aimed at forming a person's motivation for purposeful actions. For Example, Yu. Franchuk (2015) notes that stimulating is a combination of means (external) that affect a particular object of the stimulation, and the interests and goals of both the object and subject of stimulating are considered.

Stimulating is interpreted somewhat differently in the theory of public administration. For example, V. Kopylov (2012) defines it through such components as the type of power manifestation and the form of power. The power subject, according to the researcher, using possible techniques, contributes to the formation of the object of management's interest to act in such a way that it is consistent with the instructions of the subject of management. Such stimulation is based solely on positive methods of influence.

As for the interpretation of the content of the concept of "stimulating" in legal science, this category is mainly used in the theory of law and branch sciences. For Example, O. Nizhnichenko (2012), as part of a study of the theoretical foundations of understanding incentives in environmental law, justifies the expediency of considering incentives as a system covering legal, organisational, economic, and other measures of incentive content. The purpose of all these measures, according to the researcher, is to improve the state of ecological and legal behaviour of subjects in relations related to the use of natural resources, their protection in particular and the environment in general, compliance with environmental safety requirements.

Speaking about incentives in the context of state support for agriculture, Kh. Hryhorieva (2019) notes that in this case, it is only possible in a "narrow", positive sense. That is, the state should use such methods, create such conditions (primarily legal) that will lead to the implementation of actions directly by an agricultural economic entity that are beneficial to both society and the state. This statement is also correct for understanding the concept of incentives in the context of the subject discussed in this study since only positive factors can stimulate a potential entrepreneur, for example, preferential conditions for establishing or conducting business activities, and not restrictions or liability measures.

The definition of the concept that is related to stimulating the development of entrepreneurship should also be conducted – "state support for

entrepreneurship". Analysing the content of Article 48 of the Economic Code of Ukraine (2003), in which state support for entrepreneurship is understood as such measures as, for example, assistance in providing entrepreneurs with a material base (land plots and other property), material and technical support, information support, assistance in the formation of personnel, stimulating the modernisation of technological processes, encouraging innovation, expanding the range of products and services, etc., and part one of Article 15 of the Law of Ukraine "On Development and State Support of Small and Medium Business in Ukraine" (2012), according to which, the state supports business entities belonging to the category of small and medium businesses through support for various aspects of activities: providing financial, information, and advisory services, stimulating innovation and research, assistance in export activities, support for management and staffing of businesses, it can be concluded that state support for entrepreneurship is primarily a set of state – management measures aimed at simplifying the conduct of business activities or increasing its economic feasibility.

Most doctrinal interpretations of this concept generally proceed from the same understanding of state support. For Example, L. Prokopets and V. Gubchak (2017), in their study on the definition of "state support for small businesses", argues that it includes any financial measures applied by the state that give business entities certain advantages and can be evaluated in monetary terms. State support for entrepreneurship is interpreted somewhat more broadly by O. Diachun and I. Nahorniak (2021), considering it the creation by state institutions of the most favourable conditions for the creation and further development of small businesses. For this purpose, the state uses financial and material resources. However, one way or another, state support is always a certain set of legal support measures and national policy.

Therewith, state support cannot be fully identified with entrepreneurship and its stimulation. In particular, Orlova (2011) delineates these concepts and notes: "if support is a manifestation of 'concern' for entrepreneurship, then stimulation is support to achieve certain changes, which is more pronounced, has specific goals and regulatory impact." It is worth considering the provisions of special acts of agricultural legislation that use both of these terms and give them different content. In this context, The Law of Ukraine "On Stimulating the Development of Agriculture for the Period 2001-2004" (2001), can be mentioned that among the main principles in Article 2 mentions both stimulating the development of private entrepreneurship and supporting agricultural producers and infrastructure of the agricultural market, that is, does not identify these terms.

Based on the above, stimulating the development of entrepreneurship can be compared with its state support as a part and in general since all measures to stimulate the development of entrepreneurship are actually simultaneously measures of its state support, but not all measures of state support are aimed at stimulating the development of entrepreneurship: some of them are more aimed at financial support for existing enterprises, overcoming crisis phenomena on them, etc., for example, provided for in Article 13 Law of Ukraine "On State Support of Agriculture of Ukraine" (2004) credit subsidies.

Therefore, summarising the entire array of studies of certain aspects of the concept of "stimulating the development of entrepreneurship in rural areas", it can be defined as a set of measures of legal regulation and national policy aimed at simplifying the establishment and conduct of business activities or increasing its economic

attractiveness, intended for business entities, regardless of the organisational and legal form and type of activity that conduct such activities within rural areas.

Current state, tasks, and basic principles of stimulating entrepreneurship in rural areas

Agriculture for Ukraine has always been a strategic sector of the economy, which provided the largest amount of export income and created a substantial number of jobs. As noted in the National Council for the Recovery of Ukraine from the Consequences of the War (2022) project, before the full-scale invasion of the Russian Federation, the state received about 22 billion USD from agricultural exports. This accounted for almost half (41%) of all exports. Agriculture of Ukraine occupied a leading position in the production of certain types of food in the world. For example, Ukraine was one of the largest exporters of sunflower oil, rapeseed, and barley (third and fourth places in the world, respectively), etc. (National Council for the Recovery..., 2022).

The reasons for the dominant position of agriculture in the national economy are complex: these are climatic conditions, rich historical traditions of agriculture, and some of the largest, at least in Europe, areas of land suitable for commodity agriculture, because Ukraine, which is only the 44th largest mainland country in the world, while ranking 9th among the world's countries in terms of arable land area (Ukraine ranks ninth in the world..., 2018). However, one of the factors in the development of Ukrainian agriculture is its support from the state, which in one form or another existed throughout the entire period of independence of Ukraine and is provided for only by dozens of laws, and a number of bylaws.

Therewith, for many decades, both during the period of Ukraine's independence and before its acquisition, the economic, social, and demographic gap between city and village, despite the state's declaration of the need to overcome it, has not only not been reduced – on the contrary, this gap has only deepened over time (Vikhrov, 2018; Nivievskyi, 2020). The uneven development of urban and rural areas is not unique to Ukraine – on average, rural areas account for 75% of the total area in the world, but only 51% of the world's population lives in them, and together only 32% of world GDP is produced in all rural areas (Stehnei, 2013).

However, in the case of Ukraine, rural decline trends are particularly threatening. The steady trend of gradual reduction of the able-bodied rural population, in particular, due to their labour migration to cities, is quite rightly defined by the authors of the draft concept of stimulating the development of entrepreneurship in rural areas until 2030 as one of the main reasons for the decline of the Ukrainian villages (Draft Order of the Cabinet of Ministers of Ukraine..., 2021).

Given the challenges that the COVID-19 pandemic and later the full-scale invasion of the Russian Federation presented to agriculture and rural areas in general in the future, there are very real concerns that the trend towards a reduction in the rural population, in particular, the employed, has only worsened. According to the working group "New agrarian policy" of the National Council for the Restoration of Ukraine from the Consequences of the War, more than 25% of available acreage was lost due to the fighting and temporary occupation. In addition, the consequence of armed aggression was the decommissioning of substantial areas of land due to mining, damage by explosions, etc. A large number of infrastructure facilities were destroyed. These include agricultural enterprises, warehouses, transport, energy infrastructures, and processing industry facilities (National Council for the Recovery ..., 2022).

Therefore, there is reason to expect that the trend towards depopulation of rural areas will continue even after the end of hostilities and the de-occupation of temporarily occupied territories, since a substantial amount of potential jobs in agriculture has been lost.

The reasons for this negative trend and the dominant role of agriculture in the Ukrainian economy, which were mentioned above, are primarily economic, not legal factors. Among other things, it is necessary to note the following: low level of remuneration of farmers; lack or inadequate level of the basic infrastructure of villages; low level of provision of housing and communal services; replacement of manual labour in agricultural production with automated and mechanised processes and, as a result, a decrease in the need for labour, etc. (Barynova & Nesterenko, 2020).

However, focusing on supporting agricultural production, the state pays relatively little attention to the development of rural areas in general and stimulating the development of entrepreneurship in such territories in particular. Although, world experience shows that rural development is a priority among the areas of development strategies of countries. Especially in the countries of the European Union (Balanovska & Gogulya, 2019). The development of entrepreneurship in rural areas – not only in the field of agriculture itself but also primarily in the areas of trade, service, logistics, construction, etc. – is one of the determining factors for the development of rural areas in general.

Tasks and basic principles of stimulating business activity in rural areas

No regulatory legal act or programme document provides a list of tasks for stimulating business activities in rural areas. Therewith, a number of laws and programme documents contain norms that indirectly allow formulating their indicative list independently.

In particular, as for the tasks (or goals) of stimulating entrepreneurship in rural areas, first of all, it is necessary to note the draft concept of stimulating the development of entrepreneurship in rural areas, in which the purpose of the concept is defined: the formation of necessary prerequisites for the development and implementation of national policy in the field of stimulating the development of entrepreneurship in rural areas (primarily small and medium businesses, family farms); highlighting those priority areas of national policy and determining ways to implement them, which are aimed at stimulating the development of small and medium businesses, primarily producers of agricultural products, increasing the standard of living of the rural population, preventing the progression of poverty, and stopping the process of depopulation of rural areas of the state. The Draft Concept defines the formation of appropriate conditions for assistance in the implementation of entrepreneurial startups of rural youth among the tasks of the state (Draft Order of the Cabinet of Ministers of Ukraine..., 2021). Describing this provision of the Draft Concept, the focus inherent in the current legislation and programme documents on stimulating primarily agricultural enterprises is notable, which, as already analysed above, is a more erroneous approach.

A more comprehensive approach to the formulation of tasks for stimulating entrepreneurship in rural areas is offered by the Concept of rural development (Order of the Cabinet of Ministers of Ukraine No. 995-R..., 2015), which, although it is a more general document, nevertheless contains a number of tasks that directly relate to the promotion of entrepreneurship in rural areas. In particular, the concept defines such tasks as the formation of conditions for the development of

the entire possible range of economic activities, organisational and legal forms of management; the growth of the role of tourism and recreation among possible areas of activity of entrepreneurs in rural areas; ensuring easy access of the population of rural areas to financial resources; comprehensive support of the rural population in the information field (regarding the potential of entrepreneurship, business activities), etc.

As for the principles of stimulating the development of entrepreneurship in rural areas, their indicative list can be formulated based on the analysis of legislation on state support for agriculture, norms on state support for certain organisational and legal forms of farming in rural areas, and the provisions of legislation on state support for entrepreneurship in general.

Principles of national policy in the field of development of small and medium businesses in Ukraine, such as the effectiveness of support for small and medium businesses; availability of state support for small and medium businesses; creation of equal opportunities for access of small and medium businesses to receive state support, etc. (Article 3 of the Law of Ukraine "On Development and State Support of Small and Medium Business in Ukraine", 2012). Among the principles of state support for agriculture provided for by the legislation, such as predictability and consistency, transparency, and publicity, and target orientation are suitable for stimulating entrepreneurship in rural areas (Law of Ukraine "On State Support of Agriculture of Ukraine", 2004). However, considering the fact that, unlike state support for agriculture, the promotion of entrepreneurship in rural areas should concern not only agricultural producers but also business entities engaged in other types of economic activities in the interests of the rural population.

The principles of legal regulation of relations concerning certain organisational and legal forms of agribusiness entities should also be considered. In particular, in this context, two provisions of Article 4 of the Law of Ukraine "On Agricultural Cooperation" (2020) are worthy of attention, which to a certain extent balance each other: on the one hand, this is the principle of promoting the development of agricultural cooperation, and on the other – the principle of considering the interests of the territorial community. That is, when conducting activities, an agricultural cooperative should not be limited solely to the interests of its members, but simultaneously act in the interests of the territorial community. This will contribute to the sustainable development of the territorial community.

Among the principles of stimulating entrepreneurship formulated in the doctrine, in particular, economic sciences, attention should be paid to such principles as complexity (stimulating entrepreneurship as a single system, covering all components of the potential of entrepreneurship in a certain territory), harmonisation of state, regional, local interests (economic, environmental, social) and the interests of entrepreneurship in the region, and compliance of policies and tools for stimulating entrepreneurship with the territorial features of the region (Vakhovych & Sheiko, 2016).

considering all the above principles and adapting them to the concept of stimulating the development of entrepreneurship in rural areas formulated in the study, and its goals, the following list of principles for stimulating the development of entrepreneurship in rural areas is proposed (which, however, is not exhaustive):

- predictability, validity, and effectiveness of measures to stimulate the development of entrepreneurship in rural areas, which are manifested in the responsibility of developing national and local programmes of such incentives that would provide for clear tasks and indicators of their

implementation, proper control over their actual implementation;

- transparency and publicity of measures to stimulate the development of entrepreneurship in rural areas, which consist in the broad involvement of business representatives and the public at all stages of discussion, adoption and implementation of the above-mentioned national and local programmes;
- complexity of stimulating the development of entrepreneurship in rural areas, which means extending incentive measures to all business entities that conduct types of economic activities that are not prohibited by law in rural areas;
- parity of the interests of the state and territorial community, on the one hand, and business entities, on the other hand, which consists in the fact that measures to stimulate the development of entrepreneurship in rural areas should be sufficiently substantial to attract the interest of potential entrepreneurs, but not excessive, to avoid harming the interests of the state or territorial community in the form of, for example, a substantial shortfall in revenues from state or local budgets;
- differentiation of measures to stimulate the development of entrepreneurship in rural areas in the context of individual administrative-territorial units – since such measures should be applied primarily to those administrative-territorial units that require the greatest support from the state (the so-called depressive and labour-intensive regions, geographically remote, for example, mountainous populated areas, etc.).

Conclusions

Thus, as a result of the theoretical-legal characteristics of stimulating the development of entrepreneurship in rural areas, the authors of the study formulated the following conclusions, which are characterised by scientific originality and indicate the achievement of the goal study.

An improved definition of the concept of "rural territories" was proposed to increase the effectiveness of the formation of the legal framework for regulating relations in the field of stimulating the development of entrepreneurship in rural areas – these are "territories that are within the jurisdiction of rural and settlement councils, and within the limits of rural united territorial communities defined by law, intended for permanent residence of people or conducting their economic activities."

The necessity of expanding the legal terminology with the definition "stimulating the development of entrepreneurship in rural areas" was justified. The author's definition was formulated as "a set of measures of legal regulation and national policy aimed at simplifying the establishment and conduct of business activities or increasing its economic attractiveness, intended for business entities, regardless of the organisational and legal form and type of activity that conduct such activities within rural areas."

It is concluded that the current prevailing approach to narrowing incentives exclusively for agricultural enterprises is erroneous. The position on the need to encourage other types of business activities in rural areas, including those that are not related to agricultural production, was supported.

A system of principles for stimulating the development of entrepreneurship in rural areas was developed, which includes predictability, validity, effectiveness, transparency, and publicity of measures to stimulate the development of entrepreneurship in rural areas; complexity of stimulating the development of entrepreneurship in rural areas; parity of interests of the state and territorial community, on the one hand, and business entities; differentiation of measures to stimulate the development of entrepreneurship

in rural areas in the context of individual administrative-territorial units.

The results obtained can be considered in law-making activities to regulate relations in the field of development of entrepreneurship in rural areas. The obtained conclusions can also be used to develop specific ways and measures to encourage entrepreneurship in rural areas. The prospect of scientific research should be the development of proposals for legal support of entrepreneurship in the Ukrainian villages, considering the devastating economic, environmental, social, and demographic consequences of military operations.

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Conflict of Interest

None.

References

[1] Balanovska, T.I., & Gogulya, O.P. (2018). Development of rural entrepreneurship in Ukraine. *Global and National Problems of Economics,* 21, 230-235.

[2] Balanovska, T.I., & Gogulya, O.P. (2019). Development of entrepreneurship in the rural areas: Opportunities and threats. *Market Infrastructure*, 28, 51-59.

[3] Barber III, D., Harris, M.L., & Jones, J. (2021). An overview of rural entrepreneurship and future directions. *Journal of Small Business Strategy,* 31(4), 1-4. doi: 10.53703/001c.29468.

[4] Barynova, D.S., & Nesterenko, V.V. (2020). Tools for increasing the economic capacity of rural areas of Ukraine. Retrieved from https://niss.gov.ua/sites/default/files/2020-12/silski-terytorii.pdf.

[5] Diachun, O., & Nahorniak, I. (2021). Promoting entrepreneurship development in Ukraine in the context of European standards. In O. Panukhnyk (Ed.), *Increasing the financial and economic potential of the subjects of economic relations as a basis for the progressive development of territorial and economic systems* (pp. 85-89). Ternopil: FOP Palyanytsia V.A.

[6] Draft Order of the Cabinet of Ministers of Ukraine "On the Approval of the Concept of Stimulating the Development of Entrepreneurship in Rural Areas until 2030". (2021, September). Retrieved from https://minagro.gov.ua/npa/pro-shvalennya-koncepciyi-stimulyuvannya-rozvitku-pidpriyemnictva-na-silskih-teritoriyah-do-2030-roku.

[7] Economic Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15#Text.

[8] Forkun, I.V., Prystemskyi, O.S., Chernenko, O.S., Chkan, I.A., & Yakusheva, I.Ye. (2021). Institutionalization of state support and development of sectoral entrepreneurship of rural areas. *Public Policy and Administration,* 20(3), 454-463. doi: 10.5755/j01.ppaa.20.3.28405.

[9] Franchuk, Yu.O. (2015). Theoretical foundations of stimulation of small business development in regions. *Young Scientist*, 1, 88-92.

[10] Freiling, J., Marquardt, L., & Reit, T. (2022). Virtual business incubators: A support for entrepreneurship in rural areas? In L. Hornuf (Ed.), *Diginomics research perspectives: The role of digitalization in business and society* (pp. 65-88). Cham: Springer. doi: 10.1007/978-3-031-04063-4_4.

[11] Gafurova, O.V. (2015). *Legal problems of rural social development* (PhD thesis, Institute of State and Law named after V. M. Koretskyi, Kyiv, Ukraine).

[12] Hryhorieva, Kh.A. (2019). *State support of agriculture of Ukraine: Problems of legal support*. Kherson: Helvetica Publishing House.
[13] Khomiuk, N.L. (2018). Features of formation of category "rural areas". *Uzhorod National University Herald. International Economic Relations and World Economy*, 17 (Pt 2), 117-120.
[14] Kopylov, V.O. (2012). The method of organization of power – attempt of determination. *Bulletin of Yaroslav Mudryi National Law University. Series: Philosophy, Philosophy of Law, Political Science, Sociology*, 1, 3-15.
[15] Krupa, V., & Krupa, O. (2018). Implementation of the rural areas business potential: Current conditions and prospects. *Efektyvna Ekonomika*, 6. Retrieved from http://www.economy.nayka. com.ua/?op=1&z=6417.
[16] Law of Ukraine No. 1807-IV "On Agricultural Advisory Activity". (2004, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1807-15#Text.
[17] Law of Ukraine No. 1877-IV "On State Support of Agriculture of Ukraine". (2004, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1877-15#Text.
[18] Law of Ukraine No. 2238-III "On Stimulating the Development of Agriculture for the Period 2001-2004". (2001, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2238-14#Text.
[19] Law of Ukraine No. 4618-VI "On Development and State Support of Small and Medium Business in Ukraine". (2012, March). Retrieved from https://zakon.rada.gov.ua/laws/show/4618-17#Text.
[20] Law of Ukraine No. 469/97-BP "On Agricultural Cooperation". (1997, July). Retrieved from https://zakon.rada.gov.ua/laws/show/469/97-%D0%B2%D1%80#Text.
[21] Law of Ukraine No. 819-IX "On Agricultural Cooperation". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/819-20#Text.
[22] Law of Ukraine No. 973-IV "On Farming Enterprise". (2003, June). Retrieved from https://zakon.rada.gov.ua/laws/show/973-15#Text.
[23] Melnyk, S.I. (2004). *Socio-economic problems of reproduction and effective use of the resource potential of the village.* Kyiv: Institute of Agrarian Economics.
[24] National Council for the Recovery of Ukraine from the Consequences of the War (2022). *Draft Ukraine Recovery Plan: Materials of the "New agrarian policy" working group*. Retrieved from https://www.kmu.gov.ua/storage/app/sites/1/recoveryrada/eng/new-agrarian-policy-eng.pdf.
[25] Nivievskyi, O. (2020). *Rural communities and land reform*. Retrieved from https://voxukraine.org/silski-gromadi-ta-zemelna-reforma.
[26] Nizhnichenko, O. (2012). Theoretical foundations of understanding incentives in environmental law. *Bulletin of Taras Shevchenko National University of Kyiv. Legal Studies,* 9, 119-122.
[27] Nyzhnyk, V., & Drach O. (2011). State of stimulation of employees in Ukraine. *Economic Analysis*, 9(Pt2), 339-342.
[28] Oliynyk, Ya.B., & Stepanenko A.V. (2003). *Social development of villages and rural areas*. Kyiv: VHL Obrii.
[29] Order of the Cabinet of Ministers of Ukraine No. 995-r "On the Approval of the Concept of the Development of Rural Areas". (2015, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995-2015-%D1%80#Text.

[30] Orlova, V.O. (2011). Main areas of stimulation of small business development: Theoretical aspect. *European Vector of Economic Development*, 2, 169-176.

[31] Polbitsyn, S., & Earl, A. (2022). Enhancing state support of entrepreneurship in rural areas. *Economy of Region,*18(4), 1263-1275. doi: 10.17059/ekon.reg.2022-4-21.

[32] Prokopets, L., & Gubchak, V. (2017). Features of state support of small business in Ukraine and foreign experience. *Investytsiyi: Praktyka ta Dosvid*, 24, 71-76.

[33] Radko, V., Nikitchenko, S., Havryk, O., Nikolaevych, O., & Bohdanova, O. (2022). Economic socialization of entrepreneurship of rural territories to ensure the well-being of the population of Ukraine. *Rivista di Studi Sulla Sostenibilita*, 2, 225-246. doi: 10.3280/RISS2022-002014.

[34] Stehnei, M.I. (2013). Current trends in maintenance of sustainable development for rural territories: European experience and Ukrainian realia. *Actual Problems of Economics*, 3, 125-133.

[35] Titov, D. (2020). Characteristics of entrepreneurship and features of its development in rural areas. *The Scientific Heritage*, 47, 53-56.

[36] Ukraine ranks ninth in the world in terms of arable land area – Ministry of Ecology. (2018). Retrieved from https://www.unn.com.ua/uk/news/1728833-ukrayina-posidaye-9-mistse-v-sviti-za-ploscheyu-ornikh-zemel-minekologiyi.

[37] Urkevych, V.Yu. (2010). About the category "sustainable development of rural areas". In *Modern land, agrarian, environmental and natural resource law: Current problems of theory and practice*: *Materials of the international scientific and practical conference* (pp. 24-26). Bila Tserkva: Bila Tserkva National Agrarian University.

[38] Vakhovych, I.M., & Sheiko, Yu.O. (2016). *Regional dimension of stimulation of small business development*. Lutsk: Vezha-Druk.

[39] Vikhrov, M. (2018). *Ukrainian village: Extinction or evolution*. Retrieved from https://tyzhden.ua/ukrainske-selo-vymyrannia-chy-evoliutsiia.

Стимулювання розвитку підприємництва на сільських територіях: теоретико-правова характеристика

Тамара Сергіївна Новак
Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0003-2371-3014

Мирослава Георгіївна Дудаш
Аспірант
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0009-0003-0390-2659

Анотація

Актуальність дослідження зумовлено нагальною потребою сформувати якісно оновлене правове поле у сфері розвитку підприємництва в сільській місцевості як одного з визначальних чинників зростання добробуту населення та мотивації економічно активного прошарку до зайнятості саме на сільських територіях. Мета дослідження – окреслити категорію «стимулювання розвитку підприємництва на сільських територіях» і визначити завдання та основоположні засади цієї діяльності. Досягнення поставленої мети стало можливим завдяки комплексному аналізу теоретичних джерел і положень чинного та перспективного законодавства. У підсумку проведеної роботи сформульовано авторську дефініцію поняття «стимулювання розвитку підприємництва та сільських територіях» через його розуміння як комплексу заходів правового регулювання та державної політики. Обґрунтовано мету цих заходів спростити порядок створення суб'єктів підприємництва, а також порядок ведення підприємницької діяльності в межах сільських територій, що підвищить економічну привабливість бізнесу саме на сільських територіях. Перспективним визначено розширення сфери стимулювання видів підприємницької діяльності на сільських територіях, не пов'язаних з виробництвом сільськогосподарської продукції, що особливо актуально в реаліях пошуку додаткових способів підтримки населення в умовах війни та повоєнної відбудови. Визначено принципи стимулювання розвитку підприємництва на сільських територіях, на яких мають базуватися законодавство в цій сфері та врегулювання відповідних відносин. Практична значущість роботи полягає в тому, що вона може стати джерелом для формулювання змісту нормативних актів у сфері стимулювання розвитку підприємництва на сільських територіях

Ключові слова: державна підтримка; правове регулювання; село; агропромисловий комплекс; сільськогосподарська діяльність; зайнятість населення; економічна привабливість

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Property rights other than rights of ownership as an object of notarised transactions

Oleksiy Piddubnyi*
Doctor of Law, Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0003-4867-4613

Oleg Rohovenko
PhD in Law, Associate Professor
Sumy National Agrarian University
40000, 160 Herasym Kondratiev Str., Sumy, Ukraine
https://orcid.org/0000-0003-2887-9339

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Abstract

The relevance of the subject is due to the frequency of application of property rights in practice, which led to the emergence of numerous situations when subjects applied to the court to protect their rights. The purpose of the study is to analyse the Ukrainian legislation on property rights other than property rights and to examine them as an object of notarisation. For the search, processing, and presentation of Information, special legal (comparative-legal, formal-legal, and the method of interpretation) and general scientific (formal-logical, analysis, synthesis, concretisation and abstraction, induction and deduction) methods are used. Considering the best practices of judicial practice, the concept of "waiting right" is fixed, which is directly related to objects of construction in progress. The shortcomings contained in the current Civil Code of Ukraine are identified. Attention is drawn to the fact that the planned

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*Corresponding author

re-modification of the code will correct many shortcomings existing in the private law sector of legal regulation. The correlation between the concepts of rights of ownership and property rights is outlined, and the absence of regulation of the concept of "property rights" in the Civil Code of Ukraine is stated. The study highlights the state of affairs regarding the notarisation of property rights other than rights of ownership. Changes caused by the entry into force of the Law of Ukraine "On Guaranteeing Rights of Ownership to Real Estate Objects That will be Built in the Future" were reported, and its importance for the regulatory plane, in general, are assessed. The problem of definitions of "property rights" and "rights of ownership" is examined. The scientific achievements of outstanding legal researchers are used, whose work is related to the correction of gaps contained in civil legislation, and the problems of insufficient definition of essential terms in regulatory legal acts regulating issues related to the subject under study. The specific features of using property and personal non-property rights in the field of intellectual property are established. The results of the study can be used for further development of doctrinal approaches to improving the institutions of property and rights of ownership

Keywords: waiting right; personal non-property rights; purchase and sale agreement; notarial action; object under construction; intellectual property

Introduction

Property rights are defined as any rights that are related to property and that will be different from ownership. This will also include rights that are components of property rights, and other specific rights, in particular, the right of claim (Law of Ukraine No. 2658-III..., 2001).

The Civil Code of Ukraine (hereinafter – CCU) (2003) very briefly defines the concept of property rights, although it is very often used in practice, which is growing exponentially every year (Stoliarchuk, 2020; Morozov, 2022). In particular, this applies to their assignment to objects under construction, because such investment for many people serves as an affordable way to purchase their housing, which in some cases will cost much less than the finished property. Accordingly, in the conditions of the existence of a future apartment "on paper", a priori it is impossible to register ownership rights, and therefore, the investor will only have the right to demand the completion of construction, commissioning of the house and transfer to the hands of a specific apartment by the developer through the act of acceptance and transfer. Since there were virtually no guarantees for the protection of the investor's rights, the notarisation of the purchase and sale agreement, the subject of which is property rights to an object under construction, was considered as an additional tool for protecting rights.

The rapid growth in the popularity of buying real estate that does not yet have a physical embodiment has given rise to many disputes between the parties, and situations when developers did not fulfil their obligations (Chukhliak, 2021). The peculiarity of judicial precedents formed during the resolution of cases directly related to the subject of this study was considered by I. Utekhin (2018). The researcher also described in detail the differences between an ordinary contract of sale and a contract of sale of property rights. The researcher drew special attention to the use of such contracts in relations that arise in the process of buying housing, where there is no conventional purchase and sale and

there is a quasi-purchase and sale. In addition, a study on features related to the implementation of the property right to receive property in ownership was conducted by L. Belkin *et al*. (2020). The authors' team has clearly established the presence of specific property rights aimed at obtaining ownership of the relevant property and emphasises their direct need not only in civil circulation but also in the legislative context. The authors drew attention to the need for a proper settlement of these relations. Theoretical aspects of fixing the concept of rights of ownership were examined by H. Kharchenko (2017), having conducted a comprehensive study on this issue, considering a substantial number of doctrinal findings, legislative norms, and judicial precedents.

D. Spiesivtsev (2021) reviewed the main draft laws that relate to objects under construction. The researcher noted that if the state fails to fully provide the constitutional guarantee of each citizen for housing, it is necessary to create conditions and a high-quality regulatory framework for the possibility of citizens acquiring property by investing in construction, without any risks that encourage the loss of such investments. M. Lutsiv (2017) noted the importance of the buyer's awareness of all aspects of legal forms of raising funds for unfinished construction projects that exist because this will help the latter protect their rights in the future.

Foreign researchers have also conducted studies on this subject, for example, N. Samuel and S.U. Firdaus (2019) described the relationship between a buyer of an object under construction and a developer in Indonesia. In the conclusions, the authors established that there is no protection of the rights of consumers of unfinished apartments, since, as a rule, developers refuse to be held responsible for claims issued by the buyer. The Law of Ukraine "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022) was put into effect to determine the specific features of the sale of construction-in-progress objects and future real estate objects and guarantee the property rights to such objects in civil circulation. However, the institutions of property and rights of ownership still need to be improved, and therefore scientific findings on the settlement of legal conflicts over so-called problematic property objects do not lose their relevance.

The purpose of the study is to examine the fundamental issues, legal definitions, and problems related to property rights other than property rights, establish the possibility of their certification by a notary, and determine the existing gaps contained in the current CCU (2003) and the possibility of their elimination with the introduction of a new version of the code.

While searching and processing information for the study, the authors used the following research methods: formal-logical, methods of analysis, synthesis, concretisation and abstraction, induction and deduction. Comparative legal, formal legal, and method of interpretation of legal norms were also used. The study uses sources of Ukrainian legal researchers, in particular, papers by such researchers as I. Utekhin (2018), H. Kharchenko (2019), V. Hrabyk and I. Koval (2018), etc.

The studies of these researchers contain opinions on gaps in the Civil Code, expressed in the insufficiency of interpretation of property and property rights as separate legal categories, and also present the main gaps in the protection of property rights other than property rights before the adoption of the law "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022). General research methods are used in the study of the regulatory component concerning the specific features of the

implementation of property rights that differ from ownership rights and their protection. In particular, using the method of induction and deduction, vulnerabilities in Ukrainian legislation were identified, which lead to the emergence of ambiguous legal positions on the subject of research.

Normative regulation of the concept of rights of ownership and property rights

CCU (2003) is a key normative legal act on which the modern Ukrainian private law doctrine is based. 2003 was marked by the reform of Ukrainian civil studies, as the adoption of the code served as another proof of distancing from the Soviet standards of perception of property rights and stated its role as an integral part not only for the state but also for each individual. The gradation of legislation indicates the development of the country and the desire to improve its functioning, but the diversification of legal norms is a consequence, not a goal, since the development of society determines the need to create a relevant legal regulation. As of January 2023, the code adopted 20 years ago has not yet lost its force, but there is a substantial prospect at the moment because a large-scale update of the civil code is being announced, which will increase the range of public relations that will be covered by the new version and will allow filling in the gaps made by the legislator in the previous version.

For example, N. Kuznetsova (2014) notes the difficulties of implementing the 2003 CCU, as the process was identified to be complex, inconsistent, and contradictory. But, despite the criticism, it is worth noting the role of the code as a foundation for fixing the fundamental principles of regulating personal and property relations in the private law field, and as a catalyst for the development of civil doctrine and legislation on a fundamentally updated platform.

Special attention should be paid to the study by I. Spasybo-Fatieieva (2015), which identifies the specific features of the interpretation of rights of ownership by both Civil and Economic codes. As a result, the researcher finds the fact that the situation with the understanding of this concept in the Ukrainian legal plane is quite confusing and incomprehensible. Special attention is also drawn to the need to reform public property relations and bring them into consistency with private property relations.

In addition, from some older studies, it can be understood that the problem is not new, so even now the comments of previous researchers on the issue remain relevant. P.M. Anglin (1994) started searching for a model that will be used to implement an agreement on the sale of real estate. It also establishes the prevalence of the use of property rights, which requires the legal implementation of the principles of their circulation (Shymon, 2013). S. Shimon reduced his thoughts to the fact that the property right is a kind of guarantee that allows getting a material benefit in reality.

One of the incomplete parts of the CCU (2003) is the category "property rights". To date, the code does not provide a theoretical explanation of property rights. Article 179 of the CCU defines a property as an object belonging to the material world**,** in respect of which, civil legal personality can be established, so it is appropriate to note that such rights will be recognised as property rights. The corresponding approach is due to the awareness of property as the main feature of rights of ownership, which distinguishes them from other civil rights. The presence of a person's property rights allows them to perform any actions in relation to property, so, logically, they are endowed with an absolute character. This imposes an inert obligation on third parties, which makes it impossible to create obstacles for the authorised person

to exercise their right. However, property rights can also have an exclusive character – the ability of a person to own, use, and dispose of property within the limits established by law.

The absence of property law as a category in the Ukrainian regulatory framework is compensated by the use of doctrinal findings, judicial proceedings, and other legal acts, but views on the insufficient interpretation of the concept cause mixed reviews among researchers. For example, H. Kharchenko (2019) notes that the right of ownership has moved property rights into the background since the substitution of a generic phenomenon with a specific one is monitored, this is emphasised by the absence of provisions in the book of the third civil code that in general were able to define property rights as a definition. The right of ownership, being a more complete variety in content, should not replace subjective property law as a generic category. The concept of "property right", on the subjective side, must exist independently of any mode of assignment, otherwise, it will lose its generic meaning and will not be able to act as a qualifying function for defining subjective civil law as real. H. Kharchenko focuses on the correlation of categories beyond theory and practice since the methodological importance of the concept of subjective property law makes it impossible to identify in practice various property-legal regimes expressed in the form of certain types of property rights. Accordingly, in the right of ownership, the potential of subjective property rights will be fully implemented, however, not comprehensively.

V. Hrabyk and I. Koval (2018), having analysed the norms of law and the views of researchers on the normative consolidation of rights of ownership, it was concluded that Chapter 13 of the CCU should be supplemented with the following provisions:

"1. Property right is the right of a person to a property that includes the right of ownership and property rights that satisfy the interests of the authorised person through direct influence on the property.

2. The exercise of a real right by a person must comply with legislative norms, but it must also be implemented at their own will, which will not depend on the intentions of other persons. The only exceptions may be the cases specified in the law".

M. Hudyma (2020), as a result of the investigation of the implementation of property rights in obligations, proved that the nature of rights of ownership does not correspond to the relations in which it is implemented. The author's study also indicates the specificity of property rights, which is intertwined with legal ties at several levels. Given the complexity and importance of rights of ownership as an object of legal regulation, the conciseness of legislative regulation of the concept is considered unacceptable.

The division of property rights into property rights and other property rights (in particular, the right to other people's property) requires considerable attention, because another terminological gap in the current CCU (2003) is the correct definition of "property rights", or rather, its absence, even despite the repeated use of the term in the provisions of the code. The only amendment concerning this issue is the addition of part two of the Article 190 of the CCU, according to Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine" (2005), which is called "property", where its first part defines property as a special object, referring to it a separate specific property or a set of properties. This will also include property rights and obligations. Accordingly, part two of the Article describes property rights as a non-consumer thing and recognises such rights as property rights (Civil Code of Ukraine, 2003).

Such an addition does not fully describe the meaning of property rights since it is characterised by an insufficient covering of the concept.

However, Article 3 of the Law of Ukraine "On Valuation of Property, Property Rights and Professional Valuation Activity in Ukraine" (2001) regulates the definition of property rights, to which the mentioned standard refers such rights that are related to property and will also be different from the right of ownership. Accordingly, they include rights that act as components of property rights, and other rights that have certain specific features and requirements.

V. Kossak (2004) gives property rights a commodity character since their main content is precisely the transfer of rights of material nature.

Property rights are also inherent in intellectual property rights. This position was aptly expressed by O. Rozgon (2016), who drew attention to the substantial difference in the established property rights in relation to objects of the material world when the objects related to property rights will be exclusively objects of the non-material world, which were already known in Roman law as disembodied. Accordingly, with respect to intellectual property rights, there is a possibility of replication, while the distribution of property rights will be directed to a specific property. This is explained by the nature of the origin of intellectual property rights: the results of the intellectual and creative activity of a person are expressed in sounds, ideas, images, symbols, etc., and such things have the ability to reproduce in any quantity when the property in the material world exists in a single copy. However, it is worth remembering that the effect of intellectual property rights is directed exclusively to intangible property, however, this will not apply to physical media where the author's idea is embodied.

V. Mykytyn (2016) considers the property rights of intellectual property from the standpoint of their subject since the researcher refers here to the corresponding subjective rights that cause such a subject to encourage property interest.

Article 424 of the CCU (2003) regulates the following non-property rights related to intellectual property rights:

1) ensure the right to use an object related to intellectual property rights;

2) allow the use of an object related to intellectual property rights as an exclusive right;

3) provide an opportunity to use methods of preventing the illegal use of an object related to intellectual property rights that do not contradict the law (also understood as an exclusive right);

4) other intellectual property rights defined by the current legislation.

Thus, Ukraine, in its efforts to develop a basic standard with a private legal direction, implemented the CCU, which set a starting point for layering various laws and other acts to expand the field of regulation of public relations. Despite attempts to settle fundamental issues, the legislator was unable to streamline a number of important factors, in particular, it concerns the concept of property and rights of ownership. It is necessary to conduct a full explanation of these definitions in the new implementation of the CCU, which is relevant: special attention should be paid to their clear definition in the restored version, since, as already noted, doctrinal and judicial findings have brought out a number of ideas. A weightier argument for confirming these views will be the full existence of regular application of property and ownership rights in public relations, hence it is clear that any field, especially the basic one, requires a proper regulatory foundation.

Features of implementation of property rights in relation to objects under construction

Despite the incomprehensible interpretation of property rights in the normative and doctrinal plane for an ordinary citizen, their demand in the practical aspect as a separate legal institution is quite high, for example, they are widely used when investing in residential development. The principle is implemented by depositing funds by the investor in a non-existent object, which in the future will find its physical embodiment. Understanding the problems faced by a potential investor, the courts have long appealed to the term "waiting right".

Regulating the status of property rights in judicial practice, references to Article 3 of the Law of Ukraine "On Valuation of Property, Property Rights and Professional Valuation Activity in Ukraine" (2001) are actively used – property rights that have the ability to evaluate will be recognised as rights that are related to property, and those that are different from ownership rights, this also includes rights understood as components of property rights, and some other specific rights and the right of claim (Belkin *et al.*, 2020).

There is such a classification of property rights that differ from property rights: rights to real estate objects that are in the process of construction (this will also include the purchase and sale and pledge of property rights); property rights to finished real estate that has been purchased, but has not yet been acquired (CCU, 2003).

As for the property rights to finished real estate that has been purchased, but has not yet been acquired in ownership, the conclusion of a preliminary contract for the purchase and sale of real estate and its possibility to act as the subject of the pledge will take place.

According to Article 4 of the Law of Ukraine "On Pledge" (1992) the pledge includes property and property rights. The article also stipulates that the subject of the pledge can be the property that will become the property of the pledgor when the pledge agreement is concluded.

Part 1 of Article 635 of the CCU (2003) defines a preliminary agreement in which the parties are obliged to conclude the main agreement in the future within the appropriate time limit, in accordance with the conditions regulated by the preliminary agreement. The peculiarity that distinguishes the preliminary contract from others is fixed in part 3 of Article 635. It consists in the termination of the obligation established by the preliminary agreement, provided that the main agreement is not concluded within the time allotted for this, or if neither party receives an offer to conclude it.

Thus, property rights to a real estate object in respect of which a preliminary purchase and sale agreement is concluded can be the subject of a pledge, and therefore, in practice, there will be situations when an unscrupulous buyer transfers as a pledge what does not belong to them, and this entails problems for the real owner, provided that the preliminary agreement is terminated, and the property is already pledged.

Investment activity in construction is one of the most common areas of application of property law in practice. Contributing finance to a project is aimed at obtaining a real estate object or, otherwise, income generated from managing such funds. At the time of investing in an object under construction, there will be no question of registering ownership rights, but first, there are property rights.

In the paper by Ye. Khodyko (2011) it is established that an object under construction will be a priori, independent, separate property. The

opinion boils down to the fact that ownership of construction materials, at the expense of which real estate is built, does not extend ownership rights directly to real estate. Therefore, when an object acquires its physical embodiment, the line between the means of construction and the result of their use is erased, since the consumable material simply ceases to exist. In support of this thesis, V. Kyryliuk (2014) interprets the possibility of staying based on the right of ownership only for those construction materials that were not used in the construction process.

According to the general rule defined in Article 331 of the CCU (2003), the moment of disclosure of ownership rights in respect of immovable property is considered to be the very moment when state registration is applied, which takes place after the final completion of the construction procedure and the suitability of the object for operation. Until then, only the obligation to construct and transfer the object in a completed state arises between the developer and the investor.

Accordingly, it is impossible to implement a classic contract for the purchase and sale of real estate in such a situation, but part 4 of Article 12 of the CCU (2003) provides for the possibility of transferring property rights to another person, except in cases established by current legislation. Consequently, the law gives property rights turnover, which allows them to act as the subject of a contract.

The current CCU does not define the concept of a contract for the purchase and sale of property rights, although this type is popular in practical application. The emphasis is placed on property rights as the subject of a pre-agreement.

In her dissertation, V. Anatiychuk (2020) presented the development of a transcript of the contract of purchase and sale of property rights to the construction object. Accordingly, there are two parties, one of which is the buyer – a person who provides or has a direct obligation to provide money to the other party that is the seller. At this time, the seller undertakes to transfer the property to the buyer in the future (when the object is put into operation) based on ownership rights.

It is worth considering the Legal Opinion of the Supreme Court of Ukraine in case No. 6-290цс16 (2016), the essence of which lies in the impossibility of acquiring property rights to housing. Based on the materials of the case, the plaintiff made his own monetary commitments in accordance with the property rights purchase and sale agreement, which served as the cause for the establishment of prerequisites necessary to create grounds for acquiring the right to demand the transfer of property rights regarding the object, the construction of which is incomplete or for acquiring property rights to such an object. Consequently, the plaintiff did not acquire the object into ownership, and thus, the property rights purchase and sale agreement only granted them the right to acquire property ownership rights (CCU, 2003).

Analysing the explanations of the Supreme Court of Ukraine regarding the mentioned case, I. Utekhin (2018) draws a parallel between the area of the contract of sale, the subject of which is property rights and the contract that concerns the purchase and sale of real estate. According to the case file, the housing did not exist at the time of its consideration, the object was not put into operation and the act of acceptance and transfer was not issued. According to I. Utekhin, the completion of the construction and its acceptance into operation substantially revived the plaintiff's position, since the latter would have the full right to demand the fulfilment of the obligation to transfer the apartment based on ownership.

Accordingly, in the actual situation that has arisen, the plaintiff is endowed with the right to demand from the developer the fulfilment of the

contract conditions, which involve the completion of construction, putting the property into operation, and subsequently, the transfer of the apartment. In other words, the absence of ownership of the object that was built and put into operation of the building excludes the emergence of property rights in relation to the real estate object. Therefore, this situation serves as a favourable ground for dishonest counterparties, which manifests in the subsequent resale, when the buyer will not have the ability to verify this (Utekhin, 2018).

The current legislation did not provide for an effective mechanism for protecting the investor's rights, since the Law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances" (2004) represented the possibility of registering rights, but the list was characterised by exhaustion, and as for property rights, they were a priori absent there. Since the fact of entering into the purchase and sale agreement was essentially only contained in the developer's documentation, a one-time sale could only be guaranteed by the developer.

One of the ways to prevent violation of the rights of the buyer of an object under construction was given by N. Zahorniak (2013). It is proposed to harmonise the interests of both the investor and the developer, where the person who invested the funds will receive the financed property since the seller will have a direct interest in such a result.

It is possible to notarise the purchase and sale agreement. The provisions of CCU (2003) regulate the concept of a notarial transaction, defining it as the implementation by a notary or an authorised person who, according to the current legislation, is entitled to perform this action by establishing a certifying inscription on the document where the text of the transaction is indicated. Therewith, transactions made in writing are subject to notarisation, if the law contains an indication to perform a notarial act or if the parties have agreed to do so. Despite the absence in the law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances" (2004) the norm that required notarising the contract of purchase and sale of property rights to an object under construction, at the request of the investor and developer, is applied to a notary.

It is generally known that mandatory state registration of property rights, and other rights of ownership related to immovable things, and encumbrances of such rights, and their occurrence, transfer and termination are established. Registration of immovable property is conducted by entering information in the Register of Rights of Ownership to the Immovable Property based on the Law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances" (2004). The classification of property rights under CCU (2003) as material rights, and the possibility of their notarisation, is entirely feasible. However, considering the absence of ownership rights to an object whose construction is still ongoing, the data will not be recorded in the Register of Material Rights to Immovable Property. In this case, the transaction is notarised, which does not guarantee the absence of any risks.

However, on 10.10.2022, the Law "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022) has come into effect, aiming to mediate the intricacies of civil turnover of unfinished properties and real estate objects whose construction will occur in the future. This law is directed towards implementing warranty principles regarding material rights to such objects. Under the new regulations, a developer will not be able to sell apartments within an unfinished construction project unless each of them is registered with the Ministry of Justice as a separate property rights object. This registration

can only be done when proper permit documentation is available. In addition, the adoption of the law was marked by the impossibility of re-selling the apartment. Accordingly, the Law of Ukraine "On State Registration of Rights to Immovable Property and Their Encumbrances" (2004) was amended on the implementation of registration.

According to the provisions of Article 55 of the law of Ukraine "On Notary" (1993), mortgage agreements, the mortgage under which are property rights to real estate, the right to perform construction works in respect of which was obtained before the entry into force of the Law "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022), the construction of which is not completed, are certified subject to the submission of documents confirming property rights to real estate.

The Law "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future" (2022) also amends CCU (2003), specifically the first part of Article 575 is presented in the following version: "Under mortgage is understood immovable property, which is placed under a pledge that will be in possession of the pledgor or is a possible option for being held by a third party, as well as a pledge for an unfinished construction object or a real estate object whose construction is planned for the future." Such an object of unfinished construction can be transferred to a mortgage only in cases defined by law. In addition, part 1 of Article 577 now states the following: in the case when the subject of a pledge is real estate, an object whose construction is still ongoing, a real estate object that is planned to be built in the future, and in cases regulated by current legislative norms, notarisation will take place for the pledge agreement, except for cases prescribed in the legislation.

Thus, given the number of negative consequences faced by investors in objects of unfinished construction, it is advisable to supplement the new version of the CCU with the concept of a contract for the purchase and sale of property rights, which will greatly facilitate the protection of invested funds, since the right of citizens to housing is constitutionally guaranteed. Realising that not everyone has the opportunity to purchase a real estate object that has a physical and legal implementation, it will be the duty of the state to ensure the possibility of acquiring it in the future.

Conclusions

Despite the fundamental significance of the revised Civil Code of Ukraine (CCU), certain sectors within the private law regulatory framework remain underdeveloped to this day. It is worth paying special attention to the insufficient clarification of details concerning "property right" and "ownership right" as legal categories, so in the new version of the Civil Code it is necessary to eliminate the gaps that exist at the present stage, since, given the special demand for these concepts in the practical plane, it is unacceptable to provide an unclear interpretation in the current code, which serves as a key standard for the private law sector of regulation.

One of the promising areas of recodification of the CCU is its supplementation by the definition of "contract of sale of property rights" as a type of contract of sale. In the doctrinal sphere, there are numerous interpretations and practical activities are filled with cases involving the application of such agreements. This necessitates the need for legal formalisation, as the development of social relations requires their proper regulation. Such an addition is impossible without a full explanation of the concept of "property rights" since they give rise to contracts that are associated with them.

In addition, the entry into force of the new law somewhat actualises the issue of guarantees

for potential real estate investors, but the gap in the basic terminological interpretation of property rights still exists, which is a problem, given the active application of the institution of property rights in practical terms.

In the course of the study, the possibility of notarising the contract of purchase and sale of property rights to an object under construction was established, but it was determined that this will not lead to guarantees to protect the investor's rights in case of non-fulfilment of obligations by the developer, but will only serve as confirmation of the emergence of legal relations between them.

The originality of the study lies in the possibilities of more optimal protection of the interests of an investor who invests in real estate at the construction stage or enters into derivative transactions with an asset that do not directly affect ownership rights.

The prospects for research are seen in the development of effective legal regulation of operations involving material rights distinct from ownership rights, such as property rights to immovable property.

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Conflict of Interest

None.

References

[1] Anatiychuk, V.V. (2020). *Contract of sale of property rights to the construction object* (PhD thesis, Vasyl Stefanyk Pre-Carpathian National University, Ivano-Frankivsk, Ukraine).

[2] Anglin, P.M. (1994). Contracts for the sale of residential real estate. *The Journal of Real Estate Finance and Economics*, 8, 195-211. doi: 10.1007/BF01096991.

[3] Belkin, L., Belkin, M., & Iurinets, J. (2020). Features of realization of property right on reception of property in property. *Journal of Civil Studies*, 38, 32-38. doi: 10.32837/chc.v0i38.364.

[4] Chukhliak, O. (2021). *The practice of resolving disputes between developers and investors, as well as between developers and state authorities*. Retrieved from https://firstlegal.com.ua/praktika-virishennya-sporiv-mizh-zabudovnikami-ta-investorami-a-takozh-mizh-zabudovnikami-ta-derzhavnimi-organami.

[5] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

[6] Hrabyk V.V., & Koval, I.F. (2018). Concept of property rights. *Bulletin of the Student Scientific Society of Vasyl Stus Donetsk National University*, 10, 21-23.

[7] Hudyma, M. (2020). Property rights in relative (liability) legal relations: A theoretical problem outlining. *Journal of Civil Studies*, 37, 16-20. doi: 10.32837/chc.v0i37.343.

[8] Kharchenko, H. (2019). Fundamentals of property law in the Civil Code of Ukraine. *Entrepreneurship, Economy and Law*, 6, 57-61. doi: 10.32849/2663-5313/2019.6.10.

[9] Kharchenko, H.H. (2017). *Property rights*. Kyiv: Alerta.

[10] Khodyko, Yu.E. (2011). Object of construction-in-progress and feature of his legal regime. *Bulletin of the Prosecutor's Office*, 9, 89-95.

[11] Kossak, V.M. (Ed.). (2004). *Scientific and practical commentary on the Civil Code of Ukraine*. Kyiv: Istyna.

[12] Kuznetsova, N. (2014). State and trends in the development of civil law in Ukraine. *Law of Ukraine*, 6, 9-14.

[13] Kyryliuk, D.V. (2014). *Civil-legal regulation of mortgages of unfinished construction* (PhD thesis, Research Institute of Private Law and Entrepreneurship named after F.G. Burchak of the National Academy of Sciences of Ukraine, Kyiv, Ukraine).

[14] Law of Ukraine No. 1952-IV "On State Registration of Rights to Immovable Property and Their Encumbrances". (2004, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1952-15#Text.

[15] Law of Ukraine No. 2518-IX "On Guaranteeing Property Rights to Real Estate Objects That will be Built in the Future". (2022, August). Retrieved from https://zakon.rada.gov.ua/laws/show/2518-20#Text.

[16] Law of Ukraine No. 2654-XI "On Pledge". (1992, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2654-12#Text.

[17] Law of Ukraine No. 2658-III "On Valuation of Property, Property Rights and Professional Valuation Activity in Ukraine". (2001, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2658-14#Text.

[18] Law of Ukraine No. 3201-IV "On Amendments to Some Legislative Acts of Ukraine". (2005, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3201-15#Text.

[19] Law of Ukraine No. 3425-XII "On Notary". (1993, September). Retrieved from https://zakon.rada.gov.ua/laws/show/3425-12#Text.

[20] Legal opinion of the Supreme Court of Ukraine in case No. 6-290cs16. (2016, March). Retrieved from https://oda.court.gov.ua/sud1590/pravovipoziciivsu/6-290cs16.

[21] Lutsiv, M. (2017). Legal forms of attracting investors' funds in the field of housing construction. *Entrepreneurship, Economy and Law*, 6, 36-42.

[22] Morozov, Ye. (2022). *Recognition of property rights to the object of unfinished construction*. Retrieved from https://blog.liga.net/user/emorozov/article/48005.

[23] Mykytyn, V. (2016). Some special features of the legal regulation of intellectual property rights. *Actual Problems of Law*, 4, 57-61.

[24] Rozgon, O. (2016). Interpretation of property rights from the standpoint of the Convention on the Protection of Human Rights and Fundamental Freedoms. *Entrepreneurship, Economy and Law*, 10, 168-171.

[25] Samuel, N., & Firdaus, S.U. (2019). Legal protection for buyers in house sale & purchase between real estate development company and buyers. *International Journal of Scientific & Technology Research*, 8(10), 1657-1660.

[26] Shymon, S. (2013). The essence of property rights as objects of civil relationships: An attempt to theoretical understanding. *State and Law*, 59, 208-213.

[27] Spasybo-Fatieieva, I. (2015). Real rights according to the Civil and Economic Codes of Ukraine. *Law of Ukraine*, 4, 60-68.

[28] Spiesivtsev, D. (2021). The problems of recognition of right of property to assets under construction in context of modern legislative initiatives. *Scientific Bulletin of the International Humanities University. Series: Jurisprudence*, 49, 94-97. doi: 10.32841/2307-1745.2021.49.20.

[29] Stoliarchuk, I. (2020). *"Problem" real estate objects: How to enter into the legal field*. Retrieved from https://yur-gazeta.com/publications/practice/bankivske-ta-finansove-pravo/problemni-obekti-neruhomosti-yak-vvesti-u-pravove-pole.html.

[30] Utekhin, I. (2018). Purchase and sale contract of property rights: Theory and practice. *Bulletin of Luhansk State University of Internal Affairs Named After E. Didorenko*, 2, 196-205.

[31] Zahorniak, N.B. (2013). Legitimate interests in the mechanism of civil-law regulation of investment housing construction: Actual problems of harmonization. *Scientific Bulletin of the National Academy of Internal Affairs*, 3, 39-45.

Майнові речові права, відмінні від права власності, як об'єкт правочинів з нотаріальним посвідченням

Олексій Юрійович Піддубний

Доктор юридичних наук, професор
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0003-4867-4613

Олег Володимирович Роговенко

Кандидат юридичних наук, доцент
Сумський національний аграрний університет
40000, вул. Герасима Кондратьєва, 160, м. Суми, Україна
https://orcid.org/0000-0003-2887-9339

Анотація

Актуальність теми зумовлено частотою застосування майнових прав на практиці, що спричинило виникнення численних ситуацій, коли з метою захисту власних прав суб'єкти зверталися до суду. Мета статті – здійснити аналіз українського законодавства щодо майнових речових прав, відмінних від права власності, а також розглянути їх як об'єкт нотаріального посвідчення. Для пошуку, обробки та викладення інформації застосовано спеціально-юридичні (порівняльно-правовий, формально-юридичний, а також метод тлумачення) та загальнонаукові (формально-логічниий, аналізу, синтезу, конкретизації та абстрагування, а також індукції та дедукції) методи. Враховуючи напрацювання судової практики, зафіксовано поняття «право очікування», прямо пов'язане з об'єктами незавершеного будівництва. Визначено недопрацювання, які містяться в чинному Цивільному кодексі України. Звернено

увагу на те, що запланована рекодифікація кодексу дасть змогу виправити безліч недоліків, наявних у приватноправовому секторі правового регулювання. Окреслено співвідношення понять речових прав та права власності, констатовано відсутність регламентації поняття «речові права» в Цивільному кодексі України. Висвітлено стан речей щодо нотаріального посвідчення майнових речових прав, відмінних від права власності. Повідомлено про зміни, зумовлені набранням чинності Закону України «Про гарантування речових прав на об'єкти нерухомого майна, які будуть споруджені в майбутньому», оцінено його значення для нормативної площини загалом. Досліджено проблематику дефініцій «майнові права» та «речові права». Використано наукові надбання видатних вчених-правовикв, роботи яких пов'язані з виправленням прогалин, що містяться в цивільному законодавстві, а також проблематикою недостатнього дефініціювання істотних термінів у нормативно-правових актах, які регламентують питання, пов'язані з досліджуваною темою. Встановлено особливості використання майнових та особистих немайнових прав у галузі інтелектуальної власності. Результати дослідження можуть бути використані для подальшої розробки доктринальних підходів до вдосконалення інститутів майнових та речових прав

Ключові слова: право очікування; особисті немайнові права; договір купівлі-продажу; нотаріальна дія; об'єкт незавершеного будівництва; інтелектуальна власність

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The concept and correlation of legal protection and defence of well-known trademarks

Oleksii Tkachuk*

Postgraduate Student
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
https://orcid.org/0000-0003-3596-5040

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Abstract

The relevance of the study is due to the lack of attention on the part of international and national legislation to such an object of intellectual property as well-known trademarks, in particular, to the regulation of their legal defence, and therefore this issue requires research and coverage in scientific circles. The purpose of the study is to investigate the difference between legal protection and legal defence of well-known trademarks in Ukraine. General scientific methods of knowledge (generalisation, formal-logical, synthesis, axiomatic) and special-legal methods (formal-legal, logical-legal, comparative-legal) were used to examine this problem. The paper considers the key features of well-known brands. By analysing the Ukrainian regulatory framework, it is established that the legal protection of well-known trademarks in Ukraine complies with the norms of international legislation, namely the provisions of Article 6 bis of the Paris Convention. A detailed analysis of the concepts of protection and defence is conducted and applied to the object of the study. It was established that the peculiarity of well-known trademarks is that they acquire the status of a protected object of intellectual property rights not from the moment of state registration but from the time of their recognition in the

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*Corresponding author

country, which means acquiring the status of being famous. The practical value of the study is that the results obtained can be used to improve the procedure for recognising trademarks as well-known, namely, to justify the possibility of choosing the appropriate course of action: by applying to the appeals chamber or applying to the court

Keywords: civil law; intellectual property law; objects of intellectual property; National Intellectual Property Authority; Appeals Chamber; court

Introduction

Well-known brands play a substantial role in influencing the consumer. Naturally, due to the broad consciousness, reputation, and commitment of consumers, this category of trademarks needs special legal defence since it often becomes the object of illegal use for unscrupulous users. The world practice of recognising and using such trademarks dates back about a hundred years, and during this time many effective mechanisms for their legal defence have been developed.

Article 6. bis of the Paris Convention for the Protection of Industrial Property (1883) plays a decisive role in the protection of well-known trademarks, which states that the countries of the Union undertake, either at the initiative of the administration, if permitted by the legislation of that country, or at the request of the person concerned, to reject or invalidate the registration and prohibit the use of a trademark that is a reproduction, imitation, or translation of another trademark capable of causing confusion with a trademark that, according to the definition of the competent authority of the country of registration or the country of application, it is already well known in this country as the designation of a person who enjoys the privileges of this convention and is used for identical or similar goods.

In the world society, quite a lot of studies are devoted to the objects of intellectual property law, since human potential is quite time-consuming and expensive. Thus, for example, C.V. Trappey *et al.* (2021) specifically noted the protection of intellectual property through artificial intelligence techniques that will help users identify potential infringement issues and develop strategies to better protect trademarks in globally distributed electronic retailers. S. Kulshrestha and P.M. Singh (2021) investigated the conditions under which a trademark is recognised as well-known. S. Odintsov *et al.* (2020) considered the functions of trademarks since in theory there is a position that if a trademark does not perform its functions, then it cannot be considered generally known. J. Ciani *et al.* (2019) noted the protection and defence of well-known trademarks, highlighting the problems of implementing legal defence of the rights of owners of such stamps by applying to the court due to the corrupt use of their stamps by more well-known brands. P. Sáiz and R. Castro (2018) emphasised that the history of trademarks has a promising and complex future and that historians have a difficult task to investigate. M.O. Stefanchuk *et al.* (2021) state the urgency of introducing artificial intelligence, especially after the COVID pandemic. I. Koval *et al.* (2019) investigated the correlation of private and public interests that are realised in the relations of intellectual property and the balance of these interests in the mechanism of their defence.

H. Kostromina *et al.* (2022) distinguished the following types of intellectual capital: personalised, technical and technological, infrastructure,

client capital, and branded. Corporate capital was considered as trademarks, brand names, and service trademarks.

The following researchers devoted their papers to the protection of objects of intellectual property rights at the NULES of Ukraine: O. Piddubny and O. Svitlychnyi (2022), noting the need to regulate the patent protection of biotechnologies at the level of national legislation. Yu. Kanarik and B. Sergienko (2019) stated that an important step for the protection of intellectual property rights is the registration of an object as a trademark. M. Pushkar (2021) focused on the need to bring the norms of intellectual property rights for plant varieties to the norms of international legislation.

Insufficient research on this issue at the national level and the beginning of the formation of a legislative framework in Ukraine that meets generally recognised standards in the field of protection and defence of well-known trademarks determines the relevance of the chosen research problem. Such an object as well-known trademarks is poorly examined not only in national science but also in the world scale.

The purpose of this paper is to examine well-known trademarks for their security and compare the concepts of "protection" and "defence", which is the first study in the scientific literature.

Materials and Methods

In the process of writing the study, a number of methods generally accepted by legal science were used. Among the general research methods, the analysis method was used, for example, to highlight international standards for the protection of well-known trademarks. The formal-logical method contributed to the characterisation of the content of the categorical research apparatus. The synthesis method allowed determining the place of regulatory legal acts regulating relations in the field of intellectual property for well-known trademarks. The application of the axiomatic method allowed focusing on the use of well-known trademarks through statements that do not require proof, for example, when protection occurs without registration of such a brand. The comparative legal method is used when comparing national legislation, international legal acts, and EU legislation on the issues raised.

The main provisions and results of the article are formulated based on an analysis of international, European, and Ukrainian legislation, and the legislation of foreign countries. In particular, during the study, the following methods were used: provisions: Article 6 of the Paris Convention for the Protection of Industrial Property (1883) in respect of well-known trademarks; Parts 2 and 3 of the Agreement on trade-related aspects of intellectual property rights (1994), which defines well-known trademarks by referring to Article 6 bis Paris Convention without providing for the terms of use of trademarks in the state where protection is required; Directive (EU) 2015/2436 of the European Parliament and of the council to approximate the laws of the member states relating to trade marks (2015), which provides that the relative grounds for refusal of registration or grounds for relative invalidation may be: trademarks that are already recognised as "well-known" in the member states in question, in accordance with the provisions of Article 6 BIS Paris Convention; Council directive 2008/114/EC on the identification and definition of European Critical Infrastructures and assessment of the need to improve their protection and protectuion (2008), which defines that "protection" and "defence" is a single concept; and national legal acts, in particular, the law of Ukraine "On the Protection of Rights to Signs for Goods and Services" (1993).

Results and Discussion

Well-known brands are those that have become widely known in the relevant consumer sector in certain industries. Compared to conventional trademarks, there are many differences, including high recognition, wide use, and economic value. First of all, for these reasons, well-known trademarks have become an important object of industrial property and occupy a substantial place in the system of intellectual property rights protection around the world.

Factors of recognition of a trademark as well-known in Ukraine may include the following characteristics: the degree of popularity or recognition of the brand in the relevant sector of the economy; the duration of public recognition, the degree and geographical area of any use of the mark or its promotion, including advertising or publication, involvement of the trademark in fairs and exhibitions; recognition of the trademark as well-known in another country by the competent authority, etc.

The peculiarity of well-known trademarks is prescribed by Article 6 bis of the Paris Convention for the Protection of Industrial Property (1883) and consists in the fact that such objects are granted state protection without state registration by the competent authorities. The countries taking part in this convention are 175 countries of the world. In Ukraine, such state bodies are the Appeals Chamber of the National Intellectual Property Authority or the court (Law of Ukraine No. 3689-XII..., 1993). Therefore, it is necessary to determine what is included in the concept of protection of a well-known trademark, and what is related to the concept of defence of a well-known trademark.

It is advisable to start by investigating the concepts of "protection" and "defence", how they relate, differentiate and how they affect the object of intellectual property rights. Despite the fact that the definitions of "legal protection" and "legal defence" are used quite widely, there is no clear distinction between them. Ya. Vavzhenchuk (2018), who examined the relationship between the concepts of "protection" and "defence" in labour law, came to the conclusion that there is no clear distinction between these concepts. In his opinion, some researchers identify these concepts, while others refer protection to the implementation of protective functions of persons whose rights are violated.

D. Kusherets (2015), investigating the protection and defence of property rights in the law of obligations, notes that protection plays a role in the conclusion of contractual obligations, for example, the conclusion of a contract aimed at preventing violations. In turn, defence occurs during the active phase, when it is necessary to defend the rights in case of violation of the terms of the contract when prescriptions or other methods of securing the claim are applied to the violator, which cannot be disagreed with.

Notably, the legislation does not define clear concepts of the terms "protection" and "defence" and their differentiation, which leads only to scientific opinions and explanations of these categories and thus causes confusion in the terminological application of legal science (Vavzhenchuk, 2010). Although for the state, the main function is to protect and defend the rights and legitimate interests of its citizens and to exercise such rights (Marchenko, 2020).

In judicial practice, there is an opinion that each law establishes rules of conduct for citizens, depending on what relations are regulated by a particular legal act. Therewith, the rules of conduct also establish rules for protecting this object from illegal behaviour (Vavzhenchuk, 2010). Researchers S. Bulavina and T. Davydova (2017) note that most often these terms are used as

synonyms or concepts that are close in meaning to goals, tasks, and methods. However, this study cannot agree with this.

After analysing the terms "protection" and "defence", R. Maksymovych (2014) notes that they are united by the legal nature and constitutional priority, primarily of the individual and citizen, and the activities of the state and state bodies aimed at ensuring the rule of law. The researcher claims that the main difference between these concepts is their purpose since the object of protection is human rights and freedoms, and defence is called to action to protect these rights. The authors agree with this.

According to M. Legenchenko (2014), legal protection should be considered as the establishment of legal means invested in the implementation of subjective law, the prevention of its violation, and the legal regulation of these legal relations. Indeed, the norms on the defence of rights constitute only a part of the protective norms that include the prevention of violations, and those that establish a mandatory mechanism for their implementation.

V. Halunko (2007) believes that it is impossible to identify the concepts of "defence" and "protection" and supports the majority of members of the scientific community in this conclusion, since "protection" in the legal sense means a positive state of law aimed at preventing violation of subjective rights and legitimate interests of individuals, reflects the static nature of legal relations. In turn, "defence" is characterised by dynamics through the implementation of the means and forms provided for by law to restore the legal status of the victim, bring the perpetrator to legal responsibility and are applied when the subjective right has already been violated. V. Halunko (2015) provides a detailed analysis of the term "protection", noting that it is characterised by protecting the rights and interests of all citizens and deterring them from certain actions by threatening a public position.

It should be added that Council Directive 2008/114/EC (2008) clearly states that "protection" and "defence" are common concepts that apply to all types of activities of citizens and are aimed at preventing violations of legal rights.

There are positions that protection is a broader concept and includes the defence of the rights and interests of citizens (Vavzhenchuk, 2010). Also noteworthy is the position of researchers that protection establishes a legal regime, and defence is applied after the violation of such a legal regime (Bulavina & Davydova, 2017).

N. Khodieieva (2019) investigated the protection and defence in the field of the right to information about the state of one's health and concluded that these concepts are identical. P. Shumov (2013) emphasises that defence is fundamental in the exercise of personal rights and interests, which is why it is much more common than protection and is the driving force behind countering violated rights and interests.

Yu. Zhelikhovska (2015) concluded on separation of defence and protection. Summarising the positions of researchers on the question of the relationship between the concepts of protection, she formed the main positions: 1) these are almost identical rights; 2) this is a different measure of behaviour of subjects; 3) the right to protection already includes defence; 4) defence is a narrower concept and is included in protection. Such a variety of positions is based on almost the same initial attitude: both through the protection and the defence of the right, a person is allowed to exercise it in the proper way, and in case of violation – to restore the right. Perhaps this was the basis for the conclusion that the nature of the differences in the stated approaches to the concepts

of protection in no case allows considering the defence of rights as an independent legal phenomenon in relation to the protection of rights.

L. Kozhura (2015) treats the concept of "legal defence" as the legal activity of public administration bodies, conducted based on administrative and legal norms, supported by a system of legal guarantees; the essence of which is to ensure and protect by legal means the rights of individuals from illegal actions bringing offenders to legal responsibility. From the analysis of the above, it can be concluded that the object of legal defence is the violated legal rights, freedoms, and interests of individuals.

K. Harbuziuk (2019) notes that it is advisable to distinguish legal protection from legal defence because they have different functional purposes. The argument for this can be the well-known in the law theory opinion of O. Skakun (2021) that the same entity, such as a court, can protect and defend, or, conversely, only defend, such as a lawyer. Therewith, defence without protection is not possible, as well as protection without defence (Bulavina & Davydova, 2017). The specified is confirmed by K. Harbuziuk (2019). This position is close to well-known trademarks since the courts of Ukraine act as both protection and defence for such objects.

A special form of state registration of a well-known trademark in Ukraine and foreign countries is recognition by a special competent authority, while other trademarks must have a sign of originality. Taking examples of recognition of trademarks well-known in Ukraine, then in 2022 the competent authority recognised the following trademarks: Morosha, Intertool, RedBul, Korolivsky smak, and for 2020-2021, the following examples can be provided – ukr.net, Rozetka, 1+1, Nova Poshta, TSN etc (State System of Intellectual Property Legal Protection, n.d.).

Summarising the scientific positions, it should be noted that the concepts of "protection" and "defence" have different legal positions, in particular, protection is provided when registering an object by state institutions. Defence occurs when the rights and legitimate interests of the registered object of the owner of such an object are violated.

For all trademarks, protection occurs after the state registration of a trademark, and only later, when the rights of the trademark owner are violated, they apply for the defence of their right to the judicial authorities. However, this is not typical for well-known brands. A special feature of a well-known trademark is that it acquires the status of a protected object of intellectual property rights not from the moment of state registration, but from the moment of its recognition in the country. Foreign researchers S. Kulshrestha and P.M. Singh (2021) indicate: to prove the recognition of a trademark as well-known, the best evidence will be provided by potential licensees, manufacturers, distributors of goods of such a trademark, import, export, and use by consumers of a particular product. The survey is a vital factor in establishing public awareness of the definition of a trademark as well-known. The Office of the Comptroller General of Patents, Samples, and Trademarks of India has prepared a guide called the draft trademark guide, indicating important factors for determining the common knowledge of a trademark. Among them are the following:

1. Public knowledge of the trademark. The degree and scope of trademark promotion is very important in determining the status of a trademark as a well-known one.

2. Scope of use of the trademark. Sales volume is also an important factor. This factor will also be given importance in determining the status of well-known trademarks.

3. The role of advertising. A brand can become known in a very short time of use, considering advertising and technology.

4. The degree of recognition through advertising and registration in any geographical area (Kulshrestha & Singh, 2021).

Therefore, foreign sources point to a substantial number of references to recognise the trademark as well-known.

Trademarks, the images of which are inextricably linked with certain goods and services, form the consciousness of people and the system of social values. That is why, to avoid illegal manipulation of the consumer, on the one hand, and protect the rights of owners, on the other, it is necessary to develop effective mechanisms for the protection of well-known trademarks. In order for these mechanisms to really work, first of all, it is necessary to confirm the status of the information of a certain trademark, because this is what will prevent encroachments on intellectual property rights.

Conclusions

As a result of the study, the goal was achieved – the concept of legal protection and legal defence of well-known trademarks in Ukraine was analysed and it was concluded that these are different concepts in content.

The analysis of the above approaches to the definition of "protection" and "defence" in the field of intellectual property law allows stating that the protection function is fixed by the norms of law and determines the field of the behaviour of business entities, which ensures the protection of the rights of intellectual property subjects. The defensive function regulates the norms of behaviour in violation of the norms of intellectual property law, but for well-known trademarks, it is special, since the courts of Ukraine act both in the implementation of protection and defence for such objects.

Ukraine, having recognised the norms of the Paris Convention, undertook to protect well-known trademarks when a sign of their general information appears, that is, when they become known in the country to consumers without state registration of this brand. However, a lack of understanding of the implementation of the legal protection of well-known trademarks leads to violations of such rights, and then the owners are forced to seek defence of their rights.

It was investigated that the legal protection of a brand appears with a sign of its general statement, that is, when it becomes known in the country to consumers without state registration of this brand.

Legal defence of a well-known trademark is conducted based on decisions of the Appeals Chamber of the National Intellectual Property Authority or the court. Moreover, compensation measures are provided only by the judicial authorities.

The scientific originality of the study is that for the first time the issues of comparing legal protection and legal defence of well-known trademarks as an object of intellectual property rights, which is not typical for other objects of intellectual property rights, are analysed.

The conducted study encourages further analysis and research on the practice of trademark protection by judicial authorities, namely: recognition of them as well-known, determination of methods of protection, application of evidence, considering the conclusions of experts, experts in the field of law, compensation for losses incurred, etc.

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Conflict of Interest

None.

References

[1] Agreement on trade-related aspects of intellectual property rights. (1994, April). Retrieved from https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm.

[2] Bulavina, S., & Davydova, T. (2017). "Protection" and "Security": Theoretical aspects of the legal terms. *History and Law Journal*, 1, 27-31.

[3] Ciani, J., Ghidini, G., Atkinson, V., & van Caenegem, W. (2019). A comparative study of fashion and IP: Nontraditional trademarks in Italy and Australia. *IIC – International Review of Intellectual Property and Competition Law*, 50(9), 1101-1130. doi: 10.1007/s40319-019-00881-2.

[4] Council Directive 2008/114/EC on the identification and definition of European critical infrastructures and assessment of the need to improve their protection and protection. (2008, December). Retrieved from http://data.europa.eu/eli/dir/2008/114/oj.

[5] Directive (EU) 2015/2436 of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (recast). (2015, December). Retrieved from http://data.europa.eu/eli/dir/2015/2436/oj.

[6] Halunko, V.V. (2007). Administrative and legal protection and security of property rights. *Bulletin of Kharkiv National University of Internal Affairs*, 38, 192-198.

[7] Halunko, V.V. (Ed.). (2015). *Administrative law of Ukraine* (Vol. 1: General administrative law). Kherson: Publisher Grin D.S.

[8] Harbuziuk, K.H. (2019). To the problem of the relationship between the terms "administrative and legal protection" and "administrative and legal security". In *Modern problems of legal, economic and social development of the state: Abstracts of reports of the 8th International scientific and practical conference* (pp. 38-40). Kharkiv: Kharkiv National University of Internal Affairs.

[9] Kanarik, Yu.S., & Sergienko, B.B. (2019). Legal protection of computer programs as objects of intellectual property law. *Legal Horizons*, 19, 31-35.

[10] Khodieieva, N.V. (2019). Protection of subjective civil rights in terms of the right to information about one's health status – the relationship between such concepts as "protection" and "security". In *Kharkiv National University of Internal Affairs: 25 years of experience and a look into the future (1994-2019): Collection of abstracts of reports at the international scientific and practical conference for the 25th anniversary of the university* (pp. 485-487). Kharkiv: Kharkiv National University of Internal Affairs.

[11] Kostromina, H., Potishchuk, O., Rudenko, T., Pushkar, M., & Romaniuk, O. (2022). Intellectual capital as the basis for the development of creative industries. *AD ALTA: Journal of interdisciplinary research*, 12(1, S XXVI), 67-70.

[12] Koval, I., Dzhumageldiyeva, G., Derevyanko, B., Patsuriia, N., & Patiuk, S. (2019). Balance of interests in the mechanism of protection of industrial property rights. *Journal of Advanced Research in Law and Economics*, 10(3), 819-827. doi: 10.14505//jarle.v10.3(41).17.

[13] Kozhura, L.O. (2015). Administrative and legal protection and security: The concept and relation. *Uzhhorod National University Herald. Series: Law*, 35 (1 Vol. 2), 119-122.

[14] Kulshrestha, S., & Singh, P.M. (2021). Factors determining well known status for a trademark: A study in Indian context. *Bioscience Biotechnology Research Communications. Special Issue*, 14(09), 240-245.

[15] Kusherets, D.V. (2015). *Protection and security of property rights in the field of contract law: Problems of theory and practice* (Doctoral thesis, Legislation Institute of the Verkhovna Rada of Ukraine, Ukraine).

[16] Law of Ukraine No. 3689-XII "On the Protection of Rights to Signs for Goods and Services". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3689-12#Text.

[17] Legenchenko, M.O. (2014). Concept of right's guard and protection through their correlation. *Current Problems of State and Law*, 72, 59-65.

[18] Maksymovych, R.O. (2014). Correlation between the concepts of "protection" and "secutity" of social and economic human rights and freedoms: theoretical and legal foundations. *Scientific Bulletin of Kherson State University. Series "Legal Sciences"*, 5 (Vol. 1), 101-106.

[19] Marchenko, V. (2020). Regarding the issue of protection of subjective civil rights by a notary public. *Entrepreneurship, Economy and Law*, 3, 31-35. doi: 10.32849/2663-5313/2020.3.06.

[20] Odintsov, S., Trubina, M., & Mansour, M. (2020). Comparative legal analysis of protectability of olfactory trademarks. ***A****mazonia Investiga*, 9(27), 129-139. doi: 10.34069/AI/2020.27.03.13.

[21] Paris Convention for the Protection of Industrial Property. (1883, March). Retrieved from https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf.

[22] Piddubny, O., & Svitlychnyi, O. (2022). Fundamentals of patent protection in the field of biotechnology. *Law. Human. Environment*, 13(1), 43-49. doi: 10.31548/law2022.01.005.

[23] Pushkar, M.V. (2021). Urgency of changes in legal regulation of property relations on plant varieties in connection with recodification of the Civil Code of Ukraine. *Law. Human. Environment*, 12(1), 101-108.

[24] Sáiz, P., & Castro, R. (2018). Trademarks in branding: Legal issues and commercial practices. *Business History*, 60(8), 1105-1126. doi: 10.1080/00076791.2018.1497765.

[25] Shumov, P.V. (2013). Correlation of concepts of "protection" and "defense" of informational rights. *Criminal-Executory System: Law, Economics, Management*, 5, 12-14.

[26] Skakun, O.F. (2021). *Theory of law and state* (4th ed.). Kyiv: Alerta.

[27] State System of Intellectual Property Legal Protection. (n.d.). *Trademarks that are recognized as well-known in Ukraine and those that have been refused recognition*. Retrieved from https://ukrpatent.org/uk/articles/ap-tm-well-known.

[28] Stefanchuk, M.O., Muzyka-Stefanchuk, O.A., & Stefanchuk, M.M. (2021). Prospects of legal regulation of relations in the field of artificial intelligence use. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(1), 157-168. doi: 10.37635/jnalsu.28(1).2021.157-168.

[29] Trappey, C.V., Chang, A.-C., & Trappey, A.J.C. (2021). Building an Internet-based knowledge ontology for trademark protection. *Journal of Global Information Management*, 29(1), 123-144. doi: 10.4018/JGIM.2021010107.

[30] Vavzhenchuk, S.Ya. (2010). Parity of concepts "protection" and "security" of the labor rights in the current legislation. *Forum Prava*, 1, 45-49.

[31] Vavzhenchuk, S.Ya. (2018). *Protection and security of labor rights of employees* (2nd ed.). Kharkiv: Pravo.

[32] Zhelikhovska, Yu. (2015). Denominated and distinction between "guard" and "protection". *Scientific Bulletin of the International Humanities University. Series: Jurisprudence*, 13 (Vol. 2), 18-21.

Поняття та співвідношення правової охорони й правового захисту добре відомих торговельних марок

Олексій Петрович Ткачук
Аспірант
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0003-3596-5040

Анотація

Актуальність дослідження зумовлено недостатньою увагою з боку міжнародного та національного законодавств до такого об'єкта інтелектуальної власності, як добре відомі торговельні марки, зокрема до регулювання їхнього правового захисту, а тому це питання потребує дослідження і висвітлення в наукових колах. Мета статті – дослідити, у чому відмінність між правовою охороною та правовим захистом добре відомих торгівельних марок в Україні, Для дослідження вказаної проблематики використовувалися загальнонаукові методи наукового пізнання (узагальнення, формально-логічний, синтезу, аксіоматичний) та спеціально-юридичні методи (формально-юридичний, логіко-юридичний, порівняльно-правовий). У роботі розглянуто ключові особливості добре відомих торговельних марок. Шляхом аналізу української нормативно-правової бази встановлено, що правова охорона добре відомих торговельних марок в Україні відповідає нормам міжнародного законодавства, а саме положенням ст. 6 bis Паризької конвенції. Проведено детальний аналіз понять охорони та захисту й застосовано їх щодо об'єкта дослідження. З'ясовано, що особливістю добре відомих торговельних марок є те, що вони набувають статусу охоронного об'єкта права інтелектуальної власності не з моменту державної реєстрації, а із часу визнання їх у країні, що означає набуття статусу відомості. Практична цінність дослідження – у тому, що отримані результати можна використати для удосконалення процедури визнання торговельних марок добре відомими, а саме в обґрунтуванні можливості вибору відповідного способу дій: шляхом звернення до Апеляційної палати або звернення до суду

Ключові слова: цивільне право; право інтелектуальної власності; об'єкти інтелектуальної власності; Національний орган інтелектуальної власності; Апеляційна палата; суд

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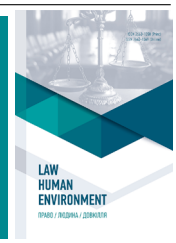

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Public control over the relocation of strategic objects of state ownership

Olena Yara*
Doctor of Law, Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 HeroivOborony Str., Kyiv, Ukraine
https://orcid.org/0000-0002-7245-9158

Olena Gulac
Doctor of Law, Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 HeroivOborony Str., Kyiv, Ukraine
https://orcid.org/0000-0001-9004-0185

Sergiy Sliusarenko
PhD in Law, AssociateProfessor
National University of Life and Environmental Sciences of Ukraine
03041, 15 HeroivOborony Str., Kyiv, Ukraine
https://orcid.org/0000-0002-6718-222X

Yurii Danyliuk
PhD in Law, Senior Researcher
Legislation Institute of the Verkhovna Rada of Ukraine
04053, 4 Nestorivskyi Ln, Kyiv, Ukraine
https://orcid.org/0000-0002-7342-8345

Serhii Mosondz
Doctor of Law, Professor,
University of Modern Knowledge
03150, 57/3 VelykaVasylkivska Str., Kyiv, Ukraine
https://orcid.org/0000-0003-4417-1074

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*Corresponding author

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Abstract

The relevance of the chosen study subject is due to the fact that the full-scale invasion of the Russian Federation in Ukraine caused the need to move enterprises, especially strategic objects of state ownership, from the zone of active military operations to safer regions. Therefore, there is a need to make adjustments to the field of public control over objects of strategic importance for the economy, security, and life of the country in a difficult time for it. The purpose of the study is to determine the state of public control as a regulation of the relocation process in the legal context of regulatory support and suggest improving state regulation, considering the existing norms of national legislation, regulatory acts, and programmes. In the process of writing the study, general scientific and special methods were used, such as: analysis and synthesis, deduction and induction, formalisation, formal legal, comparative legal, and the method of legal modelling. As a result of the study, the legal regulation of public control of relocated strategic objects in the system of existing relocation procedures is analysed. Doctrinal and legislative approaches to the interpretation of control, public control, strategic enterprises, and relocation itself are described. Features of international support for the relocation of Ukrainian enterprises to safer regions are considered. The main methods of optimising the relocation process have been identified, emphasizing the necessity to legislatively define the process itself and the related concepts. Additionally, the regulatory framework for public control over strategic enterprises has been elaborated upon. The necessity to establish a special legal regime for public control over relocation is justified. The practical value of the results obtained lies in the fact that they can be used in the development of new regulatory legal acts that will determine the proper legal mechanism in one codified act on the relocation of businesses from non-safe territories

Keywords: movement; combat operations; safe regions; martial law; codified act

Introduction

The relevance of the study lies in the fact that, suffering from military operations, among the priority tasks Ukraine has set for itself is the preservation of strategic objects of state ownership, their production capacities, human resources, and ensuring their security. The destruction of strategic state facilities and the displacement of the population became a call to relocation. In the conditions of war, the restoration of the territories of Ukraine that were destroyed becomes of particular importance. However, the variability of the location of military activity determines the tendency to take effective measures to preserve objects of strategic importance for the economy and security of our country.

The issue of public control over strategic enterprises during relocation is presented in the form of scientific studies of the regulatory framework and individual practices of organisational and managerial activities during the period of martial law.

Decomposing the word "relocation", it can be seen that "locate", from the Latin word locus, means "place", re- means "again", and -ion means "action". Relocation means "the act of resettle-ment" in a new location (Relocation, n.d.).

O. Hensetska (2022) defines the relocation process as a definite improvement that allows the business to continue operating. I. Khymych (2022) considers relocation to be the main part of Ukraine's business strategy, which continues to operate in war conditions.

Comparing the definitions of relocation proposed by O. Hensetska and I. Khymych, it can be concluded that their understanding of the location for the enterprise is similar to an opportunity to save production and continue working in safe areas in the future.

O. Bukhanevych and A. Ivanovska (2019) defined control as an activity aimed at preventing legal violations and encouraging those involved in compliance with the law. Control is identified by reviewing the understanding of such actions with "verification, supervision, revision of actions, deeds" or simply "verification". The authors outlined control as a universal function of the country, where the idea is determined according to the practice of applying contemplative activities, with certain specific features in a certain format and means of application (Bukhanevych & Ivanovska, 2022). N. Horbova (2019) noted that state control (supervision) is an external control on the part of the state in the form of administrative supervision, such as: coercion, restoration, termination, prevention, and punishment with the application of administrative-level liability.

Notably, N. Horbova compared to O. Bukhanevych and A. Ivanovska more precisely sets the control process, since the sanctions component is covered.

Public control should be exercised not only over compliance with national legislation but also over the implementation of international standards. Therefore, it is advisable to use different models in the field of public control, depending on the goal that is set for public control over their management. There are such models as the quality management system – ISO, the model of excellence of the European Foundation for Quality Management – EFQM, Common Assessment Framework, Balanced Score Card. This is due to the concept of Total Quality Management (TQM), which is aimed at covering consumer requirements and requires updating procedures through analytics and coordinated work of employees (EFQM Model, n.d.).

The normative legal acts that have become regulators of the process of relocation of enterprises do not contain a definition of the concept of "relocation", which accordingly differs from the relocation programme itself, which also does not have a single text with an understanding of a clear process of step-by-step actions and control by public institutions.

The purpose of the study is to examine international and national scientific approaches to the characterisation of public control over relocated strategic objects, analyse the normative legal acts of this field, identify problems, and suggest ways to improve the legal support of relocation.

The tasks are to determine whether international and national regulatory legal acts regulate public control over the relocation of strategic enterprises, the examination of scientific views on the relocation procedure, formation of a list of strategic objects, and the improvement of regulatory acts in the affected areas.

Materials and Methods

When writing the study, a number of general scientific methods were used: analysis and synthesis, deduction and induction, formalisation, formal legal, comparative legal, and the method of legal modelling.

Using the analysis method, the content of relocation is covered, the problems of controlling the movement of strategic enterprises are

highlighted, and the essence of the concepts of relocation and strategic objects is covered.

Through the synthesis method, the regulatory acts regulating the relocation process are listed and characterised. The need to create a single codified act for convenient and prompt movement of enterprises of strategic importance from the territories of battles to safe places is covered.

The deductive method is used in the study of the procedure for business relocation and, in particular, public control over strategic objects during relocation. The inductive method is used to characterise public control, which are components of the process of relocation of strategic objects.

Using the formalisation method, the area of control over relocated objects of strategic importance is reflected in the form of a procedure for moving enterprises. The formal legal method is used in the relationship between public control and management of strategic objects when moving their capacities and employees, which is a manifestation of relocation.

The comparative legal method is used in the study of control over enterprises through such quality management systems as the European Foundation of Quality Management – EFQM, the general assessment scheme – CommonAssessmentFramework, balance indicators –BalancedScoreCard. The method of legal modelling is used in the study of the relocation procedure for the distribution of functions and their use, and the consequences that follow them in the form of modelling both negative and positive consequences.

The main provisions and findings of the study are formulated based on the analysis of international and national legislation. In particular, during the research, the following provisions were used: the Excellence Model of the European Foundation for Quality Management (EFQM), the Common Assessment Framework, the Balanced Scorecard (EFQM Model, n.d.), as well as state regulatory policies in the field of economic activity (Law of Ukraine No. 1160-IV..., 2003); state supervision as control in the field of economic activity (Law of Ukraine No. 877-V..., 2007); Government Resolutions regarding the operation of Ukrposhta during the period of martial law (Resolution of the Cabinet of Ministers of Ukraine No. 305..., 2022); criteria for classifying state property objects as strategic (Resolution of the Cabinet of Ministers of Ukraine No. 999..., 2010); list of strategic objects of state property (Resolution of the Cabinet of Ministers of Ukraine No. 83..., 2015); organization of work of employees of economic entities in the state sector of the economy during times of war (Resolution of the Cabinet of Ministers of Ukraine No. 481..., 2022); Order of the Cabinet of Ministers of Ukraine "On the Approval of the Plan of Urgent Measures to Relocate, if Necessary, the Production Facilities of Economic Entities from Territories where Hostilities are Taking Place and/or there is a Threat of Hostilities to a Safe Territory" (2022); Orders of the Ministry of Economy "On Approval of the Procedure for Submitting and Considering Proposals for Forming a List of State-Owned Objects of Strategic Importance for the Economy and Security of the State" (2010) and "On the Approval of Methodological Recommendations on Forecasting the Consequences and Assessing the Impact on the State of Economic Security of the State of the Privatization of Certain Categories of Enterprises" (2009); Order of the Ministry of Finance of Ukraine "On Approval of the Methodology for the Analysis of Financial and Economic Activity of Enterprises of the State Sector of the Economy" (2006); Decree of the President of Ukraine "On Financial Support of Innovative Activities of Enterprises that are of Strategic Importance for the Economy and Security of the State" (2004); relocation action plans

for enterprises in the form of a guide (Plashchuk, 2022); Letter from the Ministry of Digital Transformation providing assistance for the evacuation of Ukrainian businesses (Letter from the Ministry of Digital Transformation..., 2022); the registration instruction for relocation applications on the E-Tender electronic platform (Instructions for users of registering..., n.d.), etc.

Results and Discussion

General aspects of public control over the relocation of strategic objects

The relocation of Ukrainian enterprises, including strategic objects located in the territory of military operations, should be conducted with proper public control over the relocation procedure by clearly defined steps to help move equipment to certain safer territories, select the location of capacitive, and solve personnel issues.

Canadian researcher C. Goodwin (1993) investigated displacement in the plane of human displacement as a life transition, which means a radical change from one social context and physical environment to another, creating an opportunity for change. M.P.M. Sardhar (2007) suggests that when moving businesses, interaction with employees should be considered by applying certain measures to better adapt to the relocation process. Not all employees want to move, despite the offer of relocation assistance. According to Atlas World Group, the main reasons for refusing to move are family problems or connections, and the employment of a spouse or partner (Relocate and relocation..., n.d.). The relocation of people is described by J.V. Maanen & J.E. Schein (1979) as a transitional phase, including status ambiguity, identity, lack of status, and obscurity. Relocation is also referred to as community relocation or collective relocation – a holistic restructuring of life at the local level (Tsubouchi *et al.*, 2021). The transfer of an enterprise can be conducted within the country, or outside its borders (international movement). Moving an enterprise outside the country is defined as the process of offshoring, the reverse action is moving the enterprise back to the country of origin of production – backshoring (Hayter, 1997; Yong-Sik & Kidong, 2018). A. Nedoshitko and I. Yaremko (2022) define internal relocation (within the state) as a chance to save a business and restore its activities in conditions limited by martial law. O. Bokiy and M. Moroz (2022) see the need for assistance at the state level in relocation and capacities that are at risk.

Canadian researcher C. Goodwin (1993) also appropriately focuses on the priority of considering the social component of displacement. A. Nedoshitko and I. Yaremko (2022) rather narrowly define relocation, in particular, activities only in war conditions, but this can be regarded as the need for mandatory return after the abolition of martial law, and this, in turn, may not be possible under certain objective conditions. O. Bokiy and M. Moroz (2022) – supporters of a position that can be agreed with, because it was these authors who stressed the need for state support in the relocation process.

A large explanatory dictionary of the Ukrainian language contains the definition of the term "control" in such meanings as: viewing for compliance of a certain control object with certain needs; checking and accounting for actions (of someone/something), supervision (of someone/something); an organisation or institution that monitors (someone/something) or checks the latter; derived from the term "controllers" (Busel, 2005).

Yu. Bila-Tiurina (2022) defines that in Ukraine, state control is used by the legislative, executive, and judicial branches of government. In each of these areas, the control powers of government bodies are implemented considering the

specific features of the relevant type of state activity. According to M. Tereshchenko (2019), it is worth emphasising that state institutions, trying to comply with guarantees of legality, sometimes incorrectly use the norm of the law in management to apply this aspect. Accordingly, public assistance should also be used in monitoring. Yu. Bila-Tiurina and M. Tereshchenko, in relation to state control as the activity of authorised institutions, have different views on this practice, and the latter author noted that he expressed the opinion that it is necessary to apply public opinion for the proper use of the rule of law.

Z. Teniukh (2006), considers strategic enterprises in the form of the production of vital products, with limited use, a ban on exports, strict state supervision and/or the production of which has risks to the economy and security of the country. O. Bondar (2001) refers to the range of strategic enterprises such capacities that produce raw materials, energy, certain production, consumer reserves, export resources, which are an exchange-replacing link of strategic supplies. O. Denysiuk (2006) considers strategic enterprises as an opportunity to influence the market component, and the consequences of instability in their work, which can be a factor influencing the state of enterprises. Summarising, Z. Teniukh, O. Bondar, and O. Denysiuk define the importance of strategic enterprises for the country's economy and security in all areas.

S. Stetsenko (2011) divides control into public and state. V. Kravchuk (2015) defines public control in the form of: state, public, municipal, and international control as a system of organisational and legal support in compliance with legal norms in the activities of public administration, human rights and freedoms, compliance with the powers, and tasks defined by state and local government bodies, and officials. V. Averyanov (2007) defines state control in the form of certain actions of officials of state authorities to comply with the legality and discipline in a certain area. Each type of control is appropriate in their application both separately and in aggregate since control, no matter how divided, performs its direct role in a certain process.

Separation of control according to the positions of authors S. Stetsenko on public and state, V. Kravchuk on state, public, municipal, and international and of V. Averyanov on control, which is embodied in the work of public authorities, is the prerogative of public control as a diverse category with inclusive concepts of attracting verification, supervision, and evaluation.

In the summer of 2022, in the western part of Ukraine, with the involvement of representatives of business, non-governmental organisations, authorities and international partners, the economic forum "Relocation to Transcarpathia: the European dimension" was held, where it was proposed to divide the participants of relocation into certain groups, each of which carried a certain defining criterion of investment attractiveness/unattractiveness, considering the state and municipal form of ownership, enterprises that are ready to change their strategy with an emphasis on promising development in a certain region (Transcarpathian Regional State Administration, 2022). All these groups into which such enterprises were divided should be focused on the principles of the economic component of a particular region (mechanical engineering, woodworking, tourism, electronics, innovation, environmental friendliness, product processing, etc.), considering the prevention of harm to the region in the fields of tourism and recreation (Panov, 2022).

Strategic objects of state ownership that are appropriate for development, since they are important in the fields of the economy, have a high

level of importance for the security of the state, and removing them from the list of strategic ones, considering martial law and relocation, will violate the integrity of the infrastructure for which they were responsible, therefore, it is necessary to establish a special legal regime of public control. The definition of "strategic objects" is proposed to be considered as state-owned enterprises, on which the economy, ecology, population, and state security depend, and sovereignty, territorial integrity, inviolability, defence capability, and information protection directly.

State-owned enterprises "Prozorro.Sale", E-Tender, and eDocs created a programme for processing applications with the possibility of further support, on a free basis, placing materials, equipment, capacities in the territory that is less susceptible to combat impressions, that is, in safer territories of Ukraine. The application is submitted at the following link on the website, and priority is given to strategic enterprises (Instructions for users of registering..., 2021). The website of the Ministry of Economy of Ukraine covers the step-by-step process of processing applications (Ministry of Economy of Ukraine, 2022a).

However, the regulatory consolidation of the procedure for monitoring this process and, as a result, problems with the subsequent adaptation and preservation of property, especially strategic objects, remains aside.

Features of regulatory support for the relocation of strategic enterprises

Due to the damage and sometimes destruction of enterprises in the territories where active military operations take place, it became necessary to use relocation. Therefore, for the purpose of adaptation, such regulations as the Resolution of the Cabinet of Ministers of Ukraine "On the Peculiarities of the work of the Joint-Stock Company "Ukrposhta" in the Conditions of Martial Law" (2022) and Order of the Cabinet of Ministers of Ukraine "On the Approval of the Plan of Urgent Measures to Relocate, if Necessary, the Production Facilities of Economic Entities from Territories where Hostilities are Taking Place and/or there is a Threat of Hostilities to a Safe Territory" (2022). This procedure does not bypass strategic objects of state ownership since their resources and potential cover military needs, so the issue of mobilisation mechanisms of public control becomes relevant.

An attempt to legislate the organisational process of public control has already been conducted in the development of the draft law on public control, which has not been implemented in the law since 2019, as it was withdrawn (Draft Law of Ukraine No. 2679-VIII…, 2015).

The legal basis for the functioning of state-owned objects of strategic importance is provided by regulatory acts of executive authorities. These acts include: "On Determining the Criteria for Classifying State-Owned Objects as Having Strategic Importance for the Economy and Security of the State" (2010), "On the List of State-Owned Objects of Strategic Importance for the Economy and Security of the State" (2015), "On Approval of the Procedure for Submitting and Considering Proposals for Forming a List of State-Owned Objects of Strategic Importance for the Economy and Security of the State" (2010), as well as reference regulatory acts such as "Methodological Recommendations on Forecasting the Consequences and Assessing the Impact on the State of Economic Security of the State of the Privatization of Certain Categories of Enterprises" (Order of the Ministry of Economy of Ukraine No. 518..., 2009), "Methodology for the Analysis of Financial and Economic Activity of Enterprises of the State Sector of the Economy" (Order of the Ministry of Finance of Ukraine No. 170..., 2006), "On Financial Support

of Innovative Activities of Enterprises that are of Strategic Importance for the Economy and Security of the State" (Decree of the President of Ukraine, 2004), "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity" (Law of Ukraine, 2007), etc.

The government in its resolution established the regulation of provisions on the criteria by which these strategic objects are determined (Resolution of the Cabinet of Ministers of Ukraine No. 999…, 2010). However, as can be seen from the available content, there is no informative exhausted content of the characteristic data of such enterprises. Therefore, this affects the exercise of public control over state-owned objects, which must be relocated.

The legislation that establishes the basis of supervisory control by the state determines to conduct a certain breakdown of the levels of interest depending on the danger in the event of certain violations and the corresponding consequences for the life of society and the environment. Thus, it is considered necessary to establish control and supervision. Depending on the type of activity of the enterprise, the risk level is determined–insubstantial, medium, or high and the degree of risk to the safety of life and health of the population, and the natural environment. Accordingly, the criteria used to assess the degree and level of risk are determined depending on the type of activity of the enterprise (Law of Ukraine No. 877-V…, 2007). Accordingly, the consequences of the economic activities of strategic enterprises depend on public control over them.

Foreign experience and support in the relocation of Ukrainian enterprises

The relocation took place for the following enterprises: LLC "Pozhmashina", "Corum "Druzhkivsky machine-building plant", "Stalex", private joint stock company "Kramatorsk heavy machine tool plant",etc.(MinistryofEconomyofUkraine,2022b). Therefore, it is important to use international experience in managing such relocated enterprises.

Thus, the assessment of the quality of activities in European management is conducted according to the model of excellence EFQM – the European Foundation for Quality Management, which is distributed among private and public levels of management and allows evaluating the levers of control in comparison with the same sectors in a certain functionality. Therefore, it is used to determine organisational components and tools for influencing the regulatory activities of enterprises, among which there are: management systems; introspection procedure; comparison with similar ones; ways of improvement (EFQM Model, n.d.). The use of this system allows efficiently, quickly, and easily managing the enterprise and monitoring its functioning.

With Ukraine's substantial gradual steps towards European integration, the practical effect of international control is being strengthened by the bodies of world organisations where a certain country is a member/participant, such as the Organisation for Security and Cooperation in Europe, the International Monetary Fund, the International Bank for Reconstruction and Development, the World Trade Organisation, and international judicial bodies such as the European Court of Human Rights in Strasbourg, the International Criminal Court in the Hague.

Accordingly, international control, along with Ukrainian control over relocated enterprises, is a factor in their successful formation and development in new places.

The relocation programme provides for the resumption of state development in the economic field through the transportation of equipment and the relocation of workers from dangerous regions

of Ukraine, where military operations are taking place, to the western territories of the country (Ministry of Economy of Ukraine, 2022a). With the help of the American Agency for International Development and GoLocalno, the economic support project of the Ukrainian state developed a manual on the relocation of enterprises, which defines the position on relocation, which was created by a group of business experts (Plashchuk, 2022). The manual contains the general principles of this process and provides the definition of relocation as the transfer of the physical location of the enterprise from the place of permanent deployment in whole or in part to preserve the possibility of operation of the enterprise and its full functioning.

However, the availability of European support does not allow easily and quickly solving both organisational and regulatory issues related to the relocation of strategic enterprises, given the imperfection of legal regulation.

Gaps in public control in the relocation of strategic objects

The definition of "relocation" can be considered in the understanding of the organisation and support of authorised structures for the movement of enterprises, institutions and organisations within the country to another place with employees and production, followed by ensuring their placement and functioning.

On 17.03.2022, the Ministry of Digital Transformation of Ukraine issued a letter in support of the evacuation of Ukrainian businesses (Letter from the Ministry of Digital Transformation..., 2022), and the Government issued a resolution on organising the work of employees – business entities of the public sector of the economy during the war (Resolution of the Cabinet of Ministers of Ukraine No. 314..., 2022). Instructions for registration of a customer account (n.d.), which allows applying for relocation online were created on the E-Tender digital platform. However, access to it is possible through multi-step search actions on the Internet, and this is difficult due to the view of the navigation in the territories from which objects move. Therefore, such a complicated search path can lead to loss of time and, as a result, human casualties and property. Accordingly, it is necessary to develop a codified regulatory act that would contain the most comprehensive information on step-by-step actions with a certain instruction to fill in, so that it can be obtained and familiarised already in the absence of electronic communications in a safer place.

In the Order of the Cabinet of Ministers of Ukraine No. 246-r (2022), measures to move industries to avoid the threat of shelling in communications were fixed. In this administrative document, authorised state institutions, such as ministries, executive authorities, and military administrations, are instructed to implement these measures provided for in the plan, considering those responsible for such actions.

However, there is no order of control over the movement process, and the order of movement itself, and this is extremely important since it concerns strategic objects and such enterprises have different, depending on the field of activity, production capacity, sales markets, and other features. Therewith, the establishment of clearly regulated control by public state institutions is a factor in observing the maximum possible movement of all production facilities, enterprise resources, and personnel in safe regions. Due to the integrity of certain capacities, their partial transfer may sometimes be impossible. Accordingly, by establishing only those responsible without specific ordinal actions and without a certain distribution of measures for each of the author-

ised persons, it is impossible to exercise proper control, because it is impossible to demand compliance with the implementation of what is not established. Understanding the factor of redirection of responsibility in the redistribution of powers and functionality, which often intersects between departments, without specifically established measures for each of those responsible, is not possible. Thus, the duplication of responsibilities between many ministries and departments, in general, has formed an unregulated organisational and administrative mechanism for state control regulation.

One of the main reasons for the growth of negative trends in state regulation is the lack of a single document that would define the main priorities of national policy in the field of relocation and strategic enterprises. This should encourage states to draw up a unified document. It should be agreed upon among the ministries and state structures involved and approved at the appropriate managerial level. For example, it can be the format of a roadmap for relocation. Such a single regulatory act should become a qualitative regulator of the relocation process and control this procedure. Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity" (2003). The legal basis and organisational basis for public control of the relocation of strategic enterprises should be developed with the involvement of professional experts in this field.

The relevance of the national policy on the relocation of objects of strategic importance lies in the adaptation of production to the current military conditions. Since strategic objects are particularly important for the economy and security of Ukraine, the establishment of organisational, technical and technological conditions for their deployment has become extremely necessary. Social, economic, political, and legal processes in the country are gradually becoming more adapted to the relocation of strategic enterprises.

V. Kravchuk (2015) and V. Averyanov (2007) considers control in various forms: public, state, municipal, and international, and all of them really constitute a system of care for the organisation and legal support of the activities of strategic enterprises that are relocated.

Considering the above-defined understanding of public control, many authors can express their own vision, where public control is a utilitarian way to ensure the right security of management, which will help the fruitfulness and effectiveness of administration in the strategic field of state enterprises. Comparing the author's visions considered, control is a comprehensive analysis and establishment of responsibility for specific institutions in the event of violations within the limits of their powers.

Conclusions

In the course of the study, it was stated that now Ukraine is in difficult conditions caused by military operations, which substantially changed the ways of forming and conducting economic activities. The following goals were achieved, in particular, the process of relocation, the procedure for establishing public control over the relocated strategic objects, the legal regulation of this process, the establishment of problematic aspects were examined and analysed, and ways to overcome the gaps in the relocation of strategic objects of state ownership were proposed. Attention is focused on scientific approaches to the interpretation of relocation, control, and strategic enterprises. The essence of relocation, problematic aspects in the control procedure are determined, the importance of strategic objects and the legal

component of relocation in the management of such enterprises are evaluated. Based on the results of the study, the need to update legal norms and adjust the public administration of economic structures was established. It is also proposed to analyse the work of state institutions in the process of relocating strategically substantial objects and the consequences that will affect their activities upon relocation. It is determined that control is implemented in the work of state authorities and is the prerogative of public control with inclusive concepts of attracting verification, supervision, and evaluation. It is emphasised that there are no characteristic data of strategic enterprises and this affects the exercise of public control over state-owned objects, which must be relocated. Since the procedure for controlling relocation is not regulated by law, there are problems with the subsequent adaptation and preservation of property, especially strategic objects. Therefore, it is recommended to establish a special legal regime of public control. It is proposed to define "strategic objects" as state-owned enterprises on which the economy, ecology, security of the population and the state in general and sovereignty, territorial integrity, inviolability, defence capability, and information protection directly depend.

The scientific originality of the study consists in the examination of the consolidation in regulatory legal acts of control over relocated strategic enterprises, including considering the monitoring of management processes of these enterprises, which has not yet been examined during martial law. Research in this area can be used to eliminate shortcomings in the implementation of the process of relocation of strategic objects, exclude corruption factors and abuses.

It is established that there is no order to control the movement process and the order of movement itself. Therefore, it is proposed to create a single regulatory codified Act, which defines the concept of the term "strategic objects", "relocation" and a step-by-step scheme of movement with the definition of responsible business entities for specific actions in the movement, starting from the submission of an application to the actual placement of capacities and personnel at the place of deployment in another safer region of Ukraine. Predictive risks that may arise from negative consequences from improper organisation of public control may quite specifically affect the activities of strategic enterprises and the possibility of harm to the state and society. Proper public control over the relocation of objects of strategic importance for infrastructure is a consequence of preserving their integrity for operation. It is advisable to use these results in similar studies and in the development of new legal norms. That is why among the prospects of research is the development of a theoretical basis and effective proposals for the functioning of the new law on the movement of strategically important Ukrainian enterprises from the territories where fighting continues to safer ones.

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Conflict of Interest

None.

References

[1] Averyanov, V.B. (Ed.). (2007). *Administrative law of Ukraine* (Vol. 1. General part). Kyiv: Yurydychna Dumka.

[2] Bila-Tiurina, Yu.Z. (2022). Concepts and types of extrajudicial control over the activities of public administration in ensuring legality and protection of the rights of individuals. In S.V. Kivalov (Ed.), *The European choice of Ukraine, the development of science and national security in the realities of large-scale military aggression and global challenges of the 21st century (to the 25th anniversary of the National University "Odesa Law Academy" and the 175th anniversary of the Odesa School of Law): Materials of International scientific-practice conference* (Vol. 2; pp. 22-25). Odesa: Helvetica Publishing House.

[3] Bokiy, O., & Moroz, M. (2022). Prices for socially significant food products in conditions of emergency challenges. *Food Resources*, 10(18), 207-218. doi: 10.31073/foodresources2022-18-20.

[4] Bondar, O.M. (2001). *The organizational and economic mechanism of privatization of the strategic enterprises (on materials of the industrial enterprises of Ukraine)* (PhD thesis, Kyiv National Economic University, Kyiv, Ukraine).

[5] Bukhanevych, O., & Ivanovska, A. (2022). Legal nature and types of public control. In *Legal principles of the organization and exercise of public power: Collection of theses of the V International scientific and practical conference, dedicated to the bright memory of the Doctor of Legal Sciences, Professor, academician-founder of the National Academy of Sciences of Ukraine, the first Chairman of the Constitutional Court of Ukraine Leonid Petrovych Yuzkov* (pp. 62-64). Khmelnytskyi: Leonid Yuzkov Khmelnytskyi University of Management and Law.

[6] Bukhanevych, O.M., & Ivanovska, A.M. (2019). Constitutional control as a type of state control: Contents and functional characteristics. *Public Law*, 4, 9-18.

[7] Busel, V.T. (Ed.). (2005). *Large explanatory dictionary of the modern Ukrainian language*. Kyiv, Irpin: Perun.

[8] Decree of the President of Ukraine No. 454/2004 "On Financial Support of Innovative Activities of Enterprises that are of Strategic Importance for the Economy and Security of the State". (2004, April). Retrieved from https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=454%2F2004#Text.

[9] Denysiuk, O.M. (2006). *Scientific and methodological foundations of the transformation of the property structure in Ukraine* (Doctoral thesis, Research Institute of Economics of the Ministry of Economy of Ukraine, Ukraine).

[10] Draft Law of Ukraine No. 2679-VIII "On Public Control". (2015 July). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55907.

[11] EFQM Model. (n.d.). Retrieved from https://efqm.org/the-efqm-model.

[12] Goodwin, C. (1993). A conceptual theory of relocation. In W.F. Van Raaij, & G.J. Bamossy (Eds.), *European Advances in Consumer Research* (Vol 1; pp. 366-370). Provo: Association for Consumer Research.

[13] Hayter, R. (1997). *The dynamics of industrial location: The factory, the firm and the production system*. New York: Wiley.

[14] Hensetska, O.M. (2022). Peculiarities of the taxation system in Ukraine during martial law. In Actual problems of modern business: Accounting, financial and management aspects: Materials of the IV International Scientific and Practical Internet Conference (Pt 2; pp. 55-57). Lviv: Lviv National Environmental University.

[15] Horbova, N.A. (2019). The nature of state control (supervision) and the genesis of its legislative definition. *Law and Public Administration*, 1 (Vol. 1), 34-42.

[16] Instructions for registration of a customer account. (n.d.). Retrieved from https://e-tender.ua/training-tenders/zamovnikam-prozorro-2/instrukciya-reyestraciya-oblikovogo-zapisu-14.

[17] Khymych, I. (2022). Relocation of national business: Ukraine or the EU. In *Materials of the 4th International scientific and practical conference "European dimensions of sustainable development"* (p. 39). Kyiv: National University of Food Technologies.

[18] Kravchuk, V.M. (2015). Public control in the state. *Legal Bulletin*, 1, 210-215.

[19] Law of Ukraine No. 1160-IV "On the Principles of State Regulatory Policy in the Field of Economic Activity". (2003, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1160-15.

[20] Law of Ukraine No. 877-V "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity". (2007, April). Retrieved from https://zakon.rada.gov.ua/laws/show/877-16#Text.

[21] Letter from the Ministry of Digital Transformation of Ukraine "We help Ukrainian businesses to evacuate from the war zone". (2022, March). Retrieved from https://ips.ligazakon.net/document/FN073446?an=3.

[22] Maanen, J.V., & Schein, J.E. (1979). Toward a theory of organizational socialization. *Research in Organizational Behavior*, 1, 209-264.

[23] Ministry of Economy of Ukraine. (2022a). *Enterprise relocation program: What businesses need to know*. Retrieved from https://www.me.gov.ua/News/Detail?lang=uk-UA&id=e4f18282-77af-4fdf-8134-ce4403d711f0&title=ProgramaRelokatsiiPidprimstv-ScheoPotribnoZnatiBiznesu.

[24] Ministry of Economy of Ukraine. (2022b). *Relocation: 725 enterprises moved to safe regions*. Retrieved from https://www.kmu.gov.ua/news/relokatsiia-725-pidpryiemstv-pereikhaly-v-bezpechni-rehiony.

[25] Nedoshitko, A., & Yaremko, I. (2022). Peculiarities of entrepreneurship in the field of food technologies in the period of martial law: Relocation of enterprises. *Grail of Science*, 14-15, 63-69. doi: 10.36074/grail-of-science.27.05.2022.007.

[26] Order of the Cabinet of Ministers of Ukraine No. 246-r "On the Approval of the Plan of Urgent Measures to Relocate, if Necessary, the Production Facilities of Economic Entities from Territories where Hostilities are Taking Place and/or there is a Threat of Hostilities to a Safe Territory". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/246-2022-%D1%80#Text.

[27] Order of the Ministry of Economy of Ukraine No. 1325/18620 "On Approval of the Procedure for Submitting and Considering Proposals for Forming a List of State-Owned Objects of Strategic Importance for the Economy and Security of the State". (2010, December). Retrieved from https://ips.ligazakon.net/document/RE18620.

[28] Order of the Ministry of Economy of Ukraine No. 518 "On the Approval of Methodological Recommendations on Forecasting the Consequences and Assessing the Impact on the State of Economic Security of the State of the Privatization of Certain Categories of Enterprises". (2009, May). Retrieved from https://zakon.rada.gov.ua/rada/show/v0518665-09#Text.

[29] Order of the Ministry of Finance of Ukraine No. 170 "On Approval of the Methodology for the Analysis of Financial and Economic Activity of Enterprises of the State Sector of the Economy". (2006, February). Retrieved from https://zakon.rada.gov.ua/laws/show/z0332-06#Text.

[30] Panov, V. (2022). *Relocated enterprises are not only technologies and facilities, but also relocation of employees and their families*. Retrieved from https://fru.ua/ua/media-center/blog/panov/relokovani-pidpriemstva-tse-ne-tilki-tekhnologiji-ta-sporudi-tse-i-perejizd-pratsivnikiv-ta-jikh-simej.

[31] Plashchuk, L. (2022). *Guide for relocation of enterprises: Step-by-step action plan for relocation of enterprises*. Retrieved from https://golocal-ukraine.com/wp-content/uploads/2022/10/relokacziya-pidpri%D1%94mstv.pdf.

[32] Relocate and relocation: Definition and examples. (n.d.). Retrieved from https://marketbusinessnews.com/financialglossary/relocate-and-relocation/.

[33] Resolution of the Cabinet of Ministers of Ukraine No. 305 "On the Peculiarities of the Work of the Joint-Stock Company 'Ukrposhta' in the Conditions of Martial Law". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/305-2022-%D0%BF#Text.

[34] Resolution of the Cabinet of Ministers of Ukraine No. 314 "Some Issues of Ensuring the Conduct of Economic Activity in the conditions of Martial Law". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/314-2022-%D0%BF#Text.

[35] Resolution of the Cabinet of Ministers of Ukraine No. 481 "Some Issues of Organizing the Work of Employees of Economic Entities of the State Economy during the Period of Martial Law". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/481-2022-%D0%BF#Text.

[36] Resolution of the Cabinet of Ministers of Ukraine No. 83 "On the List of State-Owned Objects of Strategic Importance for the Economy and Security of the State". (2015, March). Retrieved from https://zakon.rada.gov.ua/laws/show/83-2015-%D0%BF#Text.

[37] Resolution of the Cabinet of Ministers of Ukraine No. 999 "On Determining the Criteria for Classifying State-Owned Objects as Having Strategic Importance for the Economy and Security of the State". (2010, November). Retrieved from https://zakon.rada.gov.ua/laws/show/999-2010-%D0%BF#Text.

[38] Sardhar, M.P.M. (2007). *Relocation policies*. Retrieved from https://www.citehr.com/33157-relocation-policy.html.

[39] Stetsenko, S.H. (2011). *Administrative law of Ukraine* (3rd ed.). Kyiv: Atika.

[40] Teniukh, Z.I. (2006). The functional role of strategic enterprises in the conditions of globalization. An alternative model of social development. In *XXI century: Alternative models of social development. The third world theory: Materials of the V international scientific and theoretical conference* (Book 3: Economic aspects of alternative models of social development; pp. 178-82). Kyiv: Fenix.

[41] Tereshchenko, M.M. (2019). State control: The essence, main approaches and concepts. *Scientific notes of V.I. Vernadsky Taurida National University. Series: Public Administration*, 30(4), 117-121. doi: 10.32838/2663-6468/2019.4/21.

[42] Transcarpathian Regional State Administration. (2022). *The economic forum "Relocation to Transcarpathia: European dimension" was launched*. Retrieved from https://carpathia.gov.ua/news/startuvav-ekonomichnij-forum-relokaciya-na-zakarpattya-yevropejskij-vimir.

[43] Tsubouchi, K., Okada, T., & Mori, S. (2021). Pathway of adaptation to community relocation: Prospects and limitations of community-centred planning. *International Journal of Disaster Risk Reduction*, 66, article number 102582. doi: 10.1016/j.ijdrr.2021.102582.

[44] Relocation. (n.d.). Retrieved from https://www. vocabulary.com/dictionary/relocation.

[45] Yong-Sik, H., & Kidong, K. (2018). The effects of inter-partner trust on third-country relocation of international joint ventures in China. *Sustainability*, 10(7), article number 2384. doi: 10.3390/su10072384.

Публічний контроль за релокацією стратегічних об'єктів державної власності

Олена Сергіївна Яра

Доктор юридичних наук, професор
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0002-7245-9158

Олена Василівна Гулак

Доктор юридичних наук, професор
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0001-9004-0185

Сергій Вікторович Слюсаренко

Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна
https://orcid.org/0000-0002-6718-222X

Юрій Васильович Данилюк

Кандидат юридичних наук, старший науковий співробітник
Інститут законодавства Верховної Ради України
04053, пров. Несторівський, 4, м. Київ, Україна
https://orcid.org/0000-0002-7342-8345

Сергій Олександрович Мосьондз

Доктор юридичних наук, професор
Університет сучасних знань
03150, вул. ВеликаВасильківська, 57/3, м. Київ, Україна
https://orcid.org/0000-0003-4417-1074

Анотація

Актуальність обраної теми дослідження зумовлено тим, що повномасштабне вторгнення російської федерації в Україну викликало необхідність переміщення підприємств, особливо стратегічних об'єктів державної власності, із зони активних бойових дій у безпечніші регіони. Тож постала необхідність унести корективи у сферу публічного контролю за об'єктами, що мають стратегічне значення для економіки, безпеки й життєдіяльності країни у важкий для неї час. Мета дослідження – з'ясувати стан публічного контролю як регулювання процесу релокації в правовому контексті нормативного забезпечення та запропонувати вдосконалення державного регулювання з огляду на наявні норми національного законодавства, регуляторні акти й програми. У процесі написання статті використано загальнонаукові та спеціальні методи, як-от: аналізу й синтезу, дедукції та індукції, формалізації, формально-юридичного, порівняльно-правового, а також методу правового моделювання. У результаті дослідження проаналізовано правове регулювання публічного контролю релокованих стратегічних об'єктів у системі чинних процедур переміщення. Охарактеризовано доктринальні й законодавчі підходи до тлумачення контролю, публічного контролю, стратегічних підприємств і власне релокації. Розглянуто особливості міжнародної підтримки релокації українських підприємств до безпечніших регіонів. Визначено основні способи оптимізації процесу релокації, окреслено необхідність законодавчо закріпити визначення цього процесу та пов'язаних з нимпонять, а також розкрито нормативне регулювання публічного контролю за стратегічними підприємствами. Обґрунтовано необхідність встановити спеціальний правовий режим публічного контролю за релокацією. Практична цінність одержаних результатів полягає в тому, що їх можна використати в розробці нових нормативно-правових актів, що визначатимуть належний правовий механізм в одному кодифікованому акті щодо релокації бізнесу з територій, що не є безпечними

Ключові слова: переміщення; бойові дії; безпечні регіони; воєнний стан; кодифікований акт

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03041, вул. Героїв Оборони, 15, м. Київ, Україна,
E-mail: info@environmentalscience.com.ua
www: https://environmentalscience.com.ua/uk

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National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony, Kyiv, Ukraine
E-mail: info@environmentalscience.com.ua
www: https://environmentalscience.com.ua/en