

Law. Human. Environment

Journal homepage: <https://environmentalscience.com.ua/en>
Law. Human. Environment, 12(2), 6-12



UDC 340.116(477)

DOI: 10.31548/law2021.02.01

On the emergence of new branches in the Ukrainian legal system

Alla Zemko*

PhD in Law, Associate Professor
Lutsk National Technical University
43018, 75 Lvivska Str., Lutsk, Ukraine

Yulia Pundor

PhD in Law, Associate Professor
Lutsk National Technical University
43018, 75 Lvivska Str., Lutsk, Ukraine

Article's History: **Abstract**

Received: 1.04.21

Revised: 15.05.21

Accepted: 20.06.21

The article analyses the current approach to the allocation of new branches in the legal system of Ukraine. The modern world does not stand still and is constantly evolving, giving impetus to the development of all spheres of human life, and, accordingly, relations arise which require legal regulation. Some scholars believe that if there is an independent subject of legal regulation, its own methodology of legal regulation and a set of specialized legislative acts, it is possible to distinguish an autonomous branch of law. The author determines that the emergence of new branches of law is hindered by the dominant concept of the existence of only the main ones. Proponents of this concept categorically reject the possibility of the existence of relevant secondary, complex branches of law. This scientific approach hinders the study of modern social legal relations. A negative attitude to the separation of new branches of law inevitably leads to gaps in the field of special legal research and,

Suggested Citation:

Zemko, A., & Pundor, Yu. (2021). On the emergence of new branches in the Ukrainian legal system. *Law. Human. Environment*, 12(2), 6-12.



*Corresponding author

Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

as a result, to a shortage of qualified personnel with specialized knowledge. It is necessary to take into account the positive experience of foreign lawyers who boldly present the developments of current practices and are not afraid to consider them as branches of law, we mean educational, sports, military, gender, “cryptocurrency”, admiralty, law, etc. The author concludes that the division of law into new branches makes it possible to regulate legal relations in the relevant areas of activity more effectively, given that global trends are increasingly demanding universal lawyers, but with specialization, with in-depth knowledge in a particular or several branches of law

Keywords: branch of law, subject of legal regulation, method of legal regulation, complex branch of law

Introduction

The issue of distinguishing branches of law will remain relevant as long as the legal society develops. For example, today, the global legal community is increasingly immersed in the concept of “Blockchain Law,” which is understood as “cryptocurrency law,” although this concept differs from the literal translation. As early as 2017, the Verkhovna Rada of Ukraine registered draft laws designed to regulate the circulation of cryptocurrencies in the country. In the draft regulations, the authors considered the following concepts: cryptocurrency, cryptocurrency exchange, cryptocurrency basket, blockchain system, miner, mining. So far, these bills have not been adopted, but experts say that Ukraine cannot escape the digital age, and therefore the issue of cryptocurrency and its circulation needs to be legally regulated. The legislative vacuum slows down the country’s development, and in practice, it is important that the legal aspect keeps pace with the technical one. The tax branch of law must evolve to adapt to modern economic relations in society.

To summarize the above, we believe that today Ukraine does not need to separate the cryptocurrency branch of law, but the example above makes it clear that there is no escape from innovations in law, and such areas as educational, sports, military, gender, and juvenile law may find their place in the legal system in the future.

Such scholars as: R.M. Dudnyk [1], V.L. Fedorenko [2], Y.N. Oborotova [3], M.S. Kelman, O.G. Murashyn and N.M. Khoma [4], I.I. Lukashuk [5], Y.S. Shemshuchenko [6], R. Braslavskiy [7], T.E. Murakhovska [8], R.M. Zholobchuk [9].

The purpose of the article is to analyse the current approach to the allocation of new branches in the system of law of Ukraine, as well as to determine the feasibility of the latter in national law, taking into account foreign experience.

Results and Discussion

A branch of law is defined as the largest, relatively separate subdivision of the legal system, which contains legal norms regulating a certain, qualitatively distinguished sphere of

social relations and usually requires specific means of legal regulation [2].

In a narrow sense, a branch of law is a grouping of legal norms that regulate homogeneous social relations through the use of a specific method of legal regulation to achieve a specific social goal [3].

Classifications of branches of law into:

- profiling (traditional), procedural, special [4]. The criterion for this classification is the degree to which substantive and procedural rules are combined within one branch of law. Thus, profiling branches are a system of substantive rules, procedural branches are a system of procedural rules, and special branches combine both substantive and procedural rules;

- profiling, special and comprehensive. At first glance, it seems that this classification is based on the peculiarities of the subject matter and method of legal regulation, but a closer examination of the elements of this classification leads to the conclusion that it is not perfect;

- core (fundamental) branches of law: constitutional, civil, administrative, criminal, and procedural (civil and administrative). Further, the main branches of law are labour, family, land, financial, criminal, and penal law, etc. Complex branches of law – tax, environmental, banking, etc.

The emergence of new branches of law is primarily associated with the expansion of the range of objects of legal regulation. This expansion is due to the emergence of new relations at the present stage of society's development which, due to their social significance, must be regulated by law. The existence of public interest determines the emergence of regulations governing such relations [5].

Thus, there is no consensus among legal scholars on the possibility of recognizing some “complex” branches of law [1].

It is worth agreeing with the researchers who note that even the not always justified and explainable complication of the structure of the legal system due to the allocation of new artificial branches of law has its own logical explanation based on objective factors of deepening and differentiation of the structure of the layer of modern social relations, the complexity of which cannot be taken into account and covered by existing branches of law. This process will continue in the future, which, of course, should be taken for granted by legal science [6]. Traditionally, the subject matter and method of legal regulation are distinguished as the main criteria for the formation of new branches of law.

Scientists have proposals to expand and formulate a list of prerequisites for the formation of a branch of law, which, in particular, include: recurring social relations that can act as an object of external control (the range of social relations should be wide, peculiar, homogeneous, but multifaceted); social need for a comprehensive regulation of such relations (they should affect the interests of a large number of subjects of law and meet the most important needs of our time in specific conditions of social life). In this case, it should be noted that political or social transformations taking place in a particular state, events of heterogeneous nature may act as a catalyst for the formation of a branch of law [7].

T. Murakhovska [8] proposes to distinguish the following stages of formation of new branches of law:

- formalization of normative prescriptions that regulate new social relations or their new manifestations;
- gradual formation on the basis of the unification of such norms, institutions of law;
- formation of legal institutions that are complex in nature;
- transformation of already established institutional forms;
- formation of a complex institution of interdisciplinary nature;
- emergent influence of a complex interdisciplinary institution on the formation of new rules of law;
- formation and progressive development of a new branch of law.

Complex branches of law are characterized by the multifaceted nature of social relations that are the subject of legal regulation of the branch. The generally recognized ones include environmental, economic, information, and juvenile law. Discussions are still underway to recognize the autonomy of such branches of law as sports, education, gender, and healthcare.

According to R.M. Dudnyk [9], military, migration, juvenile, gender, and energy law can be attributed to new branches of law, given that the latter have their own subject matter of legal regulation; their own methodology of legal regulation; and a set of specialized legislative acts.

In contrast to domestic scholars, foreign lawyers boldly present their work on new practices and are not afraid to consider them branches of law. Let us consider a few of them.

Education law generally covers legal issues related to educational institutions, their students, and staff. This area covers the protection of the rights of students and

teachers, exposing fraud in the learning process, developing new educational policies, discrimination and school discipline, administration of educational institutions, separation of church and education, etc. [10].

In Ukraine, the separation of the field of education law is quite controversial. Scholars provide both pro and con arguments. It is too early to consider education law as an established branch, but its separation is gradually taking place due to the formation of an independent subject and method of legal regulation and a number of legislative acts: The Law of Ukraine "On Education", the Law of Ukraine "On Higher Education", the Law of Ukraine "On Complete General Secondary Education", the Law of Ukraine "On Vocational (Vocational and Technical) Education", the Law of Ukraine "On Professional Higher Education", the Law of Ukraine "On Scientific and Scientific and Technical Activities", the Law of Ukraine "On Preschool Education", the Law of Ukraine "On Out-of-School Education" and many other legal acts [11].

Foreign lawyers practice in the field of "elder law", which literally translates as "elder law". This area regulates legal relations between persons who have reached retirement age, over 65 years of age (given that life expectancy is increasing). This includes issues of insurance, medical care, real estate, guardianship, drafting wills, etc. [12].

"Animal law" is considered to be legislation on the protection of animal rights. In addition to the obvious call to defend the cause of "furry friends," this branch covers criminal, contractual, administrative, civil, tort, and housing law. The popularity of this field is growing, especially with the decline in the birth rate and the increase in pet

ownership. The industry specializes in issues of animal abuse and neglect, attacks on dogs (animals), veterinarian negligence, or other disputes related to pets [13].

Admiralty (Maritime) Law is typical for the countries of the Anglo-Saxon legal family. It regulates business transactions and property disputes related to maritime trade, sailors, shipping, or the marine environment. It is not synonymous with the law of the sea, which is public international law and regulates relations related to mineral resources or the jurisdiction of coastal waters [14].

“Entertainment Law” literally translates as “entertainment law” or “entertainment law” is mostly related to intellectual property, but focuses in detail on the rights and royalties of the media in the fields of art, music, television, film, and athletics. With the rapid development of information technology and social media, entertainment attorneys are working in a constantly changing environment [15].

“Blockchain Law” is a bit of a misnomer, but in order to preserve the meaning of the concept, we translate it as “cryptocurrency law”. Blockchains were one of the hottest technology topics in 2017 and 2018. “Bitcoin”, “mining”, “blockchain” are definitions that, according to financial experts, should be enshrined in national legislation. Although it remains to be seen whether this technology will be able to fulfil its initial

promises in general, early applications of blockchains for legal purposes, such as the creation of contracts, remain promising [16].

Experts say that attorneys who understand blockchain and its implications are more likely to be able to realize their abilities, given the growing demand for cryptocurrency in the coming years.

Conclusions

The emergence of new branches of law is caused by scientific and technological progress, the development of market relations, and the economic, political, social and spiritual development of society as a whole.

Above, we have considered the narrow specializations in which foreign lawyers (attorneys) work, which, accordingly, affects the existence of many independent branches of law. We agree that we should not recognize as branches of law those entities that are not, because this negatively affects the mechanism of legal regulation in general. However, we also share the opinion of R.M. Dudnyk, who believes that the newly formed branch of law is a system that is in demand by legal practice and science.

Therefore, we should not be surprised by the emergence of modern legal phenomena, as it is quite natural that practical industry achievements influence the formation of new or change existing general theoretical legal structures.

References

- [1] Dudnyk, R.M. (2015). To the problem of identifying the systemic expression of factors affecting the process of formation of new branches of Ukrainian law. *Law and Society*, 4, 8-12.

- [2] Fedorenko, V.L. (2009). *The system of constitutional law of Ukraine: Theoretical and methodological aspects*. Kyiv: Lira-K.
- [3] Oborotov, Y.N. (2011). *General theoretical jurisprudence*. Odesa: Fenix.
- [4] Kelman, M.S., Murashyn, O.G. & Khoma, N.M. (2004). *The general theory of the state and law*. Lviv: Novy Svit.
- [5] Lukashuk, I.I. (2000). *Globalization, state, law, XXI century*. Moscow: Iskra.
- [6] Shemshuchenko, Yu.S. (2013). *Legal doctrine of Ukraine. Doctrinal problems of ecological, agrarian and economic law*. Kharkiv: Pravo.
- [7] Braslavskiy, R. (2017). *Transformation of the sub-branch of tax law into an independent branch of law. Entrepreneurship, Economy and Law, 7*, 83-85.
- [8] Murakhovska, T.Y. (2011). *Formation of new industries in the legal system of Ukraine*. Kharkiv: Yaroslav Mudryi National Law University.
- [9] Dudnyk, R.M. (2016). *Branch differentiation of Ukrainian law: concepts, levels and development trends*. Odesa: National University "Odesa Law Academy".
- [10] What is educational law? (2021). Retrieved from https://learn.org/articles/What_is_Education_Law.html.
- [11] Zholobchuk, R.M. (2017). Educational law as an independent branch of Ukrainian law. *Scientific Bulletin of the Uzhhorod National University*, 47, 12-15.
- [12] What is ancient law? (2021). Retrieved from <https://www.findlaw.com/elder/what-is-elder-law.html>.
- [13] Animal welfare and protection: explanation of EU laws. (2021). Retrieved from <https://www.europarl.europa.eu/news/en/headlines/society/20200624STO81911/animal-welfare-and-protection-eu-laws-explained-videos>.
- [14] US Maritime Law Association. (2021). Retrieved from <https://mlaus.org/>.
- [15] International Association of Entertainment Industry Lawyers. (2021). Retrieved from <http://www.iael.org/>.
- [16] Areas of legal practice that continue to develop. (2021). Retrieved from <https://www.kentlegal.com/2020/02/14/5-legal-practice-areas-that-are-continuing-to-grow/>.

Про виникнення нових галузей в системі права України

Алла Михайлівна Земко

Кандидат юридичних наук, доцент
Луцький національний технічний університет
43018, вул. Львівська, 75, м. Луцьк, Україна

Юлія Олегівна Пундор

Кандидат юридичних наук, доцент
Луцький національний технічний університет
43018, вул. Львівська, 75, м. Луцьк, Україна

Анотація

У статті проаналізовано актуальний підхід до виокремлення нових галузей у правовій системі України. Сучасний світ не стоїть на місці, постійно розвивається та дає поштовх для розвитку усіх сфер життя людини, відповідно виникають відносини, котрі потребують правового регулювання. Деякі науковці вважають, що за наявності самостійного предмета правового регулювання, власної методики правового регулювання та сукупності спеціалізованих законодавчих актів можливо виділяти автономну галузь права. Визначено, що появі нових галузей права заважає домінуюча концепція про існування лише основних. Прихильники цієї концепції категорично відкидають можливість існування відповідних вторинних, комплексних галузей права. Такий науковий підхід гальмує вивчення сучасних суспільних правовідносин. Негативне ставлення до виокремлення нових галузей права неминуче призводить до прогалин у сфері спеціальних правових досліджень і, як наслідок, до нестачі кваліфікованих кадрів, які володіють спеціальними знаннями. Необхідно врахувати позитивний досвід іноземних колег юристів, котрі сміливо презентують доробки актуальних практик та не бояться вважати їх галузями права, маємо на увазі освітнє, спортивне, військове, гендерне, «криптовалютне», адміралтейське, право та ін. Зроблено висновок, що розподіл права на нові галузі дає змогу ефективніше регулювати правові відносини у відповідних сферах діяльності, враховуючи, що світові тренди все більше задають попит на універсальних юристів, але зі спеціалізацією, з глибокими знаннями у певній чи кількох галузях права

Ключові слова: галузь права, предмет правового регулювання, метод правового регулювання, комплексна галузь права
