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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

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Abstract

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,

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*Corresponding author

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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.

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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



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The principle of environmentalization in agrarian law

Volodymyr Yermolenko*

Full Doctor in Law, Professor,
Corresponding Member of the National Academy
of Legal Sciences of Ukraine
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

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The article considers the importance of ecologization of modern agricultural production in the context of increasing use of toxic substances of chemical or biological origin, which requires directing modern agricultural production towards ecologization of artificial and natural production factors, making these issues of extreme relevance. The author presents the conceptual and categorical transformation of the environmental aspects of agriculture, which alternately took the form of a principle of agrarian law, first as the principle of greening of labour activity in agriculture, then as the principle of greening of agriculture, the environmental orientation of entrepreneurship in the agricultural sector, and even later as the principle of greening of agriculture, and finally as the principle of greening of agrarian legislation. The author also presents other variants of the author's positions, among which the author considers the ecologization of agrarian law or the principles of agrarian law themselves, as well as

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*Corresponding author

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the State agricultural policy. Proceeding from the general legal nature of the principles, the implementation of which requires embodiment in the regulatory provisions of legislation, the author substantiates the priority of formulating the principle of ecologization of agrarian legislation. At the same time, the author provides examples of greening of the content of statutory agrarian laws, as well as non-greened statutory laws, which indicates that the principle under consideration is incompletely implemented in agrarian legislation. The author analyses the array of functional agrarian laws in certain areas of activity, which in terms of quantitative measurement and scope of coverage prevail over the greening of status laws

Keywords: principle, ecologization, agrarian law, ecologization of agrarian legislation

Introduction

Modern agricultural production is not possible without the use of a wide range of toxic substances of chemical or biological origin, which are contained in mineral fertilizers, plant protection and animal care products, industrial waste, etc. If ingested through food, these substances can cause serious mass poisoning, allergic and chronic diseases. Another danger is the release of chemicals into the environment – soil, water, air, sub-soil, plants and animals. The problem of uncontrolled mutations of plants and animals when genetically modified organisms are released into the environment is also poorly understood, but no less dangerous. All of this requires that modern agricultural production be directed towards the greening of artificial and natural production factors, making these issues of utmost urgency.

For the first time, the environmental aspect was embodied in agrarian law as the principle of greening labour activity in agriculture [1]. Later, this principle was transformed by B.O. Voronin [2] into the principle of ecologization of agriculture, the ecological orientation of entrepreneurship

in the agricultural sector. This principle was included in the national agrarian and legal doctrine under the name of agricultural ecologization [3] and was accepted by the scientific community [4]. However, based on the dynamism of scientific knowledge, ideas about the objects of knowledge are constantly changing under the influence of the criteria of objectivity, which, in turn, are also not constant due to the dialectical relativity of even absolute truth.

Hence, the purpose of the article is to clarify the substantive characteristics of the peculiarities of the impact of environmentalization on the formulation of the relevant principle of agrarian law.

Results and Discussion

The following is the principle of environmentalization of agricultural legislation, which is an agrarian law projection of the natural law principle of everyone's inalienable right to a healthy environment. At the same time, it should be noted that greening is now gaining not only intersectoral [5] but also interdisciplinary significance [6]. However, the

inter-sectoral level does not cover the insurmountable specifics of agriculture and the relevant agricultural legislation, which is why this principle is definitely sectoral.

The modern agrarian law doctrine is dominated by two main visions of the principle of ecologization: of agricultural production [4; 7] and of agrarian legislation [8]. However, at the level of individual publications, the greening of agrarian law [9] or the principles of agrarian law themselves [10], as well as the state agrarian policy [11] are considered in parallel as options. As for the greening of agricultural production and agrarian legislation, despite the external difference between these formulations, they are closely related, expressing different vectors of greening and levels of initial application. In the first case, agricultural production itself is being greened with the determination of further changes in agricultural legislation. This direction is illustrated by the conclusion of B.O. Voronin [2], who singled out as a principle the greening of agriculture and the environmental orientation of entrepreneurship in the agricultural sector, the latter of which should be a red thread in the development of modern agricultural legislation. On the other hand, there is the direct greening of agrarian legislation, which means the penetration of environmental requirements into institutions, sub-institutions, norms and legal acts containing them, the placement of environmental norms in other branches of law, in particular agrarian law, as the closest to nature management, which has been one of the first to be greened for many decades [8]. Here, we can see a different direction and initial object of greening. First, agrarian legislation is greened, which

then has a reverse effect on the relations of agricultural production. What is noteworthy here is that representatives of agrarian law prefer to formulate the principle of greening agricultural production, while environmental law prefers to green agricultural legislation. It is difficult to determine which direction is more effective, because despite the overwhelming tendency of legal norms to follow emerging social relations, one cannot deny the existence of a stimulating influence of legal norms on the emergence of new relations. However, based on the legal nature of the principles, the implementation of which requires embodiment in the normative provisions of legislation, it is more appropriate to formulate the principle of environmentalization of agricultural legislation.

In the absence of a codified act of agrarian legislation, the latter's environmentalization is implemented in the context of separate regulatory legal acts, in particular, status and differentiated laws. As for status laws, environmentalization provisions are contained directly in the norms that define the obligations of agricultural entities. For example, these are the provisions of Art. 15 of the Law of Ukraine "On Farming" [12], according to which the latter and its members must:

- comply with the requirements of environmental legislation;
- prevent soil fertility decline and preserve other useful properties of the land;
- provide the relevant executive authorities and local governments with data on the condition and use of land and other natural resources;
- comply with sanitary, environmental and other requirements for the quality of products.

Similarly, according to Art. 7 of the Law of Ukraine “On Personal Peasant Farming” [13], members of a private farm have:

- comply with the requirements of environmental legislation;
- increase soil fertility and preserve other useful properties of the land;
- comply with restrictions related to the establishment of security zones;
- comply with applicable product quality, environmental and other requirements in accordance with the law.

Article 12 of the Law of Ukraine “On Collective Agricultural Enterprises” [14] obliges members of a CAE to:

- efficiently use land in accordance with the on-farm land management project, increase soil fertility, apply environmental protection technologies, and prevent deterioration of the environmental situation on the territory as a result of their business activities;
- to implement a set of measures to protect land provided for by the land legislation;
- maintain erosion control structures, irrigation, and drainage systems;
- comply with the regime of sanitary zones and specially protected areas;
- take measures to prevent the possibility of rain and wastewater runoff, penetration of pesticides and mineral fertilizers on the adjacent land plot.

These are convincing examples of the greening of status agrarian laws. However, not all of these laws are “greened”. For example, agricultural cooperative legislation does not contain any environmental provisions.

This applies to both the original version of the Law of Ukraine “On Agricultural Cooperation” [15-17] and its subsequent versions.

Manifestations of the environmentalization of functional laws in the areas of activity are the provisions of Articles 14-26 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products” [18], which regulate the requirements for organic production, Articles 12-13 of the Law of Ukraine “On Pesticides and Agrochemicals” [19], which determine the procedure and specifics of the use of pesticides and agrochemicals, Articles 6, 9 of the Law of Ukraine “On Milk and Dairy Products” [20], which set requirements for the safety and quality of milk and raw milk

Conclusions

The modern agrarian legal doctrine is dominated by two main visions of the principle of ecologization: agricultural production and agricultural legislation. The first direction of application of ecologization reflects to a greater extent economic and technological aspects. Therefore, based on the legal nature of the principles, the implementation of which requires embodiment in the normative provisions of legislation, it is more appropriate to formulate the principle of environmentalization of agricultural legislation. At the same time, this conclusion corresponds to the current state of development of agrarian relations, which does not exclude further scientific research in this area.

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Принцип екологізації в аграрному праві

Володимир Михайлович Єрмоленко

Доктор юридичних наук, професор,
член-кореспондент НАПрН України

Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

Розглянуто важливість екологізації сучасного сільськогосподарського виробництва в умовах зростання рівня застосування токсичних речовин хімічного чи біологічного походження, що вимагає спрямування сучасного аграрного виробництва у напрямі екологізації штучних і природних виробничих факторів, надаючи цим питанням надзвичайної актуальності. Наведено понятійно-категорійну трансформацію екологічних аспектів сільського господарства, які по чергово набули форми принципу аграрного права спочатку як принципу екологізації трудової діяльності в сільському господарстві, далі – принципу екологізації сільського господарства, екологічної спрямованості підприємництва в аграрній сфері, ще пізніше – екологізації сільського господарства і, нарешті, набув формулювання принципу екологізації аграрного законодавства. Викладено й інші варіанти авторських позицій, серед яких розглядається екологізація аграрного права або безпосередньо самих принципів аграрного права, а також державної аграрної політики. Виходячи із загальноправової природи принципів, реалізація яких потребує втілення саме в нормативні приписи законодавства, обґрунтовано пріоритет формулювання принципу екологізації аграрного законодавства. При цьому наведено приклади екологізації змісту статусних аграрних законів, а також не «екологізованих» статусних законів, що свідчить про неповне втілення розглядуваного принципу у аграрне законодавство. Проаналізовано масив функціональних аграрних законів за окремими напрямками діяльності, які в кількісному вимірі та за обсягом охоплення переважають екологізацію статусних законів

Ключові слова: принцип, екологізація, аграрне право, екологізація аграрного законодавства



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Legal basis of rural hospitality in the context of inclusive rural development

Olena Hafurova*

Full Doctor in Law, Professor

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

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The article provides a scientific and theoretical analysis of the legal framework of rural hospitality in Ukraine in the context of inclusive rural development. Special attention is paid to the justification of the expediency of developing and adopting a special law which would define the general legal, organizational, socio-economic principles of regulation of citizens' activities in this area. It is noted that the draft Law of Ukraine "On Stimulating the Development of Rural Hospitality in Ukraine" is characterized by a number of positive features. These include the following: rural hospitality is defined as a diversified activity that can be carried out by any household located in rural areas; the provision of rural hospitality services is not an entrepreneurial activity (Article 3 of the draft). Thus, the process of establishing legislation in the field of rural hospitality is currently underway. It is aimed at creating a framework for broader involvement of the rural population in the provision of tourism services and improving their

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*Corresponding author

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economic situation. This contributes to improving the level and quality of life in rural areas, and thus to ensuring inclusive rural development

Keywords: inclusive rural development, rural green tourism, rural hospitality, rural area, rural population, private farming

Introduction

Restrictions on the movement of citizens caused by the COVID-19 pandemic, a drop in their incomes as a result of the economic crisis, and, accordingly, the loss of confidence in their future by a large part of the population have had a negative impact on the development of the global tourism industry. In such circumstances, the issue of further development of domestic tourism is of particular relevance. On the one hand, Ukrainians are increasingly starting to pay attention to recreational opportunities within their country. This is especially true for rural areas, which have significant tourism potential. First of all, it is about receiving rural green tourism services (hereinafter referred to as RGT) provided by persons who run private farms (hereinafter referred to as PFH). On the other hand, this type of activity is aimed at ensuring inclusive rural development, as it creates conditions for various categories of rural population, mainly the poor, to start their own business.

The study of issues of legal regulation of sustainable development of rural areas, including rural green tourism, is devoted to the works of leading domestic experts in the field of agrarian law, in particular: V.M. Yermolenko [1], T.O. Kovalenko, I.M. Kulchii, V.V. Nosik, A.M. Stativka, V.Y. Urkevych.

The purpose of this article is to conduct a scientific and theoretical analysis of the legal framework of rural hospitality in Ukraine in the context of inclusive rural development. Particular attention is paid to substantiating the expediency of developing and adopting a special law which would define the general legal, organizational, socio-economic principles of regulation of citizens' activities in this area.

Results and Discussion

In the economic literature, inclusive rural development is defined as both an outcome and an instrument of rural development that ensures an inclusive improvement in the quality of life, where all, without exception, have and realize economic, social, and political rights, develop their potential and benefit from the advantages arising in the local environment. This process leads to significant improvements in the economic opportunities and livelihoods of all rural people (not just specific groups), small farmers, women and youth, poor and landless peasants, marginalized social groups and ethnic minorities [2]. As for the concept of rural development (development of rural areas) itself, it was proposed by representatives of agrarian and legal science. In particular, V.M. Yermolenko [1] understands sustainable development of

rural areas as a system of organizational, economic, political and legal measures aimed at ensuring proportional and simultaneous, irreversible and stable progressive changes in the production, social and environmental spheres which occur proportionally and simultaneously in each of the components of rural areas. Such development includes a gradual increase in the standard of living and quality of life of the population living in rural areas; growth and efficiency of agricultural production; improvement of the environmental situation in rural areas [1]. It should be noted that EU legislation defines six priority areas of rural development. These are:

- promoting knowledge transfer, innovation in agriculture, forestry, and rural areas;
- increasing the viability and competitiveness of agriculture in all regions, promoting innovative agricultural technologies and sustainable forest management;
- promoting the organization of food chains, including processing and marketing of agricultural products, animal welfare and risk management in agriculture;
- restoring, preserving and strengthening ecosystems related to agriculture and forestry;
- promoting efficient use of resources, supporting the transition to a low-carbon and climate-resilient economy in the agriculture, food and forestry sectors;
- promoting social inclusion, poverty reduction and economic development in rural areas (Article 5 of Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural

Development (EAFRD) and repealing Council Regulation (EU) No 1698/2005 (Regulation (EU) No 1305/2013) [3].

Taking into account all of the above, it should be noted that activities in the field of agricultural and rural development contribute to inclusive rural development by involving low-income groups of the population in running their own businesses, growing organic products, preserving natural resources in rural areas, etc.

According to Ukrainian legislation, the implementation of activities in the area of agricultural production on the basis of the property of individual farms is characterized by a number of special features, which are mainly due to their legal status. First of all, it should be noted that neither the Law of Ukraine of May 15, 2003 "On Private Peasant Farms" (Article 1) nor the Commercial Code of Ukraine (Article 55) consider these farms as business entities. Accordingly, the provision of services in the field of rural transit does not require state registration of the individual farm as such an entity. Unfortunately, a significant obstacle to the spread of the idea of rural tourism is the lack of understanding of its fundamental difference from commercial tourism activities in legislative, governmental and educational circles. The NWT is mistakenly viewed as a tourism industry, i.e., it is identified with a highly profitable business in urbanized areas with all the consequences that follow [4]. Therefore, clear criteria should be established at the legislative level to distinguish between entrepreneurial and non-entrepreneurial activities in this area. In order to regulate this issue, the Verkhovna Rada of Ukraine adopted

in the first reading the draft Law of Ukraine on Amendments to the Law of Ukraine “On Private Peasant Farming” regarding the development of rural green tourism (Reg. No. 2232-a) [5]. It stipulated that this activity should be limited exclusively to the provision of services on the basis of the property owned by the individual farmers; accommodation of tourists in manor-type residential buildings where the owners themselves live with the number of places for vacationers not exceeding 10 [5]. Unfortunately, in the process of preparing for the second reading by the Verkhovna Rada Committee on Agrarian Policy and Land Relations, it underwent strange metamorphoses. Now it is a draft law “On Amendments to the Law of Ukraine ‘On Private Farming’ on the Development of Rural and Ecological (Green) Tourism” [6]. This document refers to other types of tourism (ecological (green) and rural), which completely changes its original meaning. In addition, it excludes the criteria that made it possible to recognize activities in the field of SRT carried out using the property of individual farms as non-entrepreneurial.

It should be noted that the legislation of a number of foreign countries either recognizes a similar type of activity as non-entrepreneurial or is subject to taxation on a preferential basis. For example, the legislation of the Republic of Belarus stipulates that the activities of individuals, in particular, those who conduct personal subsidiary farming on land plots allocated for this purpose, to provide services in the field of agroecotourism, are not entrepreneurial (clause 1 of the Decree of the President of the Republic of Belarus of October 9, 2017 No. 365 “On the

Development of Agroecotourism”) [7]. At the same time, it is established that the total number of rooms in an agro-ecological farmstead may not exceed 10 (clause 12). According to Polish law, income received from renting out guest rooms in residential buildings located in rural areas, on a farm, as well as income received from their meals, if the number of rooms rented out does not exceed 5, is not taxed (clause 43 of Article 21 of the Law of July 26, 1991 “On Taxation of Personal Income”) [8].

Unfortunately, today, according to industry experts, there is a growing trend towards the gradual transformation of rural tourism into tourism activities in rural areas, which has a negative impact on inclusive rural development due to a significant increase in the dichotomy between the rural population involved in obtaining livelihoods from agriculture and providing rural hospitality services and the rest of the citizens who use rural attractions and local resources for the tourism industry and their own enrichment [9]. This trend is also characteristic of the development of tourism legislation. Thus, the Draft Law of Ukraine “On Amendments to the Law of Ukraine “On Tourism” and Some Other Legislative Acts on the Basic Principles of Tourism Development” (Reg. No. 4162) [10] (in the part that relates directly to the Draft Law of Ukraine “On the Basic Principles of Tourism Activity” [10] (hereinafter – the Draft Law) states that the subjects of tourism activity are legal entities established in accordance with the legislation of Ukraine, as well as individual entrepreneurs who carry out and/or provide tourism activities and whose information is entered in the

Unified State Register of Entrepreneurs. In other words, persons providing services in the field of tourism, including rural tourism (rest in rural areas to get acquainted with the peculiarities of customs, traditions and life of the rural population and associated with temporary residence in a rural estate (clause 3 of Article 4 of the draft Law) [10], are considered by this draft law exclusively as business entities.

In the context of the above, it seems appropriate and timely for the Institute of Economics and Forecasting of the National Academy of Sciences of Ukraine to develop a draft Law of Ukraine "On Stimulating the Development of Rural Hospitality in Ukraine" [2]. It defines the general legal, organizational, socio-economic principles of regulation of citizens' activities in the field of rural hospitality, including on the basis of joint and several liability of providers and consumers of relevant services, in order to meet the recreational, cognitive, cultural and spiritual needs of the population, diversify the activities and incomes of rural households in the provision of recreational and health services in rural areas. It also establishes the principles of rational use of natural and recreational resources of rural areas and regulates relations related to the organization and provision of rural hospitality services aimed at the multiplier development of rural communities.

It should be noted that the concept of "rural hospitality" is related to the STS. The former is proposed to be understood as one of the types of diversified activities of rural households engaged in agricultural production. Activities in the field of rural hospitality involve the reception, organization of meals

and provision of other services to persons (guests) traveling or visiting rural areas for recreation, health improvement, educational purposes, to get acquainted with nature, historical heritage, traditions, peculiarities of rural lifestyle and work in agriculture. In other words, this type of activity is not related to tourism by its content.

In addition, it is particularly important, in our opinion, that, first, rural hospitality is defined as a diversified activity. Secondly, it is carried out by a household – a group of people who live together in one dwelling or part of it, provide themselves with everything necessary for life, run a common household, fully or partially pool and spend funds. These persons may be related to each other by blood or by marriage, may not be related to each other, or may be related to both. A household may consist of one person. That is, such households may include individuals who are members of a household, as well as those who have received a land plot for the construction and maintenance of a residential building and outbuildings (homestead), individual summer cottage construction and gardening, and live in rural areas. Thirdly, the draft law clearly states that the provision of rural hospitality services is not considered an entrepreneurial activity. Guests are accommodated in residential buildings where the owners live; the number of beds is limited to 10.

Conclusions

Thus, it should be noted that today the process of establishing legislation in the field of rural hospitality is underway. It is aimed at creating the basis for broader involvement

of the rural population in the provision of tourism services and improving their economic situation. This contributes to improving the level and quality of life in rural areas, and thus to ensuring inclusive rural development.

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Правові засади сільської гостинності в умовах інклюзивного сільського розвитку

Олена Вікторівна Гафурова

Доктор юридичних наук, професор

Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

У статті проведено науково-теоретичний аналіз правових засад сільської гостинності в Україні в умовах інклюзивного сільського розвитку. Окрема увага приділяється обґрунтуванню доцільності розробки і прийняття спеціального закону, який би визначив загальні правові, організаційні й соціально-економічні засади регулювання діяльності громадян у вказаній сфері. Зазначається, що проект Закону України «Про стимулювання розвитку сільської гостинності в Україні» характеризується рядом позитивних ознак. До них можна віднести наступні: сільська гостинність визначається як диверсифікована діяльність, яка може здійснюватися будь-яким домогосподарством, розташованим у сільській місцевості; надання послуг сільської гостинності не є підприємницькою діяльністю (ст. 3 проекту). Тож сьогодні відбувається процес становлення законодавства у сфері сільської гостинності. Воно спрямоване на створення підвалин для широкого залучення сільського населення до сфери надання туристичних послуг, покращення його економічного становища. Вказане сприяє підвищенню рівня і якості життя у сільській місцевості, а отже і забезпеченню інклюзивного сільського розвитку

Ключові слова: інклюзивний сільський розвиток, сільський зелений туризм, сільська гостинність, сільська територія, сільське населення, особисте селянське господарство



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New legislation on agricultural cooperation

Olena Hafurova

Full Doctor in Law, Professor

National University of Life and Environmental Sciences of Ukraine

03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Svitlana Marchenko*

PhD in Law, Associate Professor

Taras Shevchenko Kyiv National University

01033, 60 Volodymyrska Str., Kyiv, Ukraine

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Abstract

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The article provides a scientific and theoretical analysis of the trends in the development of Ukrainian legislation in the field of agricultural cooperation. The author notes that the Law of Ukraine dated July 21, 2020 "On Agricultural Cooperation" (the new Law), on the one hand, sets out in detail the basis for the functioning of these business entities, but, on the other hand, its content almost completely eliminates the basic principles of agricultural cooperation established by national legislation and also contradicts the principles of the cooperative movement. There is a general negative trend in the development of legislation on agricultural cooperation. It can be seen already in the Law of Ukraine of November 20, 2012 "On Amendments to the Law of Ukraine "On Agricultural Cooperation", which is characterized by a "truncated form" (only 16 out of 38 articles remain), a considerable number of reference provisions, and the establishment of advantages

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*Corresponding author

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for the development of agricultural service cooperation. With the adoption of the new Law, this trend has deepened and consists in the artificial separation of agricultural cooperation from the cooperative system and the gradual loss of its social orientation. This approach is unacceptable and will have a negative impact on the further development of not only agricultural cooperation as a social and legal phenomenon, but also agricultural production and the social sphere of rural areas

Keywords: cooperative principles, agricultural cooperative, agricultural service cooperative, agricultural production cooperative, agricultural cooperative for profit, agricultural cooperative without profit

Introduction

Agricultural cooperation is a traditional form of management of the Ukrainian peasantry. Its massive development dates back to the late 1890s and early twentieth century [1]. At that time, agricultural artels founded by M. Levytskyi in the Kherson region appeared, which are considered the first form of agricultural cooperation [2]. Unfortunately, today the share of agricultural cooperatives (hereinafter referred to as ACs) in the total number of enterprises operating in rural areas is insignificant. This is in contrast to a number of foreign countries where the cooperative movement is actively developing. Thus, India is the leader in terms of the number of active CAs, followed by the USA, France, Sweden, Germany, Morocco, and Canada. In England, about 40% of agricultural products are sold through cooperatives, and in France, where more than 90% of farmers are members of the SC, – 50% of such products [3]. In most of these countries, government policy is aimed at providing tax, financial, credit, investment, and other types of support to such organizations. In Ukraine, despite a considerable number of

regulations that provide for state support measures for these business entities, according to the State Statistics Service of Ukraine, as of February 1, 2021, only 1000 agricultural production companies (hereinafter referred to as APCs) and 1200 agricultural service cooperatives (hereinafter referred to as ASCs) were registered [4]. The adoption of the new Law of Ukraine of July 21, 2020 “On Agricultural Cooperation” (hereinafter – the new Law) should be a turning point in the development of the CA. Accordingly, it is of particular relevance to analyse the provisions of this legal act, which establishes fundamental changes in the legal status of the above-mentioned business entities.

The article is based on scientific research by leading Ukrainian agricultural lawyers: V.I. Fedorovych [1], V.M. Yermolenko [5], A.M. Stativka [6], V.Y. Urkevych [7].

In addition, the research was based on the scientific work of the classics of cooperative theory: O.M. Antsiferov [8], M.I. Tugan-Baranovsky [9], O.V. Chayanov [10].

The purpose of this article is to conduct a scientific and theoretical analysis of trends

in the development of Ukrainian legislation in the field of agricultural cooperation.

Results and Discussion

The revival of agricultural cooperation in independent Ukraine should be associated with the adoption of the Law of Ukraine “On Agricultural Cooperation” on July 17, 1997. This fact indicated a change in the state’s attitude to the cooperative form of agricultural production, which in practice was often identified with the former collective farms. However, further development of legislation in this area has seen a number of negative trends. Thus, the adoption of the Law of Ukraine of November 20, 2012 “On Amendments to the Law of Ukraine “On Agricultural Cooperation” [11], as rightly noted by V.M. Yermolenko [5], narrowed the scope of the agrarian legal regulation mechanism, giving priority to economic regulation. In addition, this law was “truncated” (only 16 out of 38 articles remained). Accordingly, it established that the general principles, concepts and norms of formation, functioning, management and liquidation of CAs and cooperative associations, control over their activities, rights and obligations of their members, formation of property, funds, prices and tariffs for products and services, as well as labour relations in such cooperatives and associations are regulated by the Law of Ukraine of July 10, 2003 “On Cooperation” [11] (clause 2, Article 2 of the Law of Ukraine “On Agricultural Cooperation” (hereinafter – the old Law). Of course, this approach of the legislator did not contribute to taking into account all the peculiarities of the legal status of the CA, and the presence

of a considerable number of reference provisions complicated the application of this law. Another negative feature of this legal act, which has been pointed out in the agrarian law literature, is the legislator’s attitude to CAEs. Thus, V.Y. Urkevych [7] noted that the law was biased towards the spread of agricultural service cooperation, and the development of production cooperation was practically not supported. A.M. Stativka [6] saw in it a steady tendency to liquidate agricultural production cooperatives.

As for the new Law, on the one hand, it sets out in detail the basis for the functioning of these business entities, but, on the other hand, its content almost completely eliminates the basic principles of agricultural cooperation established by domestic legislation. In this article, we will consider only some of the controversial provisions of this legal act. Thus, the said law amended Article 5 of the Law of Ukraine “On Cooperation” [11], according to which the latter’s provisions do not apply to the regulation of relations in the agricultural cooperative. As rightly noted in the remarks of the Main Legal Department of the Verkhovna Rada of Ukraine, such an approach to legislative regulation of social relations related to the establishment and operation of ICs, which provides for the non-extension of the Law of Ukraine “On Cooperation” [11] to them, is incorrect from a legal point of view. After all, these business entities are one of the types of cooperatives, and accordingly, the regulation of relations that arise, change, and terminate in the course of their activities should be conducted on the basis of the framework law.

It should also be noted that the drafters of the new Law use terminology that is not typical for the sphere of cooperation in general and agricultural cooperation in particular. The result of this approach was the practical identification of the IC and business associations. At the same time, the “new” categories are not filled with different content, they only formally replace the old ones. Thus, such concepts as authorized capital and share fund (Art. 2, Art. 20 of the Law of Ukraine “On Cooperation” [11]); contribution (additional contribution) and share contribution (additional share contribution; share in the authorized capital (Art. 1 of the new Law) and share (Art. 2, Art. 21 of the Law of Ukraine “On Cooperation” [11]); dividends and payments on shares; patronage dividends and cooperative payments are almost identical. The new Law retains the only feature that distinguishes cooperative-type enterprises from corporate ones – the right of membership.

Moreover, today we have a single organizational and legal form of a legal entity – a joint stock company, which can be of two types: A non-profit cooperative (hereinafter referred to as a non-profit) and a for-profit cooperative (hereinafter referred to as a for-profit). It should be noted that the analysis of the new and old cooperative laws allows us to draw an analogy between the CCA and the CCA and the CCAp. Thus, the following features are common to the CCA and the CCAp: their members can be both individuals and legal entities – agricultural producers; they provide services exclusively to their members; they do not aim to make a profit; they provide various types of services

(processing, procurement, procurement, storage, marketing, sale of agricultural products, etc.); they do not acquire ownership of agricultural products produced, grown, fattened, caught or harvested by its members – agricultural producers. The owners of agricultural products harvested, processed, supplied, marketed (sold) by such a cooperative are its members, etc. The main difference between the two is that the CBCP does not provide for associate membership and the possibility of distributing the income (profits) of the cooperative during the fiscal year. This is exactly what creates the conditions for recognizing such business entities as non-profit organizations.

As for the UCP and the SPC, they have in common the following: the goal of making a profit, the presence of associate membership, and the possibility for members to receive appropriate payments from their income (profits). However, the differences are quite significant. Firstly, agricultural production companies were created by uniting only individuals. This requirement is due to the fact that the members of such a cooperative are obliged to participate in its activities by working. Thus, this type of cooperative played an especially important social role in rural areas. After all, it helped to create jobs and provide the rural population with employment. The legislation gives the right to provide for mandatory labour participation of individual members in its activities in the charter.

Second, CAEs were created primarily for the purpose of producing agricultural products. Such activities are not prohibited for CAEs, but they are not mandatory

either. Thus, we can talk about the gradual transformation of CAs into business entities whose activities are mainly aimed at providing several types of services. The beginning of this process, associated with the adoption of the above-mentioned Law of Ukraine of November 20, 2012, was aptly called by V. Yermolenko [5] as a re-profiling of agricultural cooperation from direct production of agricultural products to servicing agricultural activities. It is interesting that the legislation restricts the right of the CAQ to provide services and conduct business transactions with persons who are not its members (associate members). In particular, it is established that their total value cannot exceed 20% of the cooperative's revenue for the year. In our opinion, such a provision violates the right of a business entity to freedom of entrepreneurial activity and puts the CGPA in unequal competitive conditions with other business entities.

Thirdly, it should be noted that the principle of distribution of net profit of a cooperative among its members in the CCA is similar to the process in business companies. Thus, members of this type of cooperatives are entitled to receive dividends and patronage dividends. The former means a part of the financial result (profit) of the cooperative remaining after payment of taxes, fees and other mandatory payments provided for by law, distributed among its members, associate members in proportion to the size of the share of each member, associate member. Their total amount may not exceed 80 percent of the net profit intended for distribution. Accordingly, at least 20 percent of such profit is reserved for patronage dividends

(determined in proportion to each member's share of turnover with the respective cooperative and/or in proportion to their labour participation (Article 26 of the above law). In the case of SOC and ASC, the total amount of payments for shares was strictly limited and could not exceed 20% of the income determined for distribution. In addition, the charters of the cooperatives could specify that these payments are made only for additional shares and for shares of associate members. Thus, CCAs are close to business companies in the following ways: 1) the majority of their net income is distributed among members; 2) the number of dividends received by members of such cooperatives directly depends on the size of their property participation. In other words, conditions are created under which the owner of a larger contribution will be able to receive a larger profit, while the member's personal labour participation or participation in the cooperative's business activities will be practically discouraged. This contradicts the very essence of cooperation, as evidenced by the statements of the classics of the cooperative movement. In particular, O.V. Chayanov [10] drew attention to the fact that in "cooperation capital is a servant, not a master". According to O.M. Antsiferov [8], the profit received as a result of business operations of a cooperative is not used to remunerate capital. And M.I. Tugan-Baranovsky [9] emphasized that the main purpose of the cooperative is to meet the material and other needs of its members. According to his definition, a cooperative is an economic enterprise whose purpose is not to obtain the highest profit on the capital invested, but to increase

the labour income of its members through the general management of the economy or to reduce the expenses of these members for their consumer needs [9].

The new Law stipulates that one of the principles of the IC is the principle of democracy, according to which members have equal rights in decision-making regardless of the size of the share, according to the rule that one member of the IC has one vote ("one member – one vote"), which is also in line with the Law of Ukraine "On Cooperation" [11]. However, the former establishes exceptions to this rule. Thus, the Charter of the IC may provide that during decision-making its members receive an additional number of votes proportional to their participation in the cooperative (the share of each of them in the turnover with the cooperative and/or labour participation in its activities). The question arises whether such an approach will not lead to the establishment of a direct correlation between the number of votes at the general meeting and the property participation of members in the activities of the cooperative?

Conclusions

In our opinion, the content of the Law of Ukraine of July 21, 2020 "On Agricultural Cooperation" contradicts the basic principles of the cooperative movement. Its significant shortcomings include: the non-extension of the Law of Ukraine "On Cooperation" to the CAs, the use of terminology not inherent in this area, which gives grounds (by external signs) to identify CAs and business entities; the gradual transformation of CAs into business entities whose activities are mainly aimed at providing various types of services rather than producing agricultural products; reduction in the number of jobs, as labour participation in CAs (including CAEs) becomes optional. Thus, there is a general negative trend in the development of legislation on agricultural cooperation. This is primarily due to the artificial separation of agricultural cooperation from the cooperative system and the gradual loss of its social orientation. This approach is unacceptable and will negatively affect the further development of not only agricultural cooperation as a social and legal phenomenon, but also agricultural production and the social sphere of rural areas.

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Новели законодавства про сільськогосподарську кооперацію

Олена Вікторівна Гафурова

Доктор юридичних наук, професор

Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Світлана Іванівна Марченко

Кандидат юридичних наук, доцент

Київський національний університет імені Тараса Шевченка
01033, вул. Володимирська, 60, м. Київ, Україна

Анотація

У статті проведено науково-теоретичний аналіз тенденцій розвитку законодавства України у сфері сільськогосподарської кооперації. Автор зазначає, що у Законі України від 21 липня 2020 р. «Про сільськогосподарську кооперацію» (новий Закон) з одного боку, докладно прописані основи функціонування вказаних суб'єктів господарювання, але, з іншого – його зміст практично повністю нівелює основні засади сільськогосподарської кооперації, встановлені вітчизняним законодавством, а також суперечить принципам кооперативного руху. У розвитку законодавства про сільськогосподарську кооперацію спостерігається загальна негативна тенденція. Вона прослідковується вже у Законі України від 20 листопада 2012 р. «Про внесення змін до Закону України «Про сільськогосподарську кооперацію», який характеризується «усіченою формою» (із 38 статей залишилося лише 16), значною кількістю відсилочних положень, встановленням переваг для розвитку сільськогосподарської обслуговуючої кооперації. Із прийняттям нового Закону, вказана тенденція поглибилася і полягає у штучному виокремленні сільськогосподарської кооперації із кооперативної системи та поступовій втраті її соціальної спрямованості. Зазначений підхід є неприпустимим і таким, що негативно впливатиме на подальший розвиток не тільки сільськогосподарської кооперації як соціально-правового явища, а й сільськогосподарського виробництва та соціальної сфери села

Ключові слова: кооперативні принципи, сільськогосподарський кооператив, сільськогосподарський обслуговуючий кооператив, сільськогосподарський виробничий кооператив, сільськогосподарський кооператив з метою отримання прибутку, сільськогосподарський кооператив без мети отримання прибутку



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Experience of EU countries in legal regulation of agricultural land turnover between agricultural producers

Maryna Deineha*

Full Doctor in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Ruslan Gutsol

Postgraduate Student
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

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The article examines the peculiarities of legal regulation of agricultural land turnover among agricultural producers in the EU countries and identifies the areas for improvement of national legislation in this area. The study finds that international experience indicates that there are various models of legal regulation of land turnover among agricultural enterprises which can be effective if they take into account the specific features of a particular country and national interests. Almost every country in the world regulates such turnover in one way or another. There are countries with "hard" and "soft" regulation of land transactions between agricultural producers. However, almost every developed

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*Corresponding author

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EU country gives priority to farmers who live in the area and run their own farms, as opposed to large agricultural holdings. Despite the fact that in the EU countries the legislation on the turnover of agricultural land between agricultural producers is based on different models of legal regulation, the positive experience of these countries should be used to improve the national legislation in this area. In the area of legal support for the use of land by agricultural producers, the national land legislation should pay special attention to granting pre-emptive rights to purchase agricultural land to farms, territorial communities, tenants, etc; provide for the establishment of a preferential procedure for the acquisition of such land and the granting of tax benefits; and define the limits of land concentration at the level of regions and united territorial communities or establish a permit procedure for the acquisition of land plots with an area larger than that established in a particular region or united territorial community

Keywords: agricultural land, turnover of agricultural land, agricultural producers, agricultural holdings, farms

Introduction

In the context of modern agrarian transformations, EU agriculture is facing new challenges and tasks. The family farming model, which has long been a benchmark for EU countries, is now under threat of slowing down. The inflow of foreign capital into agriculture through the purchase of shares in agricultural enterprises has led to the ownership of land by large agricultural holdings with foreign investments, which are not engaged in agriculture but see it as a regular investment project and a source of enrichment. The main reason for this was the “softening” of the mechanisms for regulating access to agricultural land, which led to the rapid emergence of agricultural holdings.

Given that the change in the legal forms of agricultural enterprises directly depends on the mechanisms for regulating access to land, in some EU countries there is a need to revise the models of legal regulation of

land relations [1]. And the experience of the EU countries is valuable for Ukraine, as it makes it possible to avoid numerous problems in building not only a mechanism for legal support of the creation and operation of agricultural holdings, but also an effective and transparent market turnover of agricultural land.

The legal status of agricultural producers has been studied by many scholars in the field of agrarian law, in particular: A. Bakytzhan, S. Saule and S. Sholpan [2], A.E. Dankevych [3], V.V. Dudarenko [4], O.Y. Yermakov and A.V. Kravchenko [5], I.T. Kishchak and S.V. Rachkovskiy [6], O.V. Khodakivska [7], T.M. Churylova [8] and other scholars.

The purpose of the article is to study the peculiarities of legal regulation of agricultural land turnover between agricultural producers in the EU countries and to identify

areas for improving domestic legislation in this area.

Results and Discussion

International experience shows that there are various models of legal regulation of land turnover among agricultural enterprises, which can be effective if they take into account the specific characteristics of a particular country and national interests. Almost every country in the world regulates such turnover in one way or another. There are countries with “hard” regulation of land transactions between agricultural producers, such as Denmark, or “soft” regulation, such as Germany [7]. However, almost every developed EU country gives priority to local farmers who live in the area and run their own farms, as opposed to large agricultural holdings.

Family farms in Western Europe account for 85% of all agricultural enterprises, cultivate 68% of agricultural land (compared to 25% in Eastern Europe) and produce 71% of the food in the old EU member states (EU-15). Of course, there are significant differences between countries: Italy and Austria focus on small and medium-sized family farming; Spain and France (to a lesser extent) on large-scale agricultural production by both agroholdings and large family farms; Germany on large family farms (100-250 hectares). However, even large farms in Germany are much smaller than those owned by agroholdings in Eastern Europe [7].

By contrast, agribusinesses dominate the agriculture of the vast majority of Eastern European countries. Agricultural producers with an area of more than 100 hectares own 75% of the region's agricultural land. They

usually have corporate ownership, although individual ownership is also present, on a smaller scale. Bulgaria is the most exemplary embodiment of this concept – 80% of the country's land resources are owned by 4 thousand companies, mostly corporate structures. Poland and Greece are the exceptions. The basis of agriculture in these countries is family farms, small (Poland) and small (Greece) agriculture. Thus, with the exception of Poland and Greece, agriculture in Eastern Europe is focused on large-scale agricultural production conducted by agroholdings [7].

Under EU legislation, agroholdings are primarily recognized as two or more related legal entities, one of which has a decisive influence on the will of other business entities in the course of agricultural production and economic activities. According to the European model, agroholdings are formed mainly in the organizational and legal form of a joint-stock company, where the parent (holding) company is given the opportunity to decisively influence the controlled companies by owning a block of shares (stakes). Such organizational and legal forms of agroholdings have proven to be the most stable (suitable) for the unification of large capital, which has made it possible to better diversify and modernize the entire technological cycle of agricultural production, as well as to establish a mechanism for processing and marketing agricultural products [4].

Legal support for the formation of land holdings by agricultural holdings in the EU countries has its own specifics, depending on the peculiarities of legal regulation of land relations in a particular country,

acquisition, registration and exercise of real rights to land in the form of ownership and use rights, primarily on a lease basis. EU countries apply different regulatory mechanisms based on national interests, the need to ensure food security, and the specifics of their economies and the organization of sustainable agriculture.

In Germany, there is no specific legislation on agroholdings, and the process of their establishment and operation is regulated by the Stock Corporation Act (1965) and the Limited Liability Company Act (1992). Thus, in accordance with paragraph 15 of the Stock Corporation Act, related companies are legally independent companies that are, in relation to each other, companies owned by a majority shareholder and companies with majority participation, dependent and dominant companies, and companies of a concern.

German law recognizes several types of such related companies. The closest to an agricultural holding by its legal nature is a concern. The main feature of a concern is the unification of one or more enterprises under the unified management of another enterprise. At the same time, German law defines the concept of an agricultural holding company as the dominant enterprise of a concern [4].

Germany's legal system is one of the most efficient systems of legal regulation of land relations, having been formed in view of the rapid growth in demand for land resources and the desire of the government to preserve the country's agricultural potential. German land legislation is quite developed and includes a large number of legislative acts. At the same time, unlike the land

legislation of Ukraine, it does not contain a codified legislative act that would specialize in regulating land relations. However, its role is successfully fulfilled by the German Civil Code, which was adopted in 1898.

The right to property is one of the fundamental rights guaranteed by the German Basic Law (Article 14). It also states that the use of property must simultaneously serve the common good. The subjects of land ownership in Germany are the Federation, federal states, communities, individuals and legal entities. At the same time, property relations, including land, are regulated in Germany exclusively under private law, primarily by the provisions of the German Civil Code, which defines general provisions on land rights, the content of property rights, acquisition and termination of land ownership, etc.

The German Basic Law combines the protection of property and the associated freedom to dispose of land with the social responsibilities that come with ownership. Given the impossibility of expanding the existing land area and its irreplaceability as a means of agricultural production, German law has established a not entirely free format for the circulation of agricultural land. The purpose of legal regulation of land relations of agricultural producers in Germany is to prevent threats to the optimal institutional structure of the agricultural sector.

In view of this, the German Act on Measures to Improve the Structure of the Agricultural Sector and to Protect Agricultural and Forestry Organizations of 28 July 1961 introduced the right of pre-emption for land to be held by those who live and work on the land, and introduced a rather complex and

detailed procedure for issuing permits for transactions involving the alienation of land plots. Permits for transactions with land plots are issued by local government authorities. Most often, such authorities are district (county) agricultural authorities [9].

The German Law on Measures for the Improvement of the Agrarian Structure and the Protection of Agricultural and Forestry Enterprises provides that a potential buyer who does not meet the established requirements may be denied the purchase of agricultural land in the event of:

- if the sale of land will lead to “undesirable” redistribution of land (in most cases, this rule applies when the buyer is not a farmer);
- if the structure of the farm is deteriorating due to a decrease in the size of land use, which may lead to a decrease in its efficiency, parcelization or the formation of land masses inconvenient for cultivation;
- the sale price of a land plot differs from the average sale price in a particular region by more than 50%. However, other thresholds may be set at the level of individual federal states [9].

In most cases, the refusal is explained by the fact that the agricultural land plot is sold to a person who is not a farmer (“unfavourable” land distribution).

An acute problem with the market turnover of agricultural land faced by Germany is that the sale of shares and other securities of agricultural enterprises and cooperatives, which are legal entities, is not subject to any control and does not require any permits. As a result, shares are bought up by non-farmers, and land acquisition is seen as

a way of preserving capital and speculative enrichment. Therefore, the question of the need to introduce control over the sale of shares and securities of agricultural companies has now arisen.

The organizational and legal form of an agricultural holding under French law has certain specifics. French law contains special rules on entities that are economically united but legally independent, but legal regulation in this area is fragmented, as there is no full integration of these rules with the 1966 Law and the 1967 Decree on Trading Companies [10].

According to French law, one company controls another if it directly or indirectly owns a portion of the authorized capital that gives it a majority of votes at the latter’s general meeting. This is also the case if it has a majority of voting rights in the company based on agreements with other co-owners, as this gives it the ability to determine the content of the decisions of its general meeting. In particular, such a situation arises if one of the co-owners (which is a legal entity) has directly or indirectly more than 40% of all votes in the company [10].

Currently, in France, the process of forming agroholdings covers mainly sectors that belong to the agro-industrial sector, i.e. agriculture, food industry and food distribution. At the same time, the main initiators of the integration of agriculture and food production were large non-agricultural enterprises that produce more than half of the country’s food products [11].

French agriculture is based on freedom of enterprise and the right of private ownership of land and other means of agricultural production. The main production structure

of the agricultural sector of this country is farms. At the same time, the French agricultural land market is regulated by the state. However, the state has entrusted the function of regulating this market to a non-governmental, non-profit legal entity, the SAFER Society, which has been operating since 1960. In fact, in French agriculture, the canons of a free market economy are combined with rather strict state intervention in the distribution and redistribution of agricultural land.

Land ownership relations in France are primarily regulated by the French Civil Code (Napoleon Code), which was adopted in 1804. Although it has been amended and supplemented for more than 200 years, it still remains the main legislative act that defines the content of ownership of land and other real estate. In addition, the right of private ownership of land is regulated by the Law on Agricultural Orientation of August 5, 1960, which enshrines the doctrine of the social function of land ownership [11].

According to French land law, individuals and legal entities can own land plots in private ownership. The right of private ownership of land by legal entities has specific features, such as the obligation to use the land in accordance with its main purpose, carefully, rationally, etc.

The main objective of agricultural land turnover in France is to stimulate the development of farming. It is realized by limiting the area of land that can be owned by one land user (by right of ownership or use). The maximum area of land owned by one person varies from province to province. If an agricultural producer has expressed an intention

to purchase a land plot put up for sale, but already owns agricultural land that exceeds the maximum allowable size in the province, such a company will be rejected. Instead, a farmer who owns a smaller area of land or a young farmer who wants to start his own business will be given preference [1].

The owner is not entitled to sell the land plot to anyone of his or her choice. To do so, he must first offer to purchase the land plot to the tenant (exercise of the so-called pre-emptive rights). If the tenant finds the price offered by the landlord too high, he has the right to apply to the court for a lower price [11].

Poland, having gone through a rather long way of reforming land relations, has become convinced that state regulation should be quite significant in this area, and the turnover of land among agricultural producers should be carried out according to the rules that reliably protect the farmer who actually works on the land [8].

According to Article 21 of the Constitution of the Republic of Poland, agriculture in this country is based on the family form of management – the family farm. Thus, the family form of management in Poland has a constitutional status, which is also implemented in the legislation on the market turnover of agricultural land: the dominant business entity in the country's agriculture is a family farm. Family farms are considered to be farms where economic activity is carried out by an individual farmer (or his family) and the total area of agricultural land does not exceed 300 hectares.

In Poland, agricultural producers can operate on owned or leased agricultural land with an area of 1 hectare or more, but the

total area of which does not exceed 300 hectares. In the case of inheritance of agricultural land, the total area of land may increase, but may not exceed 500 hectares [12].

Family farms are granted a pre-emptive right to acquire ownership of agricultural land put up for sale. If no farm does not exercise its pre-emptive right to purchase them, the pre-emptive right to purchase agricultural land for sale is granted to a state legal entity – the Agricultural Real Estate Agency [13].

Since Poland's accession to the EU, the country has had the longest twelve-year moratorium among other new member states on the right of foreigners and foreign legal entities to acquire agricultural land. At the end of the moratorium, the Polish parliament adopted a new version of the Law on Improvement of the Agricultural System, which came into force in May 2016. Such changes are aimed at preventing massive buyouts of agricultural land by foreigners and foreign legal entities and increasing the qualification requirements for those wishing to become farmers.

Foreigners and foreign legal entities are now required to obtain permission to acquire agricultural land from the Minister of Internal Affairs and the Minister of Agriculture. The new version of the Law on Improvement of the Agricultural System also establishes a number of very important restrictions. Thus, agricultural land may be acquired only by those who:

- is really going to process them;
- reside in the municipality (rural area) where the land plot for sale is located, or in a neighbouring municipality, for 5 years (by the way, the same legal requirement applies

not only to foreigners but also to Polish citizens);

- subject to compliance with the above conditions, a foreigner may acquire ownership of an agricultural land plot if none of the family members of the seller of such a plot or farmers registered with the local agricultural chamber has expressed a desire to purchase the said land plot [13].

Thus, this Law establishes legal preferences for those persons who are farmers and who wish to increase their family farming. The law also aims to prevent the concentration of agricultural land in one owner and the creation of large agricultural estates. In this regard, Polish citizens and foreigners will be subject to a ban on the acquisition of land by individuals and legal entities that own 300 hectares of agricultural land and a ban on the sale and purchase of land acquired from state-owned land. Violation of this prohibition will result in a stiff administrative fine. All these measures are aimed at minimizing the risks that may be caused by granting foreigners the right to acquire agricultural land.

In Lithuania, buyers of agricultural land were required to have been employed in agriculture for ten years for individuals and three years for legal entities. The European Commission qualified such requirements as restrictive and discriminatory in terms of attracting investment in rural development, and therefore demanded their abolition [14].

In November 2017, the Lithuanian Law on Acquisition of Rights to Agricultural Land [15] of 2003 was amended to bring national legislation in line with EU

requirements. According to these innovations, land purchasers can now be individuals who have professional skills and competence and have obtained a permit to purchase agricultural land from the National Land Service unit under the Ministry of Agriculture. Legal entity buyers must have income from agricultural activities exceeding 50 percent of total income, and economic efficiency can be demonstrated in accordance with the procedure established by the Ministry of Agriculture in assessing the prospects of such companies.

Additionally, in Lithuania, individuals and legal entities are obliged to use the acquired land plots for agricultural use for the next five years and to carry out agricultural production in the amount of the minimum amount established by the Ministry [15].

Article 3 of the Lithuanian Law on Acquisition of Rights to Agricultural Land stipulates that national and foreign individuals and legal entities and their related parties may acquire up to 300 hectares of agricultural land, but must not concentrate more than 500 hectares of land in Lithuania and abroad. This restriction does not apply if the agricultural land is acquired for the development of livestock farming and the amount of acquired agricultural land does not exceed the corresponding number of hectares per livestock unit (1 hectare – 1 livestock unit) [15].

Access to agricultural land is strictly regulated in Denmark, which has a permit-based procedure for acquiring agricultural land. Before obtaining a permit to acquire a land plot, the buyer must submit documents confirming his financial, technical

and professional ability to conduct agriculture, cultivate land, and preserve soil fertility and other natural resources. Before entering into a land sale and purchase agreement, a potential owner must submit a written commitment that he will farm the purchased land for at least eight years. Danish law also stipulates that the owner of such a land plot must “properly conduct agricultural production”, otherwise he will be deprived of the right to the land plot [7].

Denmark has an upper limit of 150 hectares of agricultural land for both owned and leased land use. An exception is made if the agricultural producer proves that the specifics of its production require more land and none of the villagers are against it. Certain requirements are imposed on those wishing to purchase additional land [16].

The legislation of this country pursues a fairly consistent line in support of relatively large family farms, not allowing either the creation of latifundia or the purchase of land by legal entities and its transformation into an object of speculation. Such a land policy is one of the factors that ensure Denmark’s leading position in the EU in terms of agricultural efficiency [17].

Thus, under the laws of the EU countries, land plots are usually purchased by individuals, including foreigners (Poland, Hungary, Denmark), or by national and foreign individuals and legal entities (Slovakia, Bulgaria, Lithuania, Latvia, Bulgaria). At the same time, most of these countries have established requirements for residency (residence or business) in the country or in a certain administrative-territorial unit, experience in agriculture, agricultural education, the

obligation not to alienate the land plot and to farm it independently for several years from the date of acquisition of land ownership, etc.

The legislation of EU countries establishes different rules for the turnover of agricultural land between agricultural producers. The most common are the establishment of minimum and maximum sizes of agricultural land that can be acquired by a person. Establishing the maximum size of land that can be acquired by one person may serve as a means of counteracting excessive concentration of land in the hands of one person and limiting competition in the land market. At the same time, there is a clear trend in the practice of legal regulation of land relations in the EU countries: the larger the territory of the state and, accordingly, the area of its arable land, the larger the area of land that can be acquired by one person, for example, in Denmark – 150 hectares, in Poland – 300 hectares or up to 500 hectares in case of inheritance.

Land lease in the EU agricultural sector is one of the main components of the land use system. In the EU, the acquisition of the right to lease agricultural land has its own specifics, which depend on the country in which the leased land is located.

Recently, the EU countries have seen an increase in the area of leased agricultural land compared to that cultivated by their owners. For example, in Germany, France and Belgium, more than 60% of agricultural land is leased, in Luxembourg – 53%, in Sweden – 46%, and in the EU as a whole – 48% [18].

The analysis of agricultural land lease terms indicates the prevalence of long-term leases (90% of contracts) and the

establishment of minimum lease terms at the legislative level [2; 5]. For example, in Luxembourg, the minimum lease term is 6-9 years, in Sweden – 10 years, in Belgium – 9-18-27 years, in France – 9 years, in Italy – 6-15 years, in Austria – 5-15 years, in Portugal – 10 years [3].

Long-term lease of agricultural land in the EU allows for more rational use of land, helps to raise funds for conservation measures, and improves its quality. In turn, short-term leases do not allow the lessee to recover the funds spent on preserving and improving soil fertility, as the payback of these measures requires a certain period of time. Under a long-term lease, the funds spent are returned to the lessee, not the lessor, which is the case with a short-term lease.

Based on this, we believe that the experience of long-term lease of agricultural land in the EU is positive and acceptable for use in Ukraine.

Analysing the rent for agricultural land in the EU countries, it can be noted that it is usually determined as a percentage of the market price of the land plot. Thus, in Sweden, it is 118 euros/ha or 5-8% of the land price, in England it is on average 230 euros/ha or 5.2% of the market value of land, in Germany – 230 euros/ha or 6.7%, in Hungary – 300 euros/ha or 7%, in Scotland 160 euros/ha or 5.7%, in Italy – 328 euros/ha or 8% [6; 19].

In general, the EU countries can be divided into those with more liberal regulatory policies on land lease and those with legally established rents. In Germany, Greece, and Denmark, for example, rents are determined by the market under the influence of supply and

demand. At the same time, in Belgium, Italy, Spain, Portugal, the Netherlands and France, the amount of rent is regulated by law [20].

Thus, although the EU countries are developing their economies as market economies, in land relations, in particular in determining the amount of rent for agricultural land, the majority of them directly control the rent by setting minimum or maximum payment amounts and contract terms at the legislative level.

Conclusions

Despite the fact that in the EU countries the legislation on the turnover of agricultural land between agricultural producers is based on different models of state regulation, the experience of these countries gives rise to some general conclusions.

None of the countries restricts the rights of owners to dispose of their land (purchase and sale). In most EU countries, legislation grants both individuals and legal entities the right to acquire agricultural land. Regardless of the “depth” of regulation of land relations by EU legislation, the number of

administrative prohibitions in each country is minimal and mainly concerns the establishment of a minimum lease term, a ban on the acquisition of certain types of agricultural land by foreigners and the maximum area of agricultural land that can be acquired in private ownership. None of these countries favours one type of agricultural land right, such as leasehold. Market participants can acquire such land both as property and lease.

All other legal means of influencing the development of agricultural land turnover are means of “soft” law, i.e., law that gives market participants the right to choose. Moreover, such means of legal regulation of agricultural land turnover are applied in a certain proportion, which is optimal for each country. They include granting preferential rights to purchase agricultural land to farms and local rural communities; granting preferential rights to tenants to extend land lease agreements; establishing a preferential procedure for the acquisition of agricultural land (instalment payments for long periods); granting tax benefits for the acquisition of agricultural land by farms, etc.

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Досвід країн ЄС у правовому регулюванні обігу земель сільськогосподарського призначення між сільськогосподарськими товаровиробниками

Марина Андріївна Дейнега

Доктор юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Руслан Іванович Гуцол

Аспірант
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

У статті досліджено особливості правового регулювання обігу земель сільськогосподарського призначення між сільськогосподарськими товаровиробниками у країнах ЄС і визначено напрями удосконалення вітчизняного законодавства у цій сфері. За результатами дослідження встановлено, що світовий досвід вказує на існування різноманітних моделей правового регулювання обігу земель серед сільськогосподарських підприємств, які можуть бути ефективними, якщо враховують конкретні особливості тієї чи іншої країни та національні інтереси. Практично кожна країна світу в той чи інший спосіб регулює такий обіг. Є країни з «жорстким» та «м'яким» регулюванням земельних трансакцій між сільськогосподарськими товаровиробниками. Але практично кожна розвинута країна ЄС віддає пріоритет фермерам, що проживають на даній території й ведуть господарство, на відміну від великих агрохолдингів. Не зважаючи на те, що в країнах ЄС законодавство про обіг земель сільськогосподарського призначення між сільськогосподарськими товаровиробниками базується на різних моделях правового регулювання, позитивний досвід цих країн має бути використано для удосконалення вітчизняного законодавства у цій сфері. У сфері правового забезпечення використання земель сільськогосподарськими товаровиробниками, необхідно у вітчизняному земельному законодавстві особливу увагу приділити наданню переважних прав на придбання земель сільськогосподарського призначення фермерським господарствам, територіальним громадам, орендарям тощо; передбачити

встановлення пільгового порядку придбання таких земель і надання податкових пільг; а також визначити граничні межі концентрації землі на рівні областей та об'єднаних територіальних громад або встановити дозвільний порядок придбання земельних ділянок площею більше ніж встановлена на території певної області або об'єднаної територіальної громади

Ключові слова: землі сільськогосподарського призначення, обіг земель сільськогосподарського призначення, сільськогосподарські товаровиробники, агрохолдинги, фермерські господарства



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Establishment of legal regulation in the field of securing the status of territorial communities as subjects of communal land ownership

Olga Nastina*

PhD in Law, Associate Professor
Bila Tserkva National University
09117, 8/1 Soborna Sq., Bila Tserkva, Ukraine

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The article examines the formation of the right of communal ownership of land, the establishment of legal regulation in the field of consolidation of the status of territorial communities as subjects of communal ownership, the impact of decentralization processes on the legal regime of land of territorial communities and united territorial communities, and the definition of scientific approaches to the formation of a model of communal ownership of land in Ukraine. The author highlights the inconsistency of legislators in defining the principles of building the institution of communal land ownership, the lack of a well-grounded concept of communal property rights, and the legislative contradictions in approaches to creating sustainable local self-government in Ukraine based on the priority of land interests of territorial communities. The author pays special attention to the prerequisites for determining the constitutional status of territorial

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*Corresponding author

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communities, legislative consolidation of the grounds for the formation of communal land ownership in the State and solving the problem of the absence of a definition of “right of communal land ownership” in the current legislation. The author focuses on the legitimization of the powers to exercise the right of communal ownership by addressing the issue of land and legal competence of territorial communities, improving their status as entities exercising the right of communal ownership of land directly or through local self-government bodies, and exercising the right of communal ownership of land in the manner prescribed by land law. The study found that the Constitution of Ukraine has provided the necessary prerequisites for the establishment of a fundamentally new land system in the area of communal ownership of community land. An important scientific task in modern conditions is to improve the legal regulation of the land and legal competence of territorial communities as subjects of communal land ownership for sustainable development of territories. It is determined that acceleration of administrative and land reforms will contribute to the full legitimization of amalgamated territorial communities and the establishment of territorial communities as equal subjects of land ownership

Keywords: territorial communities, decentralization, local government reform, communal land ownership

Introduction

The ambiguous, sometimes inconsistent, and contradictory processes of decentralization of power in the field of public administration lead to a lack of sustainability and consistency in the development of land property relations in Ukraine based on their equality. The still unformed concept of communal land ownership hinders the development of territorial communities of a new format, increases uncertainty in approaches to building an integral property resource of communities, and creates obstacles to the development of local self-government.

Improvement of the legal regime of lands of territorial communities, determination of the forms of exercise of the right of communal ownership of land, and scientific study of the land and legal competence of territorial

communities are key to the scientific substantiation of decentralization in reforming the relations of territorial organization of power and regulation of the legal status of territorial communities as subjects of communal property rights, and these are the unsolved scientific tasks which this publication aims to address.

Leading Ukrainian scholars have studied the problems of land ownership: V.I. Andreytsev, A.P. Getman, V.M. Yermolenko, P.F. Kulinich [1; 2], A.M. Miroshnichenko, V.L. Muntyan, V.V. Nosik [3], O.O. Pogribnyi, I.V. Semchyk, N.I. Titova, Y.S. Shemshuchenko, M.V. Shulga [4] and others. Some issues related to the emergence of the right of communal ownership of land in their scientific works were covered by G.I. Balyuk, D.V. Busuyok,

M.V. Voskobiynyk, O.A. Vivcharenko, Ya.Z. Gayetska-Kolotylo, N.V. Ilkiv, I.I. Karakash, T.O. Kovalenko, T.H. Kovalchuk, I.O. Kostiaszhkin, A.I. Ripenko, V.E. Rubanyk and others.

The purpose of the article is to study the formation of legal regulation of communal land ownership in Ukraine, the impact of land reform and decentralization reform on the consolidation of the legal status of territorial communities as subjects of communal land ownership rights, and to determine scientific approaches to the formation of a model of communal land ownership in Ukraine.

Results and Discussion

The transition from the Soviet centralization of the vertical management system of 70 years to the decentralization of power in independent Ukraine is of particular importance for the development of communal land ownership relations in the current environment. The realization of the right of residents of settlements to voluntarily amalgamate into communities to independently resolve issues of local importance solves the problem of building a constructive dialogue between the state as an integral institution and territorial communities as independent units in the structure of the administrative-territorial system, and promotes the establishment of communal property as a basis for the sustainable development of local self-government in Ukraine.

Studying the legal nature of the communal form of land ownership, M.V. Shulga [4] rightly points out that the Constitution of Ukraine has created the necessary prerequisites for the formation and establishment of

a fundamentally new land system, including in the field of land ownership, so on the basis of its study, a concept should be developed that should develop the fundamental provisions of the Constitution regarding the right to land ownership of territorial communities and reflect the main trends in the economic and social development of modern society.

A scientific study of the content of the right of communal ownership of land depends on the conceptual apparatus. The current legislation and the legislation of the previous historical period of the Ukrainian state do not contain a definition of “communal land ownership”, as well as no definition of “communal property”. However, this did not prove to be an obstacle to the formation of the institution of land ownership of territorial communities, which took place in the context of the establishment of the institution of communal ownership in Ukraine [5].

The introduction of local self-government in 1990 with the adoption of the Law of the Ukrainian SSR “On local councils of people’s deputies and local self-government” [6] marked the beginning of the search for a modern legal model of communal land ownership. It was in this law, in Article 7, that the term “communal property” was first used in the modern sense: “communal property is the basis of the local economy”. Also, the Land Code of Ukraine adopted in the same year clearly states that property in Ukraine has the following forms: state, collective, and private, which it recognizes as equal.

In our opinion, the “legalization” of the right to exercise the right of communal property in Ukraine should be associated with the adoption of the Decree of the Cabinet of

Ministers of Ukraine “Demarcation of state property of Ukraine between state-wide (republican) property and property of administrative-territorial units (communal property)” [7], which recognized its separation from the state form of ownership.

The complete further denationalization of land and property provides grounds for a constructive dialogue between the ruling elite and political agreements in the Constitutional Treaty between the Verkhovna Rada of Ukraine and the President of Ukraine The Law “On the Basic Principles of Organization and Functioning of State Power and Local Self-Government in Ukraine for the Period until the Adoption of the New Constitution of Ukraine”, which in Article 5 affirms property in Ukraine as national, communal and private. The Constitution of Ukraine adopted in 1996 in its current version became (and remains) a guideline for consolidating the national idea of establishing the communal form of land ownership in the state [1]. The ratification of the European Charter of Local Self-Government by the Verkhovna Rada of Ukraine on July 15, 1997, allowed to “cement” in the legislation the fundamental principles of organization and functioning of local self-government in accordance with the standards of municipal democracy, which were embodied in subsequent law enforcement acts of land legislation.

It should be noted that a territorial community as a subject of communal land ownership is a multi-level, complex, multifaceted political, social, and legal phenomenon.

The Law of Ukraine “On local self-government” [8] defines the right of communal property as the right of a territorial

community to own, expediently, economically, effectively use and dispose of property belonging to it at its discretion and in its interests, both directly and through local self-government bodies. In our opinion, this law narrows the powers of the territorial community by subjectivizing the content of the right of communal ownership of land, which is clearly defined in Article 80 of the Law of Ukraine “Land Code of Ukraine” [9]: the subjects of land ownership are territorial communities that exercise this right directly or through local self-government bodies – on communal land. Unfortunately, based on Soviet paradigms, the principle of the origin of communal property from collective property continues to be “cultivated” in academic circles and law enforcement practice. Such an approach is ideologically and scientifically erroneous and does not correspond to the modern concept of local government reform.

Recently, a type of land property, which has not been studied by the science of land law, has appeared in Ukraine – the land (territory) of united territorial communities, the legal regime of which is still in the process of formation. The introduction of the institute of amalgamation of territorial communities also gives rise to controversial legal discussions, which are the subject of scientific research by Ukrainian scholars: whether Ukrainian legislation includes amalgamated territorial communities in the circle of subjects of land property relations. Thus, there is no direct answer to these questions in the legal acts, which weakens the argumentation for the need for voluntary or administrative-compulsory amalgamation of territorial

communities in the context of the decentralization reform.

Continuing the legal uncertainty, the current land legislation does not regulate specific forms of direct realization of land ownership by united territorial communities. Analysing the legislation, it can be concluded that amalgamated territorial communities exercise the right of communal ownership of land by transferring communal land plots to individual ownership and use, providing them for permanent use or lease, as well as by emphyteusis, superficies and by allocating land for common use of community residents.

It is noted that there is still no clear legal model for redistributing the land powers of state authorities in favour of local governments of united territorial communities [2]. We believe that the priority approach to the formation of land legislation after the reform period should be the predominance of communal land ownership in the formation of the land fund of territorial communities.

It should be noted that the land legal personality of a territorial community implies that it has land rights, and the self-government bodies established by the community have land powers. Territorial communities exercise the right of communal ownership of land through local self-government bodies, and this method of exercising the right of communal ownership of land is the most common. However, the legal forms of exercising (realization) of land ownership by territorial communities remain poorly studied in the science of land law [10]. That is, with regard to the land competence of the subjects of communal land ownership, we

support the view that territorial communities can exercise the right of communal land ownership in two forms: directly and through their elected self-government bodies – village, town, and city councils [1].

The conclusions that “...although the law enshrines the right of communal ownership, its concept remains unproven” [3] are still relevant. This gives grounds to assert that it is difficult to interpret land legislation as normatively regulated and this creates obstacles to the introduction of a single model of communal land ownership and becomes a subject of political speculation. However, in the absence of a unified vision and approaches to the formation of the legal doctrine of communal land ownership, incomplete decentralization reform and “frozen” land reform, any proposals to amend the land legislation of Ukraine regarding the legal status of territorial communities as subjects of land ownership seem premature and harmful.

Conclusions

One of the important tasks of the current local government reform is to improve the legal regulation of the status of territorial communities in Ukraine. It is believed that the powers and resources gained as a result of decentralization have provided local governments with more opportunities for the development of their territories. However, the incompleteness and delay of administrative and land reforms hinder the processes of formation of territorial communities as equal subjects of property rights, thus making it impossible to fully legitimize the right of communal ownership of land. To solve these problems, it is optimal to enshrine in

the legislation the priority of land and legal powers of territorial communities within administrative-territorial entities. Further scientific development and research of the

legal status of the united territorial community and the legal regime of the lands of the united territorial communities are separate tasks of the land law science.

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Становлення правового регулювання у сфері закріплення статусу територіальних громад як суб'єктів комунальної власності на землю

Ольга Іванівна Настіна

Кандидат юридичних наук, доцент
Білоцерківський національний аграрний університет
09117, Соборна площа, 8/1, м. Біла Церква, Україна

Анотація

У статті досліджується формування права комунальної власності на землю, становлення правового регулювання у сфері закріплення статусу територіальних громад як суб'єктів комунальної власності, вплив процесів децентралізації влади на вирішення питання правового режиму земель територіальних громад та об'єднаних територіальних громад, визначення наукових підходів до формування моделі права комунальної власності на землю в Україні. Актуалізовано непослідовність законодавців у визначення принципів побудови інституту права комунальної власності на землю, відсутність обґрунтованої концепції права комунальної власності, законодавчу суперечливість підходів до створення в Україні сталого місцевого самоврядування, заснованого на пріоритеті земельних інтересів територіальних громад. Приділено наукову увагу передумовам визначення конституційного статусу територіальних громад, законодавчому закріпленню підстав формування в державі комунальної власності на землю, вирішенню проблеми відсутності у чинному законодавстві визначення дефініції "право комунальної власності на землю". Зосереджено увагу на легітимізації правомочностей реалізації права комунальної власності через вирішення питання земельно-правової компетенції територіальних громад, удосконаленні їх статусу як суб'єктів, які реалізують право комунальної власності на землю безпосередньо або через органи місцевого самоврядування, здійсненні права комунальної власності на землю у способи, визначені земельним законом. За результатами дослідження встановлено, що Конституція України забезпечила необхідні передумови для становлення принципово нового земельного устрою у сфері комунальної власності на землі громад. Важливими науковими завданням в сучасних умовах є удосконалення правового регулювання земельно-правової компетенції територіальних громад як суб'єктів права комунальної власності на землю задля сталого розвитку територій. Визначено, що прискорення адміністративної та земельних реформ сприятиме повноцінній легітимізації об'єднаних територіальних громад та становленню територіальних громад як рівноправних суб'єктів власності на землю.

Ключові слова: територіальні громади, децентралізація, реформа місцевого самоврядування, комунальна власність на землю



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Use of antibiotics in organic livestock farming: Some aspects of legal regulation

Tamara Novak*

PhD in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Article's History: Abstract

Received: 13.04.21 Revised: 25.05.21 Accepted: 15.06.21	The article analyses the national and international legal framework for the use of antibiotics in organic livestock farming and formulates conclusions and proposals aimed at improving the current agricultural legislation in this area. It is determined that the reform of Ukrainian legislation on veterinary medicine and feed takes into account the main international requirements for regulating the use of antibiotics in animal husbandry, in particular Regulation (EU) 2019/6 of the European Parliament and of the Council of 11.12.2018 on veterinary medicinal products and repealing Directive 2001/82/EC. For the effective implementation of legislative requirements in practice, the author substantiates the need to continue work in the following areas: development of bylaws in the field of antimicrobial use in animal husbandry; collection, accumulation and analysis of information on the volume and types of antibiotics used by agricultural producers; development of improved animal husbandry technologies without the use of antimicrobial agents, taking into account the positive experience of other countries; dissemination of knowledge about such
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*Corresponding author

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technologies among the subjects of animal husbandry. As a result of the study of the current legislation in the field of organic agricultural production, it was concluded that the legal regulation of the use of antibiotics in organic livestock farming generally meets international requirements, namely such basic documents as Commission Regulation (EC) No. 889/2008 of 5.09.2008 “Detailed rules on organic production, labelling and control to implement Council Regulation (EC) No. 834/2007 on organic production and labelling of organic products” and Council Regulation (EC) No. 834/2007 on organic. To improve the mechanism of control and traceability of the use of antibiotics in the treatment of farm animals in organic livestock, it is proposed to: accelerate the work on the adoption of the Procedure for the Use of Antimicrobial Products in Veterinary Medicine; supplement the Procedure (detailed rules) for organic production and circulation of organic products with provisions on the requirements for documentary evidence of the use of antimicrobial products by operators, and the storage periods for relevant documents

Keywords: antibiotics, antibiotic resistance, safety of organic products, organic livestock products, organic agricultural production, organic livestock production, legal regulation, quality of organic products

Introduction

In the current realities of agricultural production, the problem of antibiotic use in livestock production is becoming increasingly acute. The practice of their active use for prophylactic purposes (to prevent the spread of diseases of farm animals, especially pigs and poultry), to stimulate the growth of productive animals, etc., which has become widespread in recent decades, has led to the emergence of antibiotic resistance, i.e., the resistance of bacteria to one or more antibiotics. As a result, an increasing number of antimicrobial drugs are becoming ineffective in treating animal diseases, and the presence of such antibiotic-resistant bacteria in meat and other animal products is already a threat to human health.

Instead, organic farming and its sub-sector, organic livestock, are gaining popularity.

The number of consumers willing to buy more expensive organic meat, milk and other organic products is growing, provided that they are of higher quality and safer than their “non-organic” counterparts. In turn, one of the basic conditions for the production of organic products, including livestock, is the establishment of clear legal requirements for the relevant activities, which has been repeatedly emphasized by scientists [1]. This makes it important to study the state of legal regulation of organic agricultural production, in particular, such an aspect as the regulation of the use of antibiotics in organic livestock.

Despite the importance of this issue, there are currently no works in the modern legal doctrine that deal specifically with the legal aspects of the use of antibiotics in

organic agricultural production. Most of the existing scientific works on the subject are the works of specialists in the field of veterinary medicine, economics, and other sciences, for example, V. Danchuk & V. Ushkalov [2], M. Kucheruk and others. The works of such legal scholars as S.I. Bugera, O.V. Gafurova [1], V.M. Yermolenko, T.V. Kurman [3], V.O. Melnyk, D.S. Piddubna, A.M. Stativka, V.Y. Urkevych and others cover the legal regulation of organic production in general or touch upon this area in a fragmentary manner.

The purpose of the article is to analyse the domestic and international legal framework for the use of antibiotics in organic livestock farming, as well as to formulate conclusions and proposals aimed at improving the current agricultural legislation in this area.

Results and Discussion

Recognizing the threat to humans if the pace of antibiotic resistance accelerates, European countries are already actively working to reduce the use of antibiotics in agriculture. For example, since 2012, the UK has reduced the use of antibiotics in poultry farming by about 70% through the use of alternative medicines, changes in the housing system to improve animal health, and the use of less intensive livestock systems [4]. In Sweden, livestock farming without the use of feed antibiotics has been introduced since 1985, and the experience of this country has proven the possibility of successful livestock farming without the use of growth promoter antibiotics [5].

The EU will introduce a ban on the use of antibiotics in livestock for prophylactic purposes starting in 2022. Accordingly, the legal

framework is also being updated: in 2018, Regulation (EU) 2019/6 of the European Parliament and of the Council of 11.12. 2018 on veterinary medicinal products and repealing Directive 2001/82/EC, which stipulates that: antibiotics should be used only in exceptional cases for administration to individual animals, but not for prophylactic purposes; antimicrobials should not be used regularly or used to compensate for poor sanitary conditions, insufficient agro-zoo-technology or lack of care, or poor farm management (Article 107 of the Regulation).

In fact, experts say, there are two main ways to control the problem of antibiotic resistance of pathogenic microorganisms at the global level:

- legislative restrictions on the circulation and use of antibiotics;
- collection of information on the use of antimicrobial agents in various spheres of human activity.

In addition, monitoring of the presence and migration of antibiotic-resistant strains of microorganisms is beginning to be used in developed countries [2].

As for Ukraine, the situation with the use of antibiotics in livestock is disappointing: they are actively used for prevention, treatment, and growth promotion. For example, in 2019, Vinnytsia Poultry Farm alone purchased 85 tons of salinomycin, an antimicrobial drug for the prevention of intestinal infections [6]. Moreover, due to the lack of funding for the State Service of Ukraine on Food Safety and Consumer Protection, the system for determining residual amounts of antibiotics in livestock products does not work properly in our country, and there are

no statistics on the volume of use of these substances on farms.

Within the framework of international cooperation, only a few steps are being taken to improve the system of control over the use of antimicrobial drugs in livestock. For example, the cooperation of the Food and Agriculture Organization of the United Nations (FAO) and the Pig Breeders of Ukraine Association on the project “Strengthening National Capacity to Address the Risks of Antimicrobial Resistance (AMR)” [7].

However, the international obligations of our country, the risk of losing foreign markets for livestock products, and the awareness of the consequences of antibiotic resistance for human health and life are prompting the reform of domestic legislation in the field of veterinary medicine and livestock production.

To improve the situation, the Cabinet of Ministers of Ukraine approved the National Action Plan to Combat Antimicrobial Resistance by its Resolution No. 116-r dated March 6, 2019. It provides for the development and adoption of regulations on limiting the use of antimicrobials as growth stimulants in livestock, poultry, and crop production by the fourth quarter of 2020. Despite the established deadlines, as of the beginning of 2021, only the Draft Procedure for the use of antimicrobial drugs in veterinary medicine [8] has been developed, which defines the rules for the use of antimicrobial drugs, the responsibilities of persons using them, measures aimed at reducing the use of antimicrobial drugs, and measures to control the use of antimicrobial drugs in veterinary medicine.

Significant changes in the issue under consideration should occur after the entry into force in 2023 of the new Law of Ukraine “On Veterinary Medicine” of 04.02.2021 No. 1206-IX, which defines the implementation of measures to prevent antibiotic resistance as one of the directions of state policy in the field of veterinary medicine (Art. 4), and the excess of the risk to human health in the event of the development of antibiotic resistance over the benefits of a veterinary medicinal product for animal health is recognized as a ground for refusal of state registration of a veterinary medicinal product (part 21 of article 55). Another act of agrarian legislation, the Law of Ukraine “On Feed Safety and Hygiene” dated 21.12.2017 No. 2264-VIII, introduces a direct ban on the use of antibiotics, except for coccidiostats and histomonostats, as feed additives or their components from 21.03.2023 (part 6 of Article 17).

As for the legal regulation of the use of antibiotics in the field of organic livestock, domestic legislation is more progressive.

First of all, it should be noted that currently the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products” of 10.07.2018 No. 2496-VIII establishes a mandatory general condition for organic production – the prohibition of the use of antibiotics for preventive purposes (part 2 of Article 14). In addition, part 1 of Article 19 of the same regulatory act contains an additional instruction prohibiting the use of antibiotics for disease prevention and veterinary treatment in organic livestock. Exceptions are cases established by this Law, including

to prevent animal suffering. Among the additional requirements for organic aquaculture, Art. 22 of the Law of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products" also prohibits the use of antibiotics for disease prevention and veterinary treatment. The same legal provision also states that "inappropriate use of phytotherapeutic, homeopathic or other products" is an exception to this rule.

According to T. Kurman [3], the grounds and conditions for organic agricultural production in the field of animal husbandry are determined by legislation of two levels. The first level includes general regulations that define the grounds and conditions for organic agricultural production in general. This is the aforementioned Law of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products". The second level is represented by regulations that define the grounds and conditions for organic agricultural production in certain livestock sectors (dairy and beef cattle breeding, aquaculture, beekeeping, etc.) [3].

These include, first of all, the Procedure (detailed rules) for organic production and circulation of organic products, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 970 dated 23.10.2019 (hereinafter – the Procedure).

The first thing we would like to point out is that the said Procedure, in paragraph 19, in addition to the requirements of the Law of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products",

establishes an unconditional ban on the use of antibiotics to stimulate animal growth or productivity. As for treatment, clause 25 of the Procedure allows for the possibility of antibiotic therapy in organic livestock farming only if the use of phytotherapeutic, homeopathic and other products is ineffective. This thesis is further elaborated in clause 63 of the Procedure.

Very important from the point of view of the professional use of antibiotics in organic livestock is the establishment in clause 64 of the Procedure of a mandatory condition for the use of such drugs – the use of antibiotics is possible only under the supervision and responsibility of a licensed veterinarian.

We would also like to emphasize that clause 66 of the Procedure establishes the rule that "if an animal or a group of animals receives more than three courses of treatment with veterinary drugs, including antibiotics, within 12 months or more than one course of treatment if the productive life cycle of animals is less than one year, except for the application of mandatory measures for the prevention and control of animal pathogens, including vaccinations, preventive treatments against parasites, the relevant animals or products obtained from them are not considered organic". Such animals must undergo a transition period in accordance with the legislation on organic production, circulation, and labelling of organic products. The requirements for such a transition period are set out in Article 25 of the Law of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products".

At the international level, the prohibition to sell as organic animals or products derived from them if such animals have received more than three courses of antibiotic treatment within 12 months, or more than one course of treatment if the productive life cycle of these animals is less than one year, is established by the basic act for organic agricultural production – Commission Regulation (EC) No. 889/2008 of 5.09.2008 “Detailed rules on organic production, labelling and control to implement Council Regulation (EC) No. 834/2007 on organic production”. In other words, in this part, the national legislation fully complies with international standards.

The following requirements of national and international legislation are extremely important for the practical implementation of the above-mentioned requirements and for monitoring compliance with them by organic livestock producers. In accordance with paragraph 4 of Article 24 of Commission Regulation (EC) No. 889/2008 of 5.09.2008 and para. 67 of the Procedure (detailed rules) for organic production and circulation of organic products, the operator (legal entity or individual entrepreneur engaged in the production and/or circulation of products in accordance with the requirements of the legislation in the field of organic production, circulation and labelling of organic products) must keep records and store documentary evidence of the use of antibiotics to provide them at the request of the certification body and/or the State Service of Ukraine on Food Safety and Consumer Protection. However, the requirements for the form of such records and the duration of their storage by

the operator are not currently defined at the legislative level, which in practice may lead to disagreements between the parties during inspections.

We have already mentioned above the Draft Procedure for the use of antimicrobial drugs in veterinary medicine developed by the Ministry of Economy [8]. It is this document that, in paragraphs 24-29, sets out the requirements for documentary evidence of the use of antibiotics in veterinary medicine.

In particular, it requires legal entities – operators of facilities that own (keep) animals – to draw up an act on the use of antimicrobial drugs. For individuals, it is mandatory to keep records on the use of antimicrobials.

Clause 25 and Clause 28 of the Procedure for the Use of Antimicrobial Agents in Veterinary Medicine [8] clearly regulate the scope of information to be specified in the act and records, respectively, ranging from information about the operator of the facilities to the results of animal treatment.

In our opinion, it is correct to establish in clauses 26 and 27 of the Procedure [8] the obligation to draw up an act in two copies (for the veterinary specialist who uses the antibiotic and for the owner (keeper) of the animals) and register it in the logs of the operator of the facilities that own (keep) the animals and the veterinary specialist who uses the antibiotic.

If the Procedure for the Use of Antimicrobials in Veterinary Medicine is adopted [8], compliance with its requirements will simplify control over the use of antibiotics in livestock, including organic livestock, and will help establish a process for traceability of the use of such drugs.

In our opinion, it is advisable to supplement clause 67 of the Procedure [8] (detailed rules) for organic production and circulation of organic products with an indication of the Procedure for the use of antimicrobial agents in veterinary medicine (if adopted). We also consider it mandatory to supplement clause 67 of the Procedure [8] (detailed rules) for organic production and circulation of organic products with information on the storage period of acts on the use of antimicrobial agents and records on the use of antimicrobial agents.

Conclusions

Thus, the reform of Ukrainian legislation on veterinary medicine and feed takes into account the main international requirements for regulating the use of antibiotics in livestock. For the effective implementation of legislative requirements in practice, it is necessary to continue work on: developing bylaws in the field of antimicrobial use in

livestock; collecting, accumulating and analysing information on the amount and types of antibiotics used by agricultural producers; developing improved livestock technologies without the use of antimicrobials, taking into account the positive experience of other countries; disseminating knowledge about such technologies among agricultural entities.

The legal regulation of antibiotic use in organic livestock farming generally meets international requirements. In order to improve the mechanism of control and traceability of antibiotics use in the treatment of farm animals in organic livestock, we propose to accelerate the work on the adoption of the Procedure for the Use of Antimicrobials in Veterinary Medicine; to supplement the Procedure (detailed rules) for organic production and circulation of organic products with provisions on the requirements for documentary evidence of the use of antimicrobials by operators, and the storage periods for relevant documents.

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Використання антибіотиків в органічному тваринництві: окремі аспекти правового регулювання

Тамара Сергіївна Новак

Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України,
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

Стаття присвячена аналізу вітчизняних та міжнародних правових засад використання антибіотиків у органічному тваринництві, а також формулювання на його основі висновків та пропозицій, спрямованих на удосконалення чинного аграрного законодавства у зазначеній сфері. Визначено, що реформування українського законодавства про ветеринарну медицину та про корми враховує основні міжнародні вимоги щодо регулювання застосування антибіотиків у тваринництві, зокрема Регламенту (ЄС) 2019/6 Європейського Парламенту та Ради від 11.12.2018 р. «Про ветеринарні лікарські засоби та скасування Директиви 2001/82/ЄС». Для ефективного впровадження законодавчих приписів у практичну площину обґрунтовано необхідність продовження роботи за такими напрямками: розробка підзаконних актів у сфері застосування протимікробних препаратів у тваринництві; збір, накопичення та аналіз інформації про обсяги та види антибіотиків, які використовують виробники сільськогосподарської продукції; розробка удосконалених технологій тваринництва без використання протимікробних препаратів, враховуючи позитивний досвід інших країн; поширення знань про такі технології серед суб'єктів аграрного господарювання. У підсумку дослідження чинного законодавства у сфері органічного сільськогосподарського виробництва зроблено висновок, що правове регулювання застосування антибіотиків у органічному тваринництві відповідає в цілому міжнародним вимогам, а саме таким базовим документам, як Постанова Комісії (ЄС)

від 5.09.2008 р. № 889/2008 «Детальні правила щодо органічного виробництва, маркування і контролю для впровадження Постанови Ради (ЄС) № 834/2007 стосовно органічного виробництва і маркування органічних продуктів» та Постанови Ради (ЄС) № 834/2007 стосовно органічного виробництва і маркування органічних продуктів, та скасування Постанови (ЄЕС) № 2092/91». Для удосконалення механізму контролю та відстежуваності застосування антибіотиків при лікуванні сільськогосподарських тварин у органічному тваринництві запропоновано: прискорити роботу щодо прийняття Порядку використання протимікробних препаратів у ветеринарній медицині; доповнити Порядок (детальні правила) органічного виробництва та обігу органічної продукції положеннями про вимоги до документального підтвердження використання протимікробних препаратів операторами, строки зберігання відповідних документів

Ключові слова: антибіотики, антибіотикорезистентність, безпечність органічної продукції, органічна продукція тваринництва, органічне сільськогосподарське виробництво, органічне тваринництво, правове регулювання, якість органічної продукції



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Subjects of legal relations in the field of organic agricultural production: General characteristics

Tamara S. Novak

PhD in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Victoriia O. Melnyk*

PhD in Law, Assistant Professor
Bila Tserkva National University
09117, 8/1 Soborna Sq., Bila Tserkva, Ukraine

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The article is devoted to the definition of the concept and types of subjects of legal relations in the field of organic agricultural production based on the analysis of doctrinal approaches and provisions of national and international legislation. Applying the “from the general to the specific” approach, the author examines the concepts of “subjects of legal relations”, “subjects of agrarian legal relations”, and “subjects of legal relations in the field of organic agricultural production”. It is concluded that the concept of “agricultural producer” is generalized and covers all producers of such products, regardless of the object of production and other characteristics of this entity and the production process. The author formulates the concept of “producer of organic products (raw materials)” as a subject of agrarian legal relations which independently owns and disposes of separate property, in the property

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*Corresponding author

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complex of which the main means of production is a natural object – agricultural land used by it for the production of organic products, and processing of raw materials of plant and animal origin, or a fishery facility for the production and processing of aquaculture facilities to ensure food security, subject to environmental safety requirements. The author identifies the basic constitutive features of organic producers (raw materials): the availability of a certificate of conformity and inclusion in the registers in accordance with the law. It is substantiated that the main subjects of legal relations in the field of organic agricultural production are individuals and legal entities engaged in the production and/or circulation of products in accordance with the requirements of legislation in the field of organic production, circulation and labelling of organic products. The auxiliary subjects of legal relations in the area under study are certification bodies, public authorities vested with the authority to regulate and control such activities, as well as processing, procurement, marketing, supply, service and other agricultural business entities, and the public

Keywords: subject, legal relations, organic agricultural production, agricultural enterprise, agricultural producer, agricultural products, agricultural products, operator, certification body, organic products

Introduction

Organic agricultural production, being a promising area of activity in the field of agriculture, is gaining more and more popularity in our country. In 2020 alone, the number of organic production operators in Ukraine increased by 17% (from 617 to 722) compared to 2019, the number of organic processors increased by 33%, and the number of producers who already have a labelled organic product on offer to the end consumer increased by 7% [1]. For an effective organic business, one of the basic requirements is clear legal regulation of the relevant relations. In turn, legislative provisions should be based on scientific substantiation, which emphasizes the relevance of theoretical research in this area in general, and such a basic category as subjects of legal relations in

the field of organic agricultural production in particular.

The problem of determining the subjective composition of agrarian legal relations has been repeatedly the subject of scientific works by scholars, including: O.V. Gafurova [2], V.M. Yermolenko, V.P. Zhushman, O.O. Pogribnyi & V.Yu. Yanchuk *et al.* As for the concept and list of subjects of legal relations in the field of organic agricultural production, this issue remains poorly understood in legal doctrine.

The purpose of the article is to define the concept and types of subjects of legal relations in the field of organic agricultural production based on the analysis of doctrinal approaches and provisions of national and international legislation.

Results and Discussion

To begin with, the subjects of legal relations in the field of organic agricultural production are one of the types of subjects of agrarian legal relations, and they, in turn, are included in the generalized category of subjects of legal relations.

The theory of law has formed a generally accepted approach, according to which the subjects of legal relations are recognized as legally capable persons in public life who are holders of legal rights and obligations; individual or collective subjects of law who use their legal personality in specific legal relations, acting as implementers of subjective legal rights and obligations, powers and legal liability [4].

When this general definition is applied to the subjects of legal relations in a particular branch of law, it is supplemented by features that reflect the specifics of the branch. In our case, it is agrarian law.

The subjects of agrarian legal relations are individuals and legal entities endowed with rights and obligations in the field of production, processing, and sale of agricultural products, as well as in their production, technical and social security. The composition of subjects of agrarian legal relations is not static, it changes as a result of changes in the social relations regulated by agrarian law. In addition, there are specific subjects inherent in agrarian legal relations as an independent branch of law. For example, V.Y. Urkevych [5] identifies among them persons who run private farms, agricultural cooperatives, and structural subdivisions of agricultural enterprises.

The key subject in agrarian legal relations is an agricultural enterprise, which is

defined as: “a legal entity whose main activity is the cultivation and processing of its own agricultural products” [6]. It can exist in various forms – agricultural company, cooperative, state, and municipal agricultural enterprises and other business entities based on private property. It should also be noted that joint ventures with foreign capital play a key role in the development of domestic agricultural production.

The classification of agricultural producers can also be conducted by the type of production object: food, raw materials, plant and animal food, fisheries, beekeeping, etc. Thus, L.O. Sviatchenko [7] emphasized the special status of subjects of legal relations in the field of fisheries. The subjects of beekeeping are defined in Articles 4, 5 of the Law of Ukraine “On Beekeeping”. Unions, associations, and other associations whose activities are related to beekeeping, according to Part 2 of Article 4 of the Law of Ukraine “On Beekeeping”, also belong to beekeeping entities.

The definition of an agricultural producer is also specific. Doctrinally, this concept is defined as “an individual or legal entity engaged in the production of marketable agricultural products, processing of own agricultural products and their sale” (Great Ukrainian Legal Encyclopedia, 2019: 596). Instead, the definition of an agricultural commodity producer provided in clause 14.1.235 of the Tax Code of Ukraine is limited by the organizational and legal form to legal entities and additionally mentions fishery activities.

Given the frequent changes in national legislation, characteristics of agricultural

activities and subjects of agricultural legal relations, the definition given in the Dictionary of Agricultural Law can be considered a classic, which states that: “an agricultural producer is a legal entity of any organizational and legal form of management and its separate subdivisions; an individual (individual entrepreneur or household) engaged in agricultural activities provided for in the Classifier of Economic Activities, who owns, uses or disposes of agricultural land or livestock and poultry” [6].

The concept of “subjects of agrarian legal relations” also covers those entities that are not directly involved in agricultural production, but the subject of their activities is related to it. These are various service agricultural business entities, without which effective agricultural production is impossible, such as processing, procurement, marketing, supply, service, and other enterprises, as well as peasants’ unions [8].

Given the above, it can be concluded that the concept of “agricultural producer” is generalized and covers all producers of such products, regardless of the object of production and other characteristics of this entity and the production process.

Given that the object of legal relations regarding the production of organic products (raw materials) is also a food product, attention should also be paid to the concept of “food producer”, which is based on an understanding of the content of the function of the subject of agrarian law and does not depend on its organizational and legal form. Entities engaged in the production and/or circulation of food products in Ukraine are defined in the Law of Ukraine “On Basic Principles and Requirements for Food Safety

and Quality” of 23.12.1997 No. 771/97-BP as food market operators. Based on the analysis of the definition of this concept in Article 1 of the said law, it can be concluded that the concept of “food producer” correlates with the more general concept of “food market operator” as a stage of circulation and sale as part of the overall process of organic production (raw materials).

According to the relevant remark of M. Krupka [9]: “the subjects of agrarian legal relations are individuals and legal entities endowed with civil legal capacity and legal capacity in the field of production, processing and sale of agricultural products, service, financial, social and other support of agricultural producers”.

Given the above, we support the following definition of the subjects of agrarian legal relations: “individuals and legal entities with rights and obligations in the field of agricultural production, processing and sale: a) agricultural producers with agrarian legal personality (legal entities: farms, agricultural cooperatives, agricultural business associations, private (private-rental), state and municipal agricultural enterprises, their associations); Individuals: private entrepreneurs, members and employees of agricultural enterprises, peasants; private farms; b) agroservice enterprises (supply, marketing, processing, service, etc.); c) state and local government bodies, Agrarian Exchange, Agrarian Fund, banking institutions, etc.” [6].

In order to obtain the status of a producer of organic products (raw materials), the relevant business entity must undergo a certification procedure, i.e., verification of compliance with organic production

standards. The procedure for certification of organic production and/or circulation of organic products is approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1032 dated 21.10.2020.

At the same time, in order to ensure the effective development of the organic market in a market economy, each of the market participants must have a certain mandatory set of attributes – knowledge, qualifications, and there must be an incentive to produce organic products (raw materials). Additionally, it is worth mentioning Article 4 of the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality” regarding the need to ensure food safety and quality in order to protect human life and health from harmful factors that may be present in food. T.O. Chaika [10] appropriately emphasized that: “...if the mandatory set of attributes of organic market participants is not complete or not fully completed, it is necessary to know the reasons for this phenomenon and be able to eliminate them. In addition, in the process of interaction between the main participants of the organic market, any mutual claims, problems, unsatisfied expectations that can and should be resolved in a timely manner necessarily arise” [10].

In general, summarizing the above and taking into account the peculiarities of organic products (raw materials) production, the following definition can be given: subjects of legal relations in relation to the production of organic products (raw materials) are producers of organic products (raw materials) who own separate property, have special legal capacity and legal capacity (legal personality), carry out economic activities using

land as the main means of production to provide the population of Ukraine and other states with the necessary food, cheese, and other products.

In a market economy, these entities may be based on any form of ownership and independently choose their organizational and legal form in accordance with the Commercial Code of Ukraine and the Civil Code of Ukraine, etc.

Based on the provisions of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” No. 2496-VIII dated 10.07.2018, a producer of organic products (raw materials) is included in the broader concept of “operator”. According to Art. 1 of the said Law, this is a legal entity, or an individual entrepreneur engaged in the production and/or circulation of products in accordance with the requirements of the legislation in the field of organic production, circulation and labelling of organic products. It should be noted that at the international level: in Council Regulation (EC) No. 834/2007 of 28.06.2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91, the definition of “operator” is narrower, as it includes natural or legal persons responsible for ensuring compliance with the requirements of this Regulation in the process of organic production that they manage.

Regarding the constitutive features of organic producers (raw materials), one of them is the inclusion of the State Register of Operators engaged in the production of products in accordance with the requirements of the legislation in the field of organic production,

circulation and labelling of organic products (the Register of Operators), which is defined in Article 1 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”. The procedure for maintaining the Register of Operators is approved by the Resolution of the Cabinet of Ministers of Ukraine No. 87 dated February 12, 2020.

It should also be noted that food production and/or circulation facilities that do not require an operational permit are subject to state registration pursuant to Part 1 of Article 25 of the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality”. The procedure for state registration of capacities, maintenance of the state register of capacities of market operators and provision of information from it to the interested parties is approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 39 dated 10.02.2016.

Additionally, the above-mentioned entities are subject to registration with the central executive body that implements the state policy in the field of plant quarantine, if they: produce seed and planting material; store and process grain, etc. (Article 27 of the Law of Ukraine “On Plant Quarantine” of 30.06.1993 No. 3348-XII). In general, the above-mentioned legal relations regarding the registration of organic producers are external agricultural legal relations, which are carried out with the participation of producers of these products and state authorities represented by their representatives.

The circle of subjects of legal relations in the field of organic agricultural production also includes public persons, among whom it

is necessary to distinguish certification bodies, which are key public bodies in legal relations regarding the certification of organic products (raw materials).

According to Art. 1 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”, a certification body may be an enterprise, institution, organization or their separate subdivision that has the right to certify organic production and/or circulation of organic products and is included in the State Register of Certification Bodies in the Field of Organic Production and Circulation of Organic Products. The procedure for maintaining this register was approved by the Resolution of the Cabinet of Ministers of Ukraine No. 87 dated February 12, 2020.

We believe that moving away from the state’s monopoly in determining the certification body and establishing requirements for such entities and defining their functions at the level of law (Article 28 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”) is an extremely positive step that meets international standards for conducting business in the field of organic agricultural production.

It is also true that one of the conditions for obtaining the status of a certification body is that the accreditation body must be accredited in the field of organic production and/or circulation of products in one or more of its sectors in accordance with the Law of Ukraine “On Accreditation of Conformity Assessment Bodies” of 17.05.2001 No. 2407-III.

The subjects of legal relations regarding the production of organic products (raw

materials) may also include the public, which has the right to participate in decision-making that may affect the environment, as well as the right to access environmental information [11]. This stems from the essence and role of the organic production method as defined by Council Regulation (EC) No. 834/2007: "Organic production is an integral system of management and production of foodstuffs that combines best practices in terms of environmental protection, biodiversity, conservation of natural resources, application of high standards of proper animal welfare and a production method that meets certain requirements for products made using substances and processes of natural origin." As emphasized by O. Gafurova [2], organic agricultural production is aimed not only at producing food in conditions as close to natural as possible, but also at humane treatment of animals, economical use of natural resources, and environmental protection. In other words, organic production, on the one hand, meets the needs of the specific market for organic products, and on the other hand, contributes to environmental protection, proper animal husbandry, and rural development.

The public participates in the implementation of public environmental control through the activities of, inter alia, public environmental inspectors, in accordance with the provisions of the Law of Ukraine "On Environmental Protection" of 25.06.1991 No. 1264-XII and the Regulation on Public

Environmental Inspectors approved by the Order of the Ministry of Ecology and Natural Resources of Ukraine No. 88 of 27.02.2002.

Conclusions

Summarizing the above, it can be stated that the main subjects of legal relations in the field of organic agricultural production are individuals and legal entities engaged in the production and/or circulation of products in accordance with the requirements of the legislation in the field of organic production, circulation, and labelling of organic products. Auxiliary subjects of legal relations in the area under study are public authorities vested with the authority to regulate and control such activities, as well as processing, procurement, marketing, supply, service and other agricultural business entities, and the public.

A producer of organic products (raw materials) can be defined as follows: it is a subject of agrarian legal relations that independently owns and disposes of separate property, in the property complex of which the main means of production is a natural object – agricultural land, which is used by it for the production of organic products, as well as processing of raw materials of plant and animal origin, or a fishery facility for the production and processing of aquaculture facilities to ensure food security, subject to compliance with environmental safety requirements, has received a certificate of conformity and is included in the registers in accordance with the law.

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Суб'єкти правовідносин у сфері органічного сільськогосподарського виробництва: загальна характеристика

Тамара Сергіївна Новак

Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Вікторія Олександрівна Мельник

Кандидат юридичних наук, асистент
Білоцерківський національний аграрний університет
09117, Соборна площа, 8/1, м. Біла Церква, Україна

Анотація

Стаття присвячена визначенню поняття та видів суб'єктів правовідносин у сфері органічного сільськогосподарського виробництва на основі аналізу доктринальних підходів та положень вітчизняного і міжнародного законодавства. Застосовуючи підхід «від загального до конкретного» досліджено поняття «суб'єкти правовідносин», «суб'єкти аграрних правовідносин», «суб'єкти правовідносин у сфері органічного

сільськогосподарського виробництва». Зроблено висновок, що поняття «виробник сільськогосподарської продукції» є узагальненим та охоплює всіх виробників такої продукції, незалежно від об'єкту виробництва та інших характеристик цього суб'єкту та процесу виробництва. Сформульовано поняття «виробник органічної продукції (сировини)» – це суб'єкт аграрних правовідносин, що самостійно володіє і розпоряджається відособленим майном, у майновому комплексі якого основним засобом виробництва є природний об'єкт – земля сільськогосподарського призначення, що використовується ним для виробництва органічної продукції, а також переробки сировини рослинного і тваринного походження, або ж рибогосподарський об'єкт для виробництва та переробки об'єктів аквакультури з метою забезпечення продовольчої безпеки за умови дотримання вимог щодо екологічної безпеки. Визначено базові конститутивні ознаки виробників органічної продукції (сировини): наявність сертифікату відповідності та включення до реєстрів згідно законодавства. Обґрунтовано, що основними суб'єктами правовідносин у сфері органічного сільськогосподарського виробництва є фізичні та юридичні особи, що здійснюють виробництво та/або обіг продукції відповідно до вимог законодавства у сфері органічного виробництва, обігу та маркування органічної продукції. Допоміжними суб'єктами правовідносин в досліджуваній сфері є органи сертифікації, органи державної влади, наділені повноваженнями у сфері регулювання та контролю за такою діяльністю, а також переробні, заготівельні, збутові, постачальницькі, сервісні та інші аграрні господарючі суб'єкти, громадськість

Ключові слова: суб'єкт, правовідносини, органічне сільськогосподарське виробництво, сільськогосподарське підприємство, виробник сільськогосподарської продукції, сільськогосподарська продукція, оператор, орган сертифікації, органічна продукція



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Prospects for the introduction of the ecological court in Ukraine

Olena Buzunko*

Postgraduate Student

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

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Effective legal regulation of environmental protection and protection of environmental relations in modern conditions is a necessary condition for the successful development of human society. Given the specifics of existing environmental problems, the article is devoted to the coverage of various forms and models of specialized environmental courts operating in different countries. The scientific opinions on the organization of activity of ecological courts are covered, the normative-legal acts regulating ecological legal relations are analyzed. The conclusion on prospects of introduction of ecological court in Ukraine is made. To this end, it is necessary to reform the legislation on the judiciary, update procedural legislation to ensure a harmonious combination of private and public interests in the field of environmental relations

Keywords: Environmental protection, ecological legal relations, organization, activity, ecological court

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*Corresponding author

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Introduction

The issue of protection of environmental rights of citizens, environmental protection requires effective steps of the Ukrainian state to implement various forms and methods in the fight against the ecological crisis situation in Ukraine. It is worth noting that among the 180 countries on the index of environmental performance, which is a comprehensive comparative indicator of the success of environmental policy around the world, used 19 indicators divided into nine “political categories”. The categories are grouped into two major groups: ecosystem viability (assessment of the level of protection of ecosystems and efficiency of natural resources management) and environmental health, which assesses the level of protection of human health from adverse environmental factors, Ukraine ranks 44th. Among the post-Soviet countries after Ukraine are Moldova, Kyrgyzstan, Tajikistan, Kazakhstan, Turkmenistan, Georgia, and Uzbekistan. The top ten includes Finland, Iceland, Sweden, Denmark, Slovenia, Spain, Portugal, Estonia and France.

The above indicates the existence of a difficult environmental situation in the country, the acute environmental crisis in Ukraine is indicated by the Law of Ukraine “On Basic Principles (Strategy) of State Environmental Policy of Ukraine until 2030” of 28.02.2019 No. 2697-VIII.

Given the importance of the problem, in scientific circles, the study of the organization and prospects of the implementation of the environmental court in Ukraine is given considerable attention. Among the scientists who examined this issue, it is worth noting G.I. Balyuk, A.I. Bryntsov [1], A.P. Hetman [2], V.M. Zavgorodnya, V.V. Kovalenko, Ya.V. Kravets [3], Yu.A. Krasnova [4] and

others. However, given the ongoing judicial reform and the constant changes in legislation and lawmaking, many problematic issues remain in this area that need to be studied.

The purpose of the article is to study the possible prospects for the organization and operation of environmental justice in Ukraine and the formation of the given proposal for their creation.

Results and Discussion

The analysis of official sources, mass media and scientific publications testifies to the existing ecological crisis situation in Ukraine. In order to eliminate the negative phenomena, various ways of solving them are proposed by implementing organizational and legal measures aimed at protecting the environmental rights of citizens, as well as introducing new forms and methods related to environmental protection, protection of environmental rights.

Since environmental protection and protection of environmental rights is impossible without the administration of justice, the idea of organization and functioning of environmental courts and their possibility of introduction in the judicial system of Ukraine, attracts the attention of researchers. Referring to the foreign experience of environmental courts, more and more scientists are paying attention to various forms and models of organization and operation of environmental courts.

Yu.V. Kravets [3] believes that the introduction and establishment of environmental courts in Ukraine is necessary, given both the number of problems in domestic environmental legislation and law

enforcement, and the progressive global trends. It should be gradual and include three functional stages: training of judges who would be competent in the areas of specification and start their work in courts of general jurisdiction, but whose competence would include relevant environmental disputes; creation of "Green benches". At this stage, it would be appropriate to provide, in addition to the obligation of environmental justice, also the obligation to allocate resources; creation of a system of specialized environmental courts [3].

Analyzing the prospects of environmental justice in Ukraine and taking into account the principles of organization of the judiciary, A.I. Brintsov [1] notes that environmental litigation in Ukraine can be implemented in several possible ways. In his opinion, this can be achieved by introducing in the courts the specialization of judges in cases arising from environmental legal relations, as well as the creation in the courts of judicial chambers for certain categories of cases, including separate judicial chambers for cases arising from environmental legal relations. Along with this, the scientist notes that the activity in the judicial system of higher specialized courts as courts of first and appellate instances to consider certain categories of cases suggests the possibility of introducing in Ukraine a higher specialized court to consider cases arising from environmental relations, or simply "higher environmental court" [1].

According to Yu.A. Krasnova [4], the solution of problems is possible with two options for further development of the judiciary, which would allow for a rapid and effective consideration of environmental cases: the creation of a judicial system based on internal specialization of the judiciary

(creation of so-called "green benches" or green judges without a formal change in the judicial structure); creation of an independent environmental judicial system or tribunal. This means that the modern judicial system of Ukraine must exist rebuilt in a new way – fast and effective consideration of environmental disputes [4].

However, among scientists there are opponents of the creation of environmental courts. Giving answers to opponents of the creation of environmental courts, Professor Richard Macrory concludes that the possible shortcomings of specialized environmental courts should be considered only as "warning signs". Implementation strategies and best practices can and should be planned to avoid potential disadvantages and maximize access, equity and future benefits of specialization of environmental courts (tribunals) [5].

However, according to foreign experts, specialization itself does not guarantee any of these potential positive characteristics of specialized environmental courts. However, the structure of such courts may include special design features to ensure the proper functioning of courts, which are not typical and may not be possible for traditional courts [6].

A.P. Hetman believes that among the main factors leading to the deepening of the crisis in the ecological component of our state should be identified defects in the organization of public administration of environmental protection and ensuring the rational use of nature (Hetman, 2013: 168).

Thus, ensuring the constitutional right of every citizen of Ukraine to a clean and safe environment is impossible without the work of the court. This was expressed in

the Decree of the President of Ukraine “On the National Strategy for Human Rights” of 24.03.2021 No. 119/202, where in § 15. “Ensuring environmental rights”, it is stated that the strategic goal is the environment, which must be safe for human life and health in Ukraine. The main indicators are the level of public awareness of environmental rights, mechanisms for their implementation and protection and the number of citizens appeals to authorized state authorities, local governments, courts, as well as to the Verkhovna Rada Commissioner for Human Rights on violations of environmental rights.

To this end, the main task of the Decree of the President of Ukraine “On the National Strategy in the field of human rights” of 24.03.2021 No. 119/202, is: to ensure free access to information on the state of the environment and the free receipt, use, dissemination and storage of such information; to raise the level of public awareness about environmental rights, mechanisms for their implementation and protection; improve legal procedures for environmental impact assessment and strategic environmental assessment, in particular in terms of ensuring public awareness and participation in the decision-making process; to create a nationwide ecological automated information and analytical system to ensure access to environmental information; to improve the responsibility for violation of the legislation on environmental protection; to create an effective mechanism for compensation for damage caused as a result of violation of the requirements of environmental legislation.

The above is evidence that the protection of environmental relations can not be done without justice. The existing problems can be overcome by generalizing the case law on

environmental disputes, as has been done, in particular, in the European Court of Human Rights (cases of: hazardous industrial activities; the impact of industrial emissions on human health; property, access to court in the context of appealing permits for environmentally hazardous activities, non-enforcement of final court decisions on cessation of environmentally hazardous activities, environmental risks and access to information, industrial pollution, impact of mobile antennas, noise pollution, impact of urban planning activities, treatment of waste, pollution of drinking water, warning of emergencies, compensation for damage caused by natural forces [4].

The answer to this question can also be found in the Decree of the President of Ukraine “Strategy for the development of the justice system and constitutional justice for 2021-2023” of 11.06. 2021 No. 231/2021, which identifies priorities for improving the legislation in the field of the judiciary, the status of judges, the judiciary and other institutions of justice, as well as the implementation of urgent measures to ensure positive changes in the functioning of relevant legal institutions. The issue of reorganization of local courts in the Decree refers to the revision of the network of local courts taking into account the administrative-territorial reform, economic feasibility, the number of appeals to the court with preservation at the first stage of the possibility of local general courts of justice at the existing local courts, conditions of access to justice for members of territorial communities, consideration after the creation of a new network of courts of first instance and, depending on the effectiveness of their work, the possibility of further optimization of the local court system by consolidating courts.

Along with this, it is worth paying attention to the Resolution of the Verkhovna Rada of Ukraine "On the formation and liquidation of districts" dated 17.07.2020 No. 807-IX. According to this Resolution, there will be a new administrative-territorial system in Ukraine, which will inevitably lead to the reform of the judicial system.

Of course, these regulations do not contain instructions on the establishment of environmental courts. Moreover, in part 1 of Art. 18 of the Law of Ukraine "On the Judiciary and the Status of Judges" of 02.06.2016 No. 1402-VIII, states that the courts specialize in civil, criminal, commercial, administrative cases, as well as cases of administrative offenses. At the same time in part 2 of Art. 18 of the same Law states that in cases specified by law, as well as by the decision of the meeting of judges of the relevant court may be introduced specialization of judges to consider specific categories of cases.

Conclusions

Thus, the study of the prospects for the introduction of the environmental court in Ukraine indicates the feasibility of their creation with the appropriate reform of legislation on the judiciary and updating procedural legislation, refining the organizational and legal framework of courts to ensure a harmonious combination of private and public interests in environmental relations. This provides for the possibility of ensuring proper judicial protection of environmental legal relations by introducing specialization of judges in environmental cases. Such specialization can be carried out in local courts, the consolidation of which is envisaged.

At the first stage of the introduction of environmental courts, it is necessary to first determine the scope of jurisdiction and jurisdiction of environmental cases, the solution of which should be attributed to the specialization of judges who must protect environmental rights and the environment.

The next step is the possibility of a gradual transition to the establishment of chambers of appeal in the courts of appeal.

The outlined features of the study of environmental cases involve the possession of special knowledge by judges. This is indicated by the rules of Art. 12 of the Law of Ukraine "On Environmental Impact Assessment" of 23.05.2017 No. 2059-VIII, according to which the conclusion on the environmental impact assessment, other decisions, actions or inaction of public authorities or local governments in the process of environmental impact assessment, as well as violation of the procedure for environmental impact assessment, unfounded and unreasonable disregard or improper consideration of the results of public participation, other violations of legislation in the field of environmental impact assessment are grounds for revoking the conclusion of the environmental impact assessment and the decision to carry out planned activities, can be appealed by any individual or legal entity.

Accordingly, judges may consider cases arising from environmental legal relations, must have special knowledge. At the same time, the outlined perspective of the introduction of the environmental court in Ukraine is a long-term perspective, but the issue of judicial protection of all participants in environmental legal relations remains problematic today.

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Перспективи впровадження екологічного суду в Україні

Олена Анатоліївна Бузунко

Аспірант

Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

Ефективне правове регулювання охорони довкілля та захист екологічних правовідносин у сучасних умовах є необхідною умовою успішного розвитку людського суспільства. З огляду на специфіку наявних екологічних проблем, статтю присвячено висвітленню різноманітних форм і моделей діяльності спеціалізованих екологічних судів, що діють у різних країнах світу. Висвітлено наукові думки щодо організації діяльності екологічних судів, проаналізовано нормативно-правові акти, що регулюють екологічні правовідносини. Зроблено висновок щодо перспектив впровадження екологічного суду в Україні. З цією метою необхідно реформувати законодавство про судоустрій, оновити процесуальне законодавство задля забезпечення гармонійного поєднання приватних і публічних інтересів в галузі екологічних правовідносин

Ключові слова: охорона довкілля, екологічні правовідносини, організація, діяльність, екологічний суд



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Civil legal method of protection of intellectual property rights

Oleksandr Svitlichny*

Full Doctor in Law, Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Olena Korotun

Full Doctor in Law, Professor
Northern Commercial Court of Appeal
04116, 1A Sholudenko Str., Kyiv, Ukraine

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The article draws attention to the specifics of protection of intellectual property rights in Ukraine by civil and special legislation, the rules of which are designed to protect the subjective rights of right holders and other participants in legal relations in the field of intellectual property. Some aspects of the legal nature of jurisdictional remedies are studied. Attention is paid to the specifics of protection of intellectual property rights by civil law, which consists primarily in the methods of protection provided by procedural law. The legislation, the norms of which guarantee the protection of intellectual property and the ways of protection of civil rights are outlined. The existing in the legal literature different views on the classification of methods of protection of property rights are analyzed. The legal analysis of the application of the vindication claim as a means of protection of intellectual property rights is carried out and the given proposals are formulated

Keywords: Civil law, intellectual property, lawsuit, protection

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*Corresponding author

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Introduction

Protection of intellectual property rights is a multifaceted legal phenomenon and is not limited to the institutions of a particular industry. This is primarily due to the complex structure of the legal essence of intellectual property law, which covers all rights related to intellectual activity in production, research and other creative activities. Complicating the structure of this law and ways to protect it is a current trend in the legal systems of most countries, which is due to economic factors, in particular, governments are forced to create incentives for creative work, trade, including through the introduction of legal guarantees of intellectual property. At the same time, intellectual property rights and property rights are not identical legal categories, which directly affects the choice of remedies and forces to rely not only on the judiciary to protect this right, but also to create other ways of legal protection.

Despite the fact that the theoretical development of the basic provisions for the protection of intellectual property rights is reflected in the works of domestic scientists, in particular, G. Androschuk, Y. Boshytsky, V. Galunko, G. Rymarchuk, O. Orlyuk, A. Khridochkin, O. Chomakhashvili, R. Shyshka and others, the latest changes in domestic legislation indicate the need for scientific analysis of this issue.

The purpose of the article is to analyze certain aspects of the legal nature of jurisdictional means of protection of intellectual property rights by the rules of civil and special legislation and to formulate the relevant conclusions.

Results and Discussion

The system of national law of Ukraine consists of separate branches of law, which are sets of relevant legal norms, united by certain principles. Legal protection of intellectual property is regulated by certain provisions of the Constitution of Ukraine, norms of the

Civil Code of Ukraine (especially the norms of its book four “Intellectual Property Law”), Criminal, Customs, Tax, Commercial Codes of Ukraine, the Code of Administrative Offenses and a number of procedural codes and a number of international regulations. This directly affects the protection of intellectual property rights. Thus, on a sectoral basis, civilians consider civil law protection of property rights as a system of active measures applied by the owner, competent state or other authorities aimed at eliminating violations, imposing the obligation to restore the violated right to the violator.

The specificity of the methods of civil protection of intellectual property rights is primarily in the application of such legal mechanisms that overcome obstacles to the exercise of property rights and restore the property status of the owner at the expense of the infringer or other obligated person, including by claiming property belonging to him illegal possession of any person.

Regarding the form of protection, legal science is divided into jurisdictional and non-jurisdictional forms of protection. Jurisdictional form of protection of intellectual property rights is carried out in court and administratively. However, given the format of the article, we will consider only some aspects of the protection of this intellectual property right. It should be emphasized that this method of protection, in relation to individuals, is provided by Article 55 of the Constitution of Ukraine, according to the provisions of which the rights and freedoms of man and citizen are protected by the court. Everyone is guaranteed the right to appeal in court against decisions, actions or omissions of public authorities, local governments, officials and officials. Legal entities are also not deprived of the right to judicial protection, but these guarantees are enshrined at

the level of the relevant sectoral Codes and laws of Ukraine. The analysis of law enforcement activities of courts in the field of administrative and criminal liability for infringement of copyright and related rights may require a separate consideration given the number of administrative and criminal offenses in Ukrainian law, in particular, the expediency of criminalizing certain acts for infringement of copyright and related rights.

The protection of intellectual property rights takes place in lawsuits in courts of civil, administrative, commercial jurisdiction, arbitration, international courts and the newly created Supreme Court of Intellectual Property.

St. 16 of the Civil Code of Ukraine (CC) of 16.01.2003 No. 435-I, guarantees the protection of civil rights and interests by the court regardless of whether it is a natural or legal person—each person has the right to go to court to protect their personal non-property or property rights and interests. The second part of this article of the Central Committee provides an indicative list of ways to protect civil rights and interests. In Art. 5 of the Civil Procedure Code of Ukraine of March 18, 2004 No. 1618-IV and Art. 5 of the Commercial Procedural Code of Ukraine from 06.11.1991 No. 1798-XII, it is determined that the court protects the rights, freedoms and interests of individuals in the manner prescribed by law or contract. At the same time, the legislator gives the court of civil, commercial jurisdiction the right to determine in its decision any method of protection that does not contradict the law. Article 5 of the Code of Administrative Procedure of Ukraine of 06.07.2005 No. 2747-IV, establishes six methods of judicial protection in administrative proceedings. In addition, in part 2 of this article, the legislator provided that the protection of violated rights, freedoms or interests of the person who applied to the court may be

carried out by the court in another way that does not contradict the law.

According to part 2 of Art. 432 of the Civil Code, the court in cases and in the manner prescribed by law, may decide to:

- take immediate measures to prevent infringement of intellectual property rights and preserve the relevant evidence;
- suspension of the passage through the customs border of Ukraine of goods, the import or export of which is carried out in violation of intellectual property rights;
- withdrawal from civil circulation of goods manufactured or put into civil circulation in violation of intellectual property rights;
- withdrawal from civil circulation of materials and tools that were used mainly for the manufacture of goods in violation of intellectual property rights;
- application of a one-time monetary penalty instead of compensation for damages for illegal use of the object of intellectual property rights. The amount of the penalty is determined in accordance with the law, taking into account the guilt of the person and other significant circumstances;
- publication in the media of information on infringement of intellectual property rights and the content of the court decision on such infringement.

Unlike the provisions of the Civil Code of 1963, the Central Committee of 2003 does not establish strictly defined ways to protect civil rights and provides that the court may protect civil rights or interests in another way established by contract or law. However, establishing flexible variability of ways of protection of civil rights and interests, the legislator provided in the Central Committee of 2003 cases (part 3 of Art. 16) of possible refusal in judicial protection of civil right and interest of the person, in case of violation by it of provisions of part two – fifth Article 13, namely:

- in the exercise of his rights, a person violates the rights of others, harms the environment or cultural heritage;
- a person acts with the intention of harming another person, as well as abuses the right in other forms;
- in the exercise of civil rights a person does not adhere to the moral principles of society;
- in the case of the use of civil rights for the purpose of unlawful restriction of competition, abuse of monopoly position in the market, as well as in the case of unfair competition.

These circumstances should be established (or refuted) during the court hearings with the adoption of the relevant decision, because otherwise it would be contrary to the constitutional guarantees of the right of everyone to protect their rights in court. On the other hand, in this list, which outlines the limits of civil rights, there are informal (in the legal sense) criteria for assessing the actions of a person, such as – compliance (or non-compliance) of moral principles of society, which complicates and confuses an extremely important issue – civil protection. rights and interests in court.

The scientific literature has repeatedly discussed the thesis that the problem of the right to protection is not only a problem of substantive law, but also a problem of civil procedural law. In this case, such a method of judicial protection as a lawsuit, or rather the right to sue, is perceived and justified by the authors in different ways. Yes, K.S. Yudelson [1] attached the right to sue only to procedural significance as a legally provided opportunity to go to court to protect their civil rights, and in cases provided by law – to protect the civil rights of others and organizations.

Without distinguishing the right to sue in the substantive and procedural sense, Vilnyansky considered the right to sue to be “the possibility of exercising his right by

coercion, against the will of the obligated person” [2]. Other authors combine substantive and procedural-legal possibilities of protection of the right into a single concept of the right to sue [3].

A separate group of authors is united by their approach to the question of the need to differentiate the right to sue in the substantive and procedural sense. Yes, M.J. Stefan [4] notes that the right to sue in the substantive sense, its origin, implementation, termination, the entire legal regime of existence is governed by the rules of civil, labor, family and other branches of substantive law. The right to sue, to sue in the procedural sense, is an institution of civil procedural law. Thus, the right to sue is an opportunity provided and provided by interested persons to apply to the court of first instance with a request to consider and resolve a civil dispute in order to protect subjective property and personal non-property rights and legally protected interests [4].

Protection of intellectual property rights in Ukraine is guaranteed in cooperation with all branches of law. Intellectual property rights belong to intangible values, and these rights are enshrined in law.

However, the essence of legal protection in the legal literature is interpreted ambiguously: so far science has not formulated clear criteria for the content of protection of civil rights in general and property rights in particular and its delimitation with the legal protection of these rights [5].

The basis of legal protection is determined by the principles of ensuring the inviolability and exercise of civil rights, including and property rights, and measures to prevent violations of these rights. In the context of the research topic, it is necessary to pay attention to the specifics of protection of intellectual property rights, namely: “... inability to protect the object only by owning

it, is a cornerstone of legislation in the field of intellectual property rights” [6].

The authors of the monograph on the problems of improving the legal regulation of private property rights expressed an interesting opinion on the relationship between the principles of protection and protection of property rights at the constitutional level: it is important in the Constitution to define the principles of protection of property rights. Article 13 of the Constitution of Ukraine establishes that the state ensures the protection of the rights of all subjects of property rights and management, the social orientation of the economy. This wording combines the concept of “protection” used in Article 13 of the Constitution with the actual provision of protection of the rights of property rights, which is expressed in reference to the social orientation of the economy. The Constitution emphasizes that the right to private property is supported by law, based on it and protected by it. Fundamental in this regard is the provision embodied in Article 41 of the Constitution that the right of private property is inviolable... The strength of protection of property rights is expressed in the indication of the impossibility of illegal actions aimed at violating property rights [7].

In view of the above, the system of remedies appears to be subordinate to the system of protection of property rights and is part of this system.

The legal literature expresses different views on the classification of methods of protection of property rights, but the most common is the division of civil law means of protection of property rights into property and contract law. Property remedies are aimed at protecting the subjective right of ownership as an absolute civil right of persons who at the time of violation of the right are not in a contractual or other binding relationship with the infringer. Mandatory legal remedies

are intended to protect the interests of the owner as a party to the binding relationship. In this context, the general provisions of contract law fully apply to intellectual property law.

Property and legal means of protection are the recovery of property from someone else’s illegal possession (vindication claim) and the removal of obstacles to the exercise of property rights by the owner (negative claim). It is a well-known legal science that these remedies are based on property relations between the owner and all other persons. The content of these legal relations comes down to the fact that the owner has the right to own, use and dispose of property [8]

I.O. Dzera [5] rightly notes that in jurisprudence it is customary to distinguish two main elements that determine the essence of any claim-the subject and basis. The subject of the claim is the substantive legal claim of the plaintiff to the defendant, and the basis of the reference to his right – the legal facts that led to the violation of this right, and the legal justification for its protection [5]. Based on this understanding of the subject and grounds of the claim, the acceptability of the vindication claim as a means of protection of intellectual property rights will be analyzed.

The subject of the vindication claim is the claim of the owner who does not own the property to the person who illegally owns this property, on the return of individually determined property from someone else’s illegal possession. The grounds for a vindication claim are circumstances that indicate the absence of a legal relationship between the plaintiff and the defendant, the plaintiff has evidence confirming ownership of the claimed property, its disposal from the plaintiff, his stay in kind with the defendant, and so on.

To properly understand the subject of the vindication claim as a possible remedy, it is necessary to mention, in particular, that

copyright consists of: personal intangible rights under Articles 423 and 438 of the Civil Code and Art. 14 of the Law of Ukraine “On Copyright and Related Rights” of 23.12. 1993 No. 3792-XII. They can not be transferred (alienated) to other persons (except as provided by law – Article 423 of the Civil Code), and therefore can not be claimed. Personal non-property rights of the author do not depend on property rights. Therefore, in the case of transfer of exclusive property rights to the work, personal non-property rights belong to the author of the work (except in cases established by Article 423 of the Civil Code, except for the right to inviolability of the work – Article 439 of the Civil Code). Personal non-property rights of the author are protected indefinitely – property rights under Art. 440 Civil Code and Art. 15 of the Law of Ukraine “On Copyright and Related Rights”. Property rights to the work may belong to both the author of the work and other persons who acquired them in accordance with the law or contract.

It is easy to see that such a remedy as a vindication claim cannot be applied to the personal non-property rights of the author. Protection of exclusive property rights by way of vindication, at first glance, is possible, because exclusive property rights are property within the meaning of Art. 190 Civil Code. At the same time, the question arises about the offender’s ability to “own” the exclusive property rights of another owner. In this case, vindication as a way to protect exclusive property rights to the work may not be possible, because the acquisition of exclusive property rights is not the same as the acquisition of property rights. As it was established, the subject of the vindication lawsuit is the claim of the owner who does not own the property.

A negative action is a claim of the owner to eliminate violations by third parties in the

exercise of his rights, which are not related to the deprivation of property, but create obstacles to the owner in the use or disposal of their property. The key characteristic of this proceeding is the owner of the intellectual property right as a person (persons) who have the right to initiate litigation. It should be noted that a negative claim can be filed for protection, including personal non-property intellectual property rights, the list of which is defined in Art. 423 Civil Code. Despite a fairly consistent understanding of the nature of a negative claim in judicial practice, it is not always possible to use this experience wisely in resolving disputes in the field of protection of intellectual property rights. In particular, the owner of the intellectual property right has the exclusive authority to use the object within a certain period established by law. After a certain period of time, the objects of intellectual property rights become public property. This indirectly indicates some differences between a negative claim in the field of protection of property rights and intellectual property rights.

Conclusions

The analysis of the legislative regulation of protection and protection of intellectual property shows that the legislation of Ukraine establishes a subordinate and interconnected system of legal means to ensure the protection of intellectual property rights. Civil law has a significant impact on the methods of protection of intellectual property rights, the rules of which provide for the protection of property rights through the prism of exclusive rights, on the outcome of protection of property rights in a dispute over a negative or vindication claim. However, the problems of legislative regulation of the protection of intellectual property rights also cause problems of protection of these rights.

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Цивільно-правовий спосіб захисту прав інтелектуальної власності

Олександр Петрович Світличний

Доктор юридичних наук, доцент

Національний університет біоресурсів і природокористування України,
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Олена Миколаївна Коротун

Доктор юридичних наук, доцент

Північний апеляційний господарський суд
04116, вулиця Шолуденка, 1А, м. Київ, Україна

Анотація

У статті звертається увага на специфіку захисту права інтелектуальної власності в Україні цивільним та спеціальним законодавством, норми якого покликані забезпечити охорону суб'єктивних прав правовласників та інших учасників правовідносин у сфері інтелектуальної власності. Досліджено окремі аспекти юридичної природи юрисдикційних засобів захисту. Звертається увага на специфіку захисту права інтелектуальної власності цивільним законодавством, що полягає насамперед у способах захисту, передбачених процесуальним законодавством. Розглянуто законодавство, норми якого гарантують захист інтелектуальної власності та окреслені способи захисту цивільних прав. Проаналізовано існуючі в юридичній літературі різні погляди на класифікацію способів захисту права власності. Здійснено правовий аналіз застосування виндикаційного позову як засобу захисту права інтелектуальної власності та сформульовано авторські пропозиції

Ключові слова: цивільне законодавство, інтелектуальна власність, судовий позов, захист



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Issues related to the realization of non-property human rights in the field of health protection

Inna V. Horislavska*

PhD in Law, Associate Professor

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

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The World Health Organization notes the main issue that needs to be addressed – patient safety as prevention, avoidance, minimization of adverse effects of treatment. Normatively established obligation of the provider of the medical service (i.e., on its own initiative, which does not require prior consent or coordination with the patient) to provide information to the consumer. In the article, on the basis of an analysis of existing national legislation, judicial cases and theoretical, legal sources, explores issues relating to the realization and safeguarding of personal non-property rights that ensure the natural existence of an individual (art. 282-286 of the Civil Code of Ukraine) and legal mechanisms for protecting consumers' rights to information in the field of health care. The case law and the practice of the Constitutional Court of Ukraine in resolving cases on recognition and protection of the right to information about the state of health of a person are studied. The proposals to address the shortcomings of legal regulation in the study area are distinguished. The purpose of the article is an analysis of legislation and case law on the exercise of personal non-property

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*Corresponding author

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rights in the field of health care. The issues of compliance with the regulatory requirements for the confidentiality of medical information in sick leaves, which still remain unresolved, are considered, especially considering the formation of a web-based service to ensure information interaction of the electronic health care system with the Electronic Register of sick leaves. Medical information, that is, a certificate of the state of health of a person, his or her medical history, the purpose of the proposed research and treatment, the prognosis of the possible development of the disease, including the existence of a risk to life and health, according to its legal regime refers to confidential, that is, information with restricted access. The introduction of effective legal mechanisms should help to improve the level of protection of rights, freedoms and interests of citizens. The issue of obtaining information on the state of health of a person by its heirs is a promising one and one that requires amendments to the legislation

Keywords: Personal intangible rights, restrictions on the exercise of personal non-property rights, information, health information

Introduction

In terms of the content, and to the extent that it objectively enables a conscious decision to be made, regardless of the medical specificity of the information that characterizes the obligations to be undertaken, and sets out their limits, such information must demonstrate that the violation of these limits is wrongful for the information which, in an accessible form, discloses the danger that the medical effect, its attendant or further consequences are concealed [1].

The purpose of the article is an analysis of legislation and case law on the exercise of personal non-property rights in the field of health care. A large number of representatives of the civil sciences have been involved in the realization of personal non-property rights that ensure the social existence of a natural person. Some aspects of the legal regulation of the exercise of personal non-property rights have been studied in the works of

O. Kokhanovska, R. Stefanchuk, R. Shyshka, O. Shtefan, O. Yavorska and others.

Results and Discussion

The corresponding position is justified by Article 285 of the Civil Code of Ukraine [2], item 4 of Article 4 of the Law of Ukraine "On Protection of Consumer Rights" [3] – Consumers, when concluding, amending, executing and terminating contracts, are entitled to necessary, accessible, reliable and timely information in the state language about the products, their quantity, quality, assortment, its executor, as well as Article 39 of the Fundamental Principles of Healthcare Legislation of Ukraine [4]. The other "party" with regard to provision of information by the executor of the agreement on provision of medical services is the category – medical secrecy provided for by Article 40 Fundamental Principles [4]; the issue of its

disclosure through the implementation of the procedure for filling in the inoperability sheet and the implementation of the right patient (their representative) or heir to such information. The Inoperability Leaf is an element of primary medical documentation and contains, inter alia, information (diagnosis – cipher of diagnosis according to the International Statistical Classification of Diseases and Related Health Problems of the 10th revision) that constitutes medical secrecy. The relevant provisions are contained in the Instructions on how to fill in the inoperability sheet (item 3.2.) [5]; the procedure of organization of maintenance of the electronic register of inoperability sheets and provision of information from it (part 8, item 10; part 6, item 13) [6].

The Ministry of Economy, Trade and Agriculture approved two national classifiers of the Ministry of Health of Ukraine, which will be used by medical workers of all health care institutions for encoding of diagnoses and medical interventions in the electronic health care system [7]. It will be used in the formation and implementation of the system of financing health care institutions in Ukraine, which provide specialized outpatient and hospital medical care.

The issue of compliance with the regulatory requirements of confidentiality with regard to such information is still unresolved, the more so considering the formation of a web-oriented service to ensure information interaction of the electronic health care system with the Electronic Register of Inoperability Leafs [8].

The exercise of the right of the patient (their representative) or heir to information

that constitutes medical secrecy and information about the state of health, including the right to review relevant medical documents that relate to the state of health, is a problematic issue in the contract on the provision of medical services. If talking about the implementation and enforcement of personal non-property rights, which ensure the natural existence of an individual (Articles 282-286 of the Civil Code of Ukraine [2]), the legal mechanisms of legislation on consumer protection, legislation on information – provide an opportunity for the appropriate implementation.

However, obtaining information from medical records to determine the cause of death of a person by its heirs is a complex process. For example, the decision in case No. 201/2923/19 of the Oktyabrskiy District Court of Dnipro satisfied the claim against the Communal enterprise “Dnipropetrovsk I.I. Mechnikov Regional Clinical Hospital” about demanding the appropriate medical documentation from the patient’s chart [9]. The health care institution refused to provide full information, disassociating part of it, and justified it as a medical secret and one that concerned the patient (daughter of the plaintiff) personally.

The law grants the right in the event of an individual’s death to members of her family or other individuals who are authorized by them, to be present during the study of the causes of her death and to familiarize themselves with the findings regarding the causes of her death, as well as the right to appeal these findings to the court [2; 4]. However, only persons who belong to the first line of heirs are discussed [2], and if the inheritance

is called on representatives of other queues, then respectively they are deprived of the right to obtain relevant information. They will not be able to “use” the right to terminate the contract for the provision of medical services and return the money paid for the goods [3], respectively, because it is possible to prove “poor quality medical services” only on the basis of the conclusion of an expert who needs medical documentation.

Medical information, that is, a certificate of the state of health of a person, their medical history, the purpose of the proposed research and treatment, the prognosis of the possible development of the disease, including the existence of a risk to life and health, according to its legal regime refers to confidential, that is, information with restricted access. A doctor is obliged, at the request of the patient, his family members or legal representatives, to provide such information in a complete and accessible form. In special cases, as provided for in article 39, paragraph 3, of the Fundamental Principles [3], when full information may be harmful to the patient’s health, the doctor may restrict it. In this case, they inform the patient’s family or legal representative, taking into account the patient’s personal interests. The same is true when the patient is unconscious. In cases of refusal or willful withholding of medical information from the patient, members of their family or legal representative, they may appeal directly to the court against the doctor’s acts or omissions, or to a medical institution or health authority of one’s choice.

The rules on the use of information relating to medical confidentiality – information about a patient, as opposed to medical

information – information for a patient are established by article 40 of the Fundamental Principles and article 46, paragraph 3, of the Law of Ukraine “On information” [10].

Thus, only the individual to whom confidential information belongs, in accordance with the constitutional and legislative regulation of the human right to collect, store, use and disseminate confidential information, has the right freely, at their discretion, determine the procedure for consulting other persons, the State and local self-government bodies, as well as the right to keep it secret. The Constitutional Court of Ukraine, in deciding on the question of the confidentiality of information about a person who holds a position connected with the exercise of the functions of the State or bodies of local self-government and the members of their family, proceeds from such considerations, that the information about a physical person is confidential in each specific case. A person’s tenure of office in the exercise of the functions of the State or local self-government provides not only guarantees for the protection of that person’s rights, but also additional legal burdens. The public nature of both the authorities themselves and their officials requires the release of certain information in order to form public opinion on the credibility of authority and the maintenance of its authority in society (paragraph one of sub-clause 3.3 of clause 3 of the motivating part) Judgment of the Constitutional Court of Ukraine in the case on the constitutional petition of Zhashkiv District Council of Cherkasy Region regarding the official interpretation of the provisions of parts one, two of Article 32, parts two and three of Article 34 of the

Constitution of Ukraine of January 20, 2012 No. 2-rp/2012 No. 2-rp/2012) [10].

The judgment of the European Court of Justice in “M.S. v.s. Sweden” of 27 August 1997 [11] states that the confidentiality of health information is a fundamental principle of the legal system of the States Parties to the Convention. National legislation should ensure non-disclosure of health information if it does not comply with Art. 8 of the mentioned Convention. The protection of personal data, and in particular medical data, is fundamental to the exercise of the right to respect for private and family life [11].

In the judgment of the European Court of Human Rights in the case of Z. v.s. Finland [12], the court emphasized that the protection of personal data in this medical case is fundamental to the exercise of one’s right to respect for private and family life. Accordingly, the state is obliged to determine effective guarantees to prevent the disclosure of such information. The court takes into account the fundamental importance of the protection of personal data, and not only medical, for the exercise of the right to respect for private and family life, as guaranteed by Art. 8 of the Convention. Respect for confidential physical data is an essential principle in the legal systems of all States parties to the Convention. It is essential not only to respect the privacy of patients, but also their trust in the medical profession and health care in general. Without such protection, those in need of medical care may refrain from providing personal or intimate information necessary for the necessary treatment and even from seeking such care, endangering their health in the event

of communicable diseases and public health. Therefore, domestic legislation should provide adequate safeguards to prevent the dissemination or disclosure of such human health data that is incompatible with the guarantees of Art. 8 of the Convention [12].

In the case No. 266/784/19 which was considered by the Primorsky District Court of Mariupol [13], Donetsk region, the plaintiff appealed to the Primorsky District Court of Mariupol, in which he asked to declare illegal the actions of employees of the hospital of the Municipal Institution “Mariupol City Hospital No. 9 Medical and Sanitary Unit of the Department of the Navy” to disseminate confidential information about his request for medical care and distribution his medical records to an outsider, and asked to recover from the defendant in favor of the plaintiff caused non-pecuniary damage. The court granted the plaintiff’s claim for non-pecuniary damage for disclosing information about his health [13].

Conclusion

Obviously, the introduction of effective legal mechanisms should help to improve the level of protection of rights, freedoms and interests of citizens. The issue of obtaining information on the state of health of a person by its heirs is a promising one and one that requires amendments to the legislation.

Thus, the human right of access to information guaranteed by article 34 of the Constitution of Ukraine is not absolute and may be subject to restrictions. Such restrictions should be exceptions provided by law, pursue one or more legitimate objectives and be necessary in a democratic society. If the right of access to information is restricted, the

legislator is obliged to introduce a legal regulation that will make it possible to achieve the legitimate objective optimally, with minimal interference in the realization of the said right and without violating the substantive content of the right.

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Питання реалізації особистих немайнових прав людини в сфері охорони здоров'я

Інна Вікторівна Горіславська

Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України,
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

У статті на основі аналізу чинного національного законодавства, судових справ та теоретичних та правових джерел стаття досліджує питання реалізації та забезпечення особистих немайнових прав, що забезпечують природне існування фізичної особи (ст. 282-286 ЦК України), та правові механізми щодо захисту прав споживачів на інформацію у сфері охорони здоров'я. Досліджено судову практику та практику Конституційного Суду України щодо вирішення справ про визнання та захист права на інформацію про стан здоров'я особи. Обґрунтовано пропозиції щодо усунення недоліків правового регулювання у досліджуваній галузі

Ключові слова: особисті немайнові права, обмеження здійснення особистих немайнових прав, інформація, інформація про стан здоров'я



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Grounds and conditions for securing a claim in administrative proceedings

Olena S. Yara*

PhD in Law, Professor

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Olha V. Kravchuk

Postgraduate student

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

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The article examines the grounds and conditions for interim relief in administrative proceedings. By analysing the legislative provisions and law enforcement (judicial) practice in conjunction with the achievements of legal science, the author identifies the grounds and conditions for interim relief in administrative proceedings, and focuses on the problematic issues which arise when courts verify the existence of grounds for interim relief and compliance with the conditions for interim relief. In particular, the author draws attention to the fact that interim relief on the grounds of obvious signs of unlawfulness of a decision, action or inaction of a public authority is in fact inapplicable due to the reservation on the inadmissibility of resolving the dispute on the merits during interim relief. It is concluded, however, that an

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*Corresponding author

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administrative claim may be secured if there is at least one of the grounds specified in part one of Article 150 of the Code of Administrative Procedure of Ukraine and subject to the conditions of proportionality, adequacy of measures to secure an administrative claim, direct relation to the subject matter of the dispute and taking into account the legal behavior of the defendant in the dispute. The author emphasizes that the court's discretion in applying interim measures to secure an administrative claim is unconditional, but not unlimited, and is controlled by the requirement to properly justify the relevant procedural action

Keywords: administrative court, administrative claim, administrative proceedings, interim relief, principles of administrative proceedings, protection of rights and freedoms of a person, grounds for interim relief, conditions for interim relief

Introduction

The right to a trial is a key human right, a fundamental element of law in a democratic and rule-of-law state.

The content of the right to a trial is most fully explained in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall determine the dispute concerning his rights and obligations in a civil matter or the validity of any criminal charge against him.

The European Court of Human Rights has repeatedly emphasized that the right to a trial would be illusory if the legal system of a Contracting State allowed a final binding judgment not to be enforced to the detriment of one of the parties (e.g., the ECHR judgment in *Hornsby v. Greece*).

Contrary to popular belief, such requirements for the enforcement of a final judgment relate not only to enforcement proceedings, but also to the correct and timely application of interim measures.

Interim relief in administrative proceedings, as defined by the Supreme Court [1], is one of the guarantees of protection of the rights, freedoms and legitimate interests of legal entities and individuals-plaintiffs in administrative proceedings, a mechanism designed to ensure the real and strict enforcement of a court decision made in an administrative case.

The institute of interim relief in administrative proceedings is an object of scientific interest for many lawyers both within the framework of comprehensive studies and independent scientific research. In particular, the issues of interim relief were considered by Ukrainian researchers O. Dzhurynskyi, I. Diorditsa, S. Martsynkevych, H. Medvidchuk, V. Semina, and O. Shurnyn.

However, the current state of scientific research into the issues of interim relief in administrative proceedings cannot be called sufficient. The specifics of this procedural institute, due, inter alia, to the broad discretion of the court in its application, require further thorough scientific research to enhance the efficiency and effectiveness of interim relief

in fulfilling the tasks of administrative proceedings.

The purpose of the article is to identify the peculiarities and problems of legal regulation of the grounds and conditions for securing a claim in administrative proceedings, as well as to formulate conclusions and proposals that will contribute to the unity of the relevant law enforcement practice.

Results and Discussion

Article 150 of the Code of Administrative Procedure of Ukraine (entitled “Grounds for securing an administrative claim”) authorizes the court to take the measures to secure a claim specified in this article at the request of a party or on its own initiative.

According to part two of Art. 150 of the Code of Administrative Procedure of Ukraine, interim relief is allowed both before filing a claim and at any stage of the proceedings if:

1. failure to take such measures may significantly complicate or make it impossible to enforce the court decision or to effectively protect or restore the violated or disputed rights or interests of the plaintiff, for the protection of which he/she has applied or intends to apply to the court; or

2. there are obvious signs of unlawfulness of the decision, action or inaction of the authority, and violation of the rights, freedoms or interests of the person who applied to the court by such a decision, action or inaction.

Thus, the existence of at least one of these grounds is sufficient to take interim measures.

The phrase “the court ... shall have the right” used in the said legal provision indicates the discretion of the court in deciding

on the interim relief even if there are grounds for such relief as set forth in Article 150 of the Code of Administrative Procedure of Ukraine.

Similarly, the court’s discretion is presumed when deciding on the sufficiency of the grounds for interim relief: in each disputed case, the court independently assesses the concepts of “significant complication” and “effective defence”.

Depriving the court of such discretion in interim relief, as suggested by some scholars, will not solve the problem of excessive judicial discretion and will dilute the very essence of interim relief. Instead, a proper justification of a certain procedural action, indicating the motives that prompted the court to take it, will facilitate the ability of persons involved in the case to control the legality of such court powers [2].

It should be noted that the existence of obvious signs of unlawfulness of a decision, action or inaction of a public authority and violation of the rights, freedoms or interests of a person who has applied to the court by such a decision, action or inaction is a ground that is rarely used by courts – the Unified State Register of Court Decisions contains only a few relevant court decisions.

At the same time, the existence of obvious signs of unlawfulness of a regulatory legal act is the only alternative ground for securing a claim by suspending the effect of such a regulatory legal act in accordance with part five of Article 151 of the Code of Administrative Procedure of Ukraine.

It is quite obvious that the “unpopularity” of interim relief on these grounds is due to the court’s fear of prematurely resolving the dispute on the merits.

In fact, the inadmissibility of such a ground was emphasized by the Supreme Court in its decision of November 20, 2019 in case No. 640/2298/19 [1], noting that the presence of signs of unlawfulness of the challenged legal act can be identified by the court only on the basis of clarifying the factual circumstances of the case, as well as assessing the relevance, admissibility and reliability of each evidence separately, as well as the sufficiency and interconnection of the evidence available in the case file in their entirety. The application of interim measures in this case resolves the case on the merits of the subject matter of the dispute [1].

Moreover, until recently, unreasonable interim measures taken by a court were an unconditional ground for bringing a judge to disciplinary liability. According to A. Muzychenko [3], such a ground for bringing a judge to disciplinary liability could completely neutralize the purpose of the interim relief institute.

Most often, the courts resort to checking another of the above grounds for interim relief – the risk of significant complication or impossibility of enforcement of the court decision or effective protection or restoration of the plaintiff's violated or disputed rights or interests, for the protection of which he or she has applied or intends to apply to the court.

It is noteworthy that in the procedural codes of Ukraine, the legislator invariably uses the same construction to determine the grounds for interim relief, the essence of which is the assumption that failure to take measures to secure a claim may complicate or make it impossible to enforce a court decision [4].

In this respect, the Ukrainian model of the institution of interim relief is in many respects similar to the German model of “delayed effect” or “delayed action” of interim relief [5].

At the same time, supporters of the preventive function of the institution of interim relief propose to introduce another ground for interim relief – the existence of a real threat of significant damage to the applicant.

However, in our opinion, such a proposal is contrary to the objectives of administrative proceedings, which protect the rights, freedoms and interests of individuals and the rights and interests of legal entities violated by public authorities.

Let us now turn to the conditions for securing an administrative claim. Some researchers call them “procedural grounds” for interim relief [6]. In our opinion, based at least on the grammatical and purposeful interpretation, it is more accurate to use the term “conditions for interim relief” to characterize the circumstances that make it possible to apply interim relief.

Proponents of this approach distinguish two groups of conditions for securing a claim:

1. conditions for filing an application for interim relief: proper subject matter, compliance with the procedural requirements for filing an application for interim relief, etc.
2. conditions for satisfying the relevant application [7].

In the context of this study, we will focus on the second group of these conditions. Thus, from the content of part two of Article 151 of the Code of Administrative Procedure of Ukraine it is clear that a condition for securing a claim is the proportionality of the

measures to secure the claim with the claims stated by the plaintiff.

The European Court of Human Rights, in the context of applying Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, also proceeds from the fact that an interim decision may be equivalent to provisional or interim measures and procedures (e.g., the judgment in *Merkica and Others v. Malta*, paragraph 35) [8]. The legislator refrained from elaborating on the concept of proportionality of interim measures.

However, the Grand Chamber of the Supreme Court in its decision of February 12, 2020 in case No. 381/4019/18 [9] defined proportionality as the ratio of the negative consequences of the application of interim measures to the negative consequences that may occur in the event of failure to take such measures, taking into account the compliance of the right or legitimate interest for the protection of which the applicant applied to the court and the value of the property to be seized or the consequences of prohibiting the defendant from taking certain actions.

Scholars emphasize that the basis for the application of interim relief is a construction based on an assumption that is always subjective and can only be proven in the exact sciences [6].

It is worth noting that the U.S. Federal Court uses a specific “formula” for calculating the grounds for injunctive relief. The said Leibs Dorf-Pozner formula is $P \times H(p) > (100\% - P) \times H(d)$, where P is the credibility of the claim and the likelihood of its satisfaction, H is irreparable harm, p is the plaintiff, and d is the defendant.

If the product of the left-hand side of the formula prevails, the claim should be enforced,

and vice versa – the predominance of the product of the right-hand side of the formula leads to a refusal to enforce the claim [10].

However, the application of this approach, in our opinion, does not exempt the institution of interim relief from the subjective, evaluative factor. In this case, “proportionality” is achieved by applying the same evaluative concepts of “credibility of the claim” and “irreparable harm” (especially in administrative cases concerning non-property legal relations).

Thus, we have to state that it is impossible to deviate from the excessive use of evaluative concepts in securing a claim and to develop a single, unified measure of the proportionality of interim measures.

In such circumstances, our earlier conclusion that the administrative court should provide the most substantial reasons for the relevant court decisions when applying interim measures is confirmed.

Pursuant to part two of Article 151 of the Code of Administrative Procedure of Ukraine, the court must also take into account the correlation between the rights (interests) sought to be protected by the applicant and the consequences of interim measures for the interested parties.

The Supreme Court in its ruling of June 19, 2018 in case No. 826/9263/17 [11] characterized this ratio as the adequacy of the interim measures applied by the court.

Another, in our opinion, unconditional, aspect of the condition of adequacy of interim relief arises from paragraph 5 of part three of Article 151 of the Code of Administrative Procedure of Ukraine, which presumes that interim relief measures are related to the subject matter of appeal in an administrative case [12].

Conclusions

Summarizing the above, we note that the procedural institution of interim relief in administrative proceedings is characterized by a fairly broad discretion of the court. Granting the court such discretion is fully justified and aimed at guaranteeing the actual enforcement of a future court decision by taking measures to secure a claim. At the same time, the court's discretion in this case is limited to the right to take measures to secure an administrative claim only if one of the grounds specified in part one of Article 150 of the Code of Administrative Procedure

of Ukraine is present and in connection with the conditions established by the Code of Administrative Procedure of Ukraine. This study highlights that such conditions are proportionality, adequacy of measures to secure an administrative claim, direct relation to the subject matter of the dispute, and legal behavior of the defendant in the dispute.

In our opinion, compliance by the courts with the grounds and conditions for interim relief identified in this study will facilitate the reasonable, prompt and effective application of interim relief by administrative courts.

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Підстави та умови забезпечення позову в адміністративному судочинстві

Олена Сергіївна Яра

Кандидат юридичних наук, професор
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Ольга Володимирівна Кравчук

Аспірант
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

У статті досліджуються підстави та умови забезпечення позову в адміністративному судочинстві. Шляхом аналізу законодавчих положень, правозастосовчої (судової) практики у сув'язі з надбаннями правової науки виокремлено підстави та умови забезпечення позову в адміністративному судочинстві, зацентовано увагу на проблемних питаннях, які виникають при перевірці судами наявності підстав забезпечення позову та дотримання умов забезпечення позову. Зокрема, звертається увага на те, що забезпечення адміністративного позову з мотивів наявності очевидних ознак протиправності рішення, дії чи бездіяльності суб'єкта владних повноважень є фактично незастосовною через застереження щодо недопустимості вирішення спору по суті під час забезпечення позову. Зроблено висновок проте, адміністративний позов може бути забезпечено за наявності принаймні однієї з підстав, зазначених у частині першій статті 150 Кодексу адміністративного судочинства України та за дотримання умов співмірності, адекватності заходів забезпечення адміністративного позову, безпосередньої пов'язаності з предметом спору та з урахуванням правової поведінки відповідача у спорі. Акцентовано увагу на тому, що свобода розсуду (дискреції) суду при застосуванні заходів забезпечення адміністративного позову є безумовною, але не безмежною та контрольована вимогою щодо належного обґрунтування відповідної процесуальної дії

Ключові слова: адміністративний суд, адміністративний позов, адміністративне судочинство, забезпечення позову, принципи адміністративного судочинства, захист прав і свобод особи, підстави забезпечення позову, умови забезпечення позову



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Public administration in the activities of the court apparatus: Approaches to the formation of the concept

Olena V. Gulac*

Full Doctor in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Artem V. Shcherbak

Postgraduate Student
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

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The article analyses the scientific approaches to the content of the concepts of "public administration" and "public administration in the activities of the court apparatus". It is noted that establishing the essence of public administration, its features and the actual formulation of the definition of public administration in the activities of the court apparatus, which would fully reflect its legal nature, is the most pressing issue in the light of judicial reform. The author argues that a separate component of building the organizational structure of the court apparatus is the established practice of organizing activities in each particular court, with due regard to which the court administration develops and approves standard staffing tables for each group of courts; based on the maximum number of civil

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*Corresponding author

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servants and technical staff, the staffing tables of courts are approved by the heads of their apparatus and court presidents. It is proved that public administration in the activities of the court apparatus has not been studied in detail. The doctrinal teachings regarding the understanding of administration in the judicial system are in many cases opposite and are not applied unambiguously. When characterizing public administration in the judicial system, the semantic load is focused on the characterization of “organizational support of the courts”, “judicial management”, “organizational management of courts”, and management relations existing in the judicial system

Keywords: court, public administration, public administration, court apparatus, administration of justice

Introduction

We live in an era of constant transformations that are taking place in the integration of all spheres of life. Such globalization is a challenge for research, which does not bypass the field of court administration. In order to see new opportunities for improving the activities of the court administration and to prevent possible threats, it is necessary to understand the essence and approaches to the formation of the concept of public administration in the activities of the court administration.

To date, management in the judicial system in Ukraine has been almost ignored by scholars. The Ukrainian judiciary has an imperfect system of public administration in the activities of the court apparatus. Among these problems are the following: limited funding and, as a result, low salaries; lower social status of court employees; inefficient, overly centralized management and funding system; imperfect legislation in this area; lack of an effective system of monitoring and control over the work of court employees.

The existence of these problems is very closely related to the problems of efficiency of all components of public administration in the activities of the court apparatus. At the same time, the study of these important practical issues is impossible without clarifying the essence of the concept of “public administration in the activities of the court apparatus”.

The issue of the content of public administration has been studied in many scientific works. In particular, V.B. Averyanov [1] in his scientific work considered the issue of “public administration”. When studying the issue of court staff activities, we tried to analyse the scientific work of I.E. Marochkina and N.V. Svibilova [2], and based on their findings, to form a model of court administrators. However, these and other researchers did not address the issue of the content of the concept of public administration in the activities of the court apparatus.

The purpose of the article is to consider scientific approaches to the content of the concept of “public administration in the activities of the court apparatus”.

Results and Discussion

Establishing the essence of public administration, its features, and, in fact, formulating the definition of “public administration in the activities of the court apparatus” that would fully reflect its legal nature is the most pressing issue in the light of judicial reform. Therefore, first of all, let us analyse the definition: “public administration” and “public administration”.

Therefore, at the beginning of our study, we will try to define such theoretical definitions in administrative law as “public administration” and “public administration”.

Let's start with the term “public”, which is found in foreign scientific literature and is translated as “state, public, public, social” [3]. The terms “public” and “public administration” are closely related to the category of “public” [4].

In particular, Webster's Revised Unabridged Dictionary defines the word “administration” as “management; the management of public affairs; rendering services or assuming duties in the conduct of affairs; the management of any institution or service; direction; management”. In addition, the dictionary provides an interpretation of this term as: “the executive part of the state power, which consists in the implementation of constitutional and legal powers, general supervision of national affairs and the application of law” [5].

While researching the origin of the term “public administration”, we found out that this term was used in 1887 by the 28th President of the United States, Woodrow Wilson, in his essay entitled “The Study of Administration”. In his work, he wrote: “The

purpose of administrative science is to determine, first, what the business of government is, and second, how it should carry out this business efficiently and with the least financial and energy costs” [6].

In European law, the concept of “public administration” is understood as a system of public authorities that exercise their powers in the public sphere exclusively in the public interest. In addition to public authorities and bodies performing functions delegated to them by the authorities, it also includes independent public enterprises and individuals, if they exercise the powers of official bodies [7].

V. Averyanov [1] understands the concept of “public administration” as a set of executive authorities and local self-government bodies that are subordinated to the political power, ensure the implementation of the law and perform other public administration functions. However, most researchers of public administration point out that this term is part of a broader concept – management, the content of which is defined as a certain action to achieve a specific goal [9].

This understanding emphasizes that administration is the methods and techniques, actions of direct and mandatory determination of the behavior and activities of people by the relevant governing components of the state. These methods on the part of a state body or official have a direct impact on the will of performers by establishing their duties, norms of behavior and instructions, unilaterally affect the solution of problems, resolving situations that are subject to mandatory execution, requiring indisputable

orders and instructions, and establishing legal liability for failure to comply with legal obligations [10].

In general, “public administration” is a multifaceted entity defined by such basic concepts as: state, politics, public administration and power. Therefore, it can be argued that court administration is the provision, organization and coordination of the work of structural units of the court, court staff, and their interaction in performing the tasks assigned to them.

Public administration in the activities of the court apparatus is carried out through the so-called administrative corps, in particular through administrative positions, namely: Chief Judge and Deputy Chief Judge(s); Chief of Staff. Therefore, only coordinated interaction of the said corps is the key to high-quality systemic support of the management of the judicial process and the administration of justice.

Thus, under the definition of the category “public administration of the judiciary”, O. Gulak, V. Ladychenko and L. Holovko [11] understand a complex system of administrative institutions with a hierarchical structure, which has a purposeful activity, forms goals, works on all elements of the judicial system and makes management decisions. At the present stage, in the context of public administration of the judiciary, it is important to ensure conditions for integrity and avoidance of conflicts of interest by the judiciary [12].

According to I.E. Marochkin and N.V. Sibilova [2], the task of the court staff is to provide organizational support for the implementation of the functions assigned to a particular judicial institution. Therefore,

depending on the number of staff and the place (level) of the court in the judicial system, which determine their structure, the apparatus of local and appellate courts are classified into the following types 1) local court apparatus with up to 5 judges; 2) local court apparatus with 6 to 10 judges; 3) local court apparatus with 11 or more judges; 4) apparatus of appellate courts with up to 50 judges; 5) appellate court apparatus with 50 or more judges [2].

It should also be noted that another component of building the organizational structure of the court apparatus is the established practice of organizing activities in each particular court, taking into account which, the court administration develops and approves standard staffing tables for each group of courts, based on the maximum number of civil servants and technical staff, and approves staffing tables of courts by the heads of their apparatus and presidents of courts [2].

At the same time, the staffing level and structure of the local court apparatus are approved within the limits of the court maintenance costs by the territorial department of the State Judicial Administration of Ukraine with the consent of the court chairman. And the structure and staffing of the appellate court's apparatus are approved within the limits of the court's maintenance costs by the State Judicial Administration of Ukraine with the consent of the Chief Justice [13].

Thus, according to I.E. Marochkin and N.V. Sibilova [2], Ukraine is characterized by the American model of court management through court administrators (court administrators) who fully perform the functions of

court presidents in terms of work with court personnel and staff (except for judges), logistics, and organization of work of all parts of the court staff. Moreover, some structures (court reporters, judicial assistants) in specific cases are also subordinate to judges and other court officials [2].

The powers and managerial responsibilities of the chairman and chief of staff of a court are set out in the Law of Ukraine "On the Judicial System and Status of Judges". The provisions of this Law divide the powers vested in administrative positions into two categories: The chief judge and deputy (deputy) chief judges who control the efficiency of the court administration; and the chief of staff, who is more responsible for organizational support of the court, judges, court proceedings and administration of justice.

Organizational support for the work of the court is provided by its staff, headed by the chief of staff. The Regulation on the Court Staff is developed on the basis of the Model Regulation on the Court Staff and approved by the meeting of judges of the respective court. Temporary Regulations on the staff of a newly established court shall be approved by the acting chief of staff of that court. The Model Regulation on the Court Staff is approved by the State Judicial Administration of Ukraine in agreement with the High Council of Justice [14].

The chief of staff of the court is personally responsible for the proper organizational support of the court, judges and the judicial process, the functioning of the Unified Judicial Information (Automated) System, and informs the meeting of judges about his/her activities. The meeting of judges may express

no confidence in the chief of staff, which results in his/her dismissal.

Thus, analysing the Model Regulations "On the Court Staff" [13] and relevant practice, the typical organizational structure of the court staff is as follows:

- chief of staff of the court;
- case management services (general and specialized offices, court clerks, expedition, archive, etc.);
- statistics and generalization service;
- information technology and logistics service;
- service of citizens' appeals;
- court bailiffs' service;
- personnel service;
- finance and planning service;
- judicial assistants [15].

Depending on the progress of the case in the court apparatus, elements of the court apparatus are also classified from the other, procedural, side:

1. At the stage of preparing a case for consideration: a) the service of initial reception of documents/materials (service of appeals, general office); b) the service of automated registration (specialized office); c) the service responsible for automatic distribution and transfer of the case to a specific judge (specialized office); d) the service of citizens' appeals (providing information on the progress of the case, organizing the reception of visitors); e) the service of information technology (support).

2. At the stage of consideration of the case on the merits: a) judge's assistant review of the case and case law, preparation of the regulatory framework, draft procedural documents, inquiries, notifications, summonses

of parties, actions to obtain evidence, etc.; b) court reporter recording of the trial, registration of the case, transfer to a specialized office; c) court bailiffs' service ensuring and observance of the established order in the court session; d) service of receiving, sending, registration of documents and correspondence (office, forwarding); e) service of appeal

3. At the final stage after the case has been considered: a) the specialized office performs immediate procedural actions, issues (sends) copies of decisions to the parties to the process, prepares them for storage/sending to the appellate instance, transfers the decision to the executive service; b) the service for receiving, sending, registering documents and correspondence (office, forwarding); c) the service for citizens' appeals (providing information on the progress of the case, organizing the reception of visitors); d) statistics and analytics service storage, accumulation and processing of statistical data on the case; e) archival case storage of the case, issuance of archival certificates; f) information technology service (support) [15].

In other words, departments, divisions, and sectors may be established within the court apparatus, which conduct their functions on the basis of regulations approved by the chief of staff of the relevant court. An office is established in the court apparatus, and the court staff also includes court reporters, scientific consultants and court administrators.

The legal status of court staff members is determined by the Law of Ukraine "On Civil Service" with due regard to the specifics defined by this Law.

Organizational support for the activities of the Supreme Court of Ukraine is provided by the Supreme Court apparatus in accordance with Article 156 of the Law of Ukraine "On the Judicial System and Status of Judges". Regulations on the apparatus, structure and staffing of the Supreme Court of Ukraine are approved by the Plenum of the Supreme Court upon the proposal of the Chief Justice of the Supreme Court of Ukraine [14].

A court library may be established in each court to provide courts with legal acts, special scientific literature, and case law materials. The library's funds shall consist of printed publications and computer databases. Regulations on the court library are approved by the State Judicial Administration of Ukraine.

Each court has a bailiff service. Court bailiffs ensure that persons in court comply with the established rules and that they comply with the orders of the presiding officer.

The work of court staff members is also ensured in compliance with the Rules of Conduct for Court Staff Members is also ensured in compliance with the Rules of Conduct for Court Staff Members approved by the Council of Judges of Ukraine on February 06, 2009, No. 33, the Rules of Internal Labour Regulations and Labour Discipline, and the Rules of Internal Service Regulations.

Conclusions

Thus, the national legislation vests court administrations with a significant range of powers in the field of public administration in the administration of justice. This makes it possible to form and implement the provision, organization, and coordination of the

work of structural units of the court, employees of the court apparatus, and to exercise control functions.

Having analysed the peculiarities of the content of the concept of “public administration in the activities of the court apparatus”, it can be argued that public administration in the activities of the court apparatus is primarily intended to ensure high-quality organizational support for timely, complete, public and independent work of the court.

Therefore, ensuring the functioning of courts is not only about the justice procedure itself, but first and foremost organizational support. Efficiency, efficiency, and accessibility have a direct impact on the performance of judges, and this, in turn, has a positive impact on the reputation of the judiciary among the public.

Establishing a proper regulator of court administration is the key to meeting the requirements of society and ensuring the smooth operation of the judicial system as a whole.

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Публічне адміністрування в діяльності апарату суду: підходи до формування поняття

Олена Василівна Гулак

Доктор юридичних наук, доцент

Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Артем Валерійович Щербак

Аспірант

Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

У статті проаналізовані наукові підходи стосовно змісту поняття «публічне адміністрування», «публічне адміністрування в діяльності апарату суду». Зазначається, що встановлення сутності публічного адміністрування, його особливостей та власне формулювання визначення публічного адміністрування в діяльності апарату суду, яке б у повній мірі відображало його правову природу, є найбільш актуальним питанням у світлі судової реформи. Відстоюється думка, що окремою складовою побудови організаційної структури апарату суду є усталена практика організації діяльності в кожному конкретному суді, враховуючи яку, судова адміністрація розробляє та затверджує типові штатні розклади для кожної з груп судів; на підставі граничної чисельності державних службовців і технічного персоналу затверджуються штатні розклади судів керівниками їх апарату та головами судів. Доведено, що публічне адміністрування в діяльності апарату суду не досліджено детально. Доктринальні вчення стосовно розуміння адміністрування у судовій системі, в багатьох випадках є протилежними та застосовуються не однозначно. При характеристиці публічного адміністрування у судовій системі, смислове навантаження орієнтується на характеристику: «організаційного забезпечення діяльності судів», «судове управління», «організаційного керівництва судами», управлінських відносин, що існують в судовій системі

Ключові слова: суд, публічне адміністрування, публічна адміністрація, апарат суду, відправлення правосуддя



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Information support of scientific research: Legal aspect

Oleksandr M. Hres*

Research Associate

Ukrainian Research Institute of Special Equipment and Forensic
Examinations of the Security Council of Ukraine
03113, Mykola Vasylenko Str., 3, Kyiv, Ukraine

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The article deals with the concept of “information” and its interpretation by both scholars and the Law of Ukraine “On Information”. The main directions of the state information policy are indicated. The main types of information are outlined. The author emphasizes the need to expand the direction of ensuring the development of information activities, without limiting this direction to the technical component of scientific activity. The importance of information support in conducting scientific research is indicated. The importance of information for the life of mankind is emphasized. It is indicated that scientific and technical information covers the results obtained in the process of scientific and research, research and development, design and technological, production and public activities, recorded in a form that ensures their reproduction, use and dissemination. It is stressed the need to expand the direction of information development, not limiting this area only by technical component of scientific activity and ignoring the humanitarian direction, because the information

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*Corresponding author

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concerning scientific activity in general, including in the humanities, in the sphere of social sciences and in other scientific spheres is left out of consideration. It is noted that the main base of the scientific and technical information is formed with information resources, which are a systematic collection of scientific and technical literature and documents (books, brochures, periodicals, patent and design documentation, industrial catalogues, deposited manuscripts, scientific and research reports) fixed on papers or other storages. The main types of information activities and areas of information are given. The importance of information support in conducting scientific research is indicated and the search for the necessary information is of great significance for the effective conduct of scientific research, as the researcher spends about 50% of his time on the process of finding information. The importance of the information for humanity is highlighted

Keywords: information, information support, science, scientific research

Introduction

The term “information” comes from the Latin word “informatio”, which means information, explanation, presentation. Despite the widespread use of this term, the concept of information is one of the most controversial in science.

Information influence on the state, society, and citizens is now more effective than political, economic, and even military influence. Information is becoming a real, almost physically tangible force [1].

Information support plays one of the most important roles in the process of scientific research and is the starting point from which scientific research begins. The process of scientific research begins with the collection and analysis of available information in a particular field of science, followed by research, modernization or improvement of certain areas of science and technology. It is thanks to the information support that researchers are able to study the issues they plan to investigate.

Among the Ukrainian and foreign scholars whose works have studied the concept of information and its importance in the information support of scientific activity, it is worth mentioning the following: S.F. Anisimov [2], L.M. Becker, V.M. Bryzhko, N. Wiener [3], V.M. Glushkov, V.A. Kopylov, V. Rovensky & A. Uyemov [4], D.V. Smernytsky [5], K. Von Weizsäcker.

The purpose of the article is a study of the legal nature of the concept of information and its importance in the information support of scientific and scientific and technical activities.

Results and Discussion

The Law of Ukraine “On Information” (the “Law”) defines “information” as any information and/or data that can be stored on material carriers or displayed electronically.

One of the first definitions of the concept of “information” belongs to N. Wiener: “Information is the designation of the content

received from the outside world in the process of our adaptation of our senses to it. The process of obtaining and using information is the process of our adaptation to the contingencies of the external environment and our life activity in this environment" [3].

V. Rovensky, A. Uyemov, & E. Uyemova [4] define information as "a message about events occurring both in the environment external to the system and in the system itself". S.F. Anisimov [2] believes that "information is any message or transfer of information about something that was not known in advance".

Academician V.M. Glushkov noted: "Information in its broadest sense is a measure of the heterogeneity of the distribution of matter and energy in space and time, a measure of the changes that accompany all processes in the world... Information is carried not only by the pages of books filled with letters or human speech, but also by sunlight, the folds of a mountain range, the sound of a waterfall, the rustle of leaves, etc." [6].

Thus, information is data about phenomena, the universe, etc. At the same time, data becomes information only if the subject can perceive this data.

According to Art. 2 of the Law of Ukraine "On Information" [7], the basic principles of information relations are:

- guarantee of the right to information;
- openness, accessibility of information, freedom of information exchange;
- reliability and completeness of information;
- freedom of expression and beliefs;
- legality of obtaining, using, disseminating, storing, and protecting information;
- protection of a person from interference in his or her personal and family life.

According to Article 3 of the Law, the main directions of the state information policy are:

- ensuring access to information for everyone;
- ensuring equal opportunities for the creation, collection, receipt, storage, use, dissemination, protection, and defence of information;
- creating conditions for the formation of an information society in Ukraine;
- ensuring openness and transparency of the activities of public authorities;
- creation of information systems and information networks, development of e-government;
- constant updating, enrichment, and storage of national information resources;
- ensuring information security of Ukraine;
- promoting international cooperation in the information sphere and Ukraine's entry into the global information space.

The types of information by content are established in Article 10 of this Law [7], namely:

- information about an individual;
- information of a reference and encyclopaedic nature;
- information on the state of the environment (environmental information);
- information about the product (work, service);
- scientific and technical information;
- tax information;
- legal information;
- statistical information;
- sociological information;
- other types of information.

Article 15 of the Law provides the definition and legal regime of scientific and technical information [8]:

- scientific and technical information – any information and/or data on domestic

and foreign achievements of science, technology and production obtained in the course of research, development, design, production, and public activities that can be stored on material carriers or displayed electronically;

- the legal regime of scientific and technical information is determined by the Law of Ukraine “On Scientific and Technical Information”, other laws and international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine;

- scientific and technical information is open to the public, unless otherwise provided by the laws of Ukraine.

It is impossible to disagree with the statement of D.V. Smernytskyi [5] that the Law, establishing norms for ensuring the development of information activities in Ukraine, does not fully cover scientific activities, limiting it to the technical direction and ignoring the humanitarian direction, and therefore requires some revision, in particular in terms of replacing the concept of “scientific and technical information” with the concept of “scientific and scientific and technical information” in accordance with the Law of Ukraine “On Scientific and Scientific and Technical Activities” [9], because information on scientific activities in general, in.

The Law of Ukraine “On Scientific and Technical Information” [8] defines the basis of state policy in the field of scientific and technical information, the procedure for its formation and implementation in the interests of scientific, technical, economic and social progress of the country. The purpose of the Law is to create a legal framework in Ukraine for obtaining and using scientific and technical information.

The law regulates the legal and economic relations of citizens, legal entities, and the state arising from the creation, receipt, use and dissemination of scientific and technical information, and defines the legal forms of international cooperation in this area.

Scientific and technical information covers the results obtained in the process of research, development, design, production and public activities, recorded in a form that ensures their reproduction, use and dissemination.

There are five main stages in the process of preparing and conducting any research:

- the stage of accumulation of scientific information: bibliographic search of scientific information, study of documents, main sources of the topic, compilation of a literature review, selection of research aspects;
- formulation of the topic, purpose and objectives of the study, definition of the problem, justification of the object and subject, goal, main tasks, hypothesis of the study;
- theoretical research – substantiation of directions, selection of general methodology, methods, development of the concept, parameters, formulation of research conclusions;
- conducting an experiment – developing a program, methodology, obtaining and analysing data, formulating conclusions and research results;
- formalization of scientific research results, conclusions, recommendations, clarification of scientific novelty and practical significance [10].

The main base of scientific and technical information is formed by information resources – a systematized collection of scientific and technical literature and documentation (books, brochures, periodicals,

patent and design documentation, industrial catalogues, deposited manuscripts, research reports) recorded on paper and other media. The main types of information activities are obtaining, using, disseminating and storing information. The main areas of information include: political, economic, scientific and technical, social, environmental, spiritual and international. The importance of familiarizing oneself with the sources of information necessary for a researcher as quickly and completely as possible is due to its aging as a result of the emergence of new materials or a decrease in the need for it. According to scientific sources, the rate of information obsolescence is more than 10% per day for newspapers, 10% per month for journals, and more than 10% per year for books and monographs. Finding the right information is of great importance for the effective conduct of scientific research, since a researcher spends about 50% of his or her time searching for information. Therefore, one of the urgent tasks facing modern information systems is to obtain, summarize, disseminate and familiarize consumers with it as quickly as possible [11].

Information support is a means of communication between scientists on issues related to their professional activities.

Creating the preconditions for enriching scientists with new knowledge,

performing R&D and managing priority areas of scientific and technological development requires appropriate information support for scientific activity, i.e. dissemination of scientific achievements and ideas for their further use. Successful scientific work requires timely receipt of information to carry out research at a high scientific level and its transfer for the implementation of the results obtained in the global scientific and communication circulation and practical application. That is, the effectiveness of scientific research largely depends on the effectiveness of their information support, on how fully and timely the information needs of scientists are met [12].

Conclusions

Summarizing the above, it should be noted that, depending on the development of society, information has specific forms of manifestation and has a different impact on the processes of socio-economic development of both a single country and the entire global economy. Information is an important scientific, economic, political and social resource of mankind, and its level of development and accessibility increases the level and quality of any field of activity. Information support plays one of the most important roles in the process of any scientific research.

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Інформаційне забезпечення наукових досліджень: правовий аспект

Олександр Гресь

Науковий співробітник

Український науково-дослідний інститут
спеціальної техніки та судових експертиз Служби Безпеки України
03113, вул. Миколи Василенка, 3, м. Київ, Україна

Анотація

У статті розглянуто поняття «інформація» та її інтерпретація як з боку науковців, так і з боку Закону України «Про інформацію». Зазначено про основні напрями державної інформаційної політики. Окреслено основні види інформації. Наголошено про необхідність розширення напряму забезпечення розвитку інформаційної діяльності, не обмежуючи даний напрямок лише технічною складовою наукової діяльності. Вказано про важливість інформаційного забезпечення в проведенні наукових досліджень. Зазначено про важливість інформації для життєдіяльності людства

Ключові слова: інформація, інформаційне забезпечення, наука, наукові дослідження

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