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Problems of land law in the studies of Kharkiv lawyers in the 1920s

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The article draws attention to the little-studied area of historical and legal science, in particular, the issue of the emergence, formation and development of the land law science in Ukraine. The relevance of this area of research is emphasized in terms of possibility of finding the options (that already existed in the past) for solving the modern land-legal problems. It is stated that this article allows performing at least two tasks: the first one is the analysis of theoretical views on the problems of land law of Kharkiv lawyers of the 1920s, and the second one – the introduction of the little-known scientific works on this problem into scientific circulation, which allows reproducing the features of legal research of that time in the field of land law. It was analyzed the scientific achievements of Kharkiv scientists,

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such as L.S. Dubinskiy, O.L. Malitskiy, M.F. Matvievskiy, O.M. Odarchenko, S.E. Sabinin. Most of their scientific works are little known both in the historical-legal science, and in the land-legal science. The analysis of presented publications is a solid foundation for the conclusion about existence of the Kharkiv branch of science of the land law in the 1920s, which later has become the basis for the formation of corresponding scientific school

Keywords: land law, history of land law, science of land law, history of science of land law, Kharkiv school of land law

Introduction

The relevance of any historical and legal research is indicated by the ability to draw historical parallels with the modernity and to find the already existing solution to the problems of legal regulation. The land law is no exception, and its modern issues already have a corresponding analogue in the past. It is known that the land law has been relatively widely studied in the 1920s. First of all, it is worth noting that the lawyers of law faculties were taught this course at that time, mainly as a special section of administrative law. Thus, the scientists-administrativists were engaged in scientific developments in the field of land law, who studied the Land Code, additional laws and sentences of the Higher Land Control Commission. The Kyiv lawyers conducted very active studies of the relevant issues within the activities of academic institutions. Thus, the employees of the Commission for the study of Customary Law of the National Academy of Sciences of Ukraine (NASU) had significant achievements in the relevant issues. Subsequently, the studies of modern land law were con-

centrated in the sub-section on issues for the study of actual land law of the Commission for the Study of Customary Law, in the agrarian section of the Commission of Soviet Law and in a special section on the issues of studying the principles of the Land Code with the same commission [1].

The Kharkiv school of administrative law was quite powerful, so the issue of land law was actively investigated in the public law section of the Research Department "Problems of Modern Law" of the Faculty of Law of the Kharkiv National University of Economics [2]. While the lawyers of the Odessa Research Department "Modern Legal Problems" rarely raised the issues of land law, at least, there was not found the relevant topic in the approved plans for scientific research [2].

The subject of the science of land law has not yet received the proper level of distribution in modern historical and legal research. At the same time, there is no comprehensive approach to revealing the features of contribution of individual scientific schools of the land law,

which have been undoubtedly functioned in the recent past within the territory of modern Ukraine. The Kharkiv school of land law is one of such scientific centers.

Therefore, the purpose of the article is to analyze theoretical views on the issues of land law of the Kharkiv lawyers of the 1920s, the introduction of little-known scientific works on this problem into the scientific circulation, which will allow reproducing the features of legal research of that time in the field of land law.

Results and Discussion

Professor A.F. Yevtykhiev [4; 5] was one of the most famous Ukrainian administrators of that time. Today, his works on administrative law are widely known, but as for the subject of land law, it became possible to find only his brochure "Land Law", which was published in Kharkiv in 1924. Instead, he supervised the work of graduate students who studied the problems of land law.

In the spring of 1922, A.F. Yevtykhiev became the scientific mentor of the graduate student Alexey Odarchenko. The young researcher focused his scientific research in two directions: 1) the basic principles of self-government and 2) the land law [1]. It is worth noting that scientific work of the graduate student was productive. He produced a number of publications on administrative law regarding the issues of decentralization of local government, the boundaries of administrative discretion, the organization of local authorities, their

competence and functionality in comparison with the Western European local authorities. His work on the systematics of administrative law [6] was extraordinary, in which he expressed his position on the system of administrative law and the directions of its reform (which was completely ignored by Soviet science). Subsequently, the young scientist prepared the work "Relationship between law and administrative order in the Soviet law", and after the public defense of this work, he was transferred to the research staff of the department.

The attributive feature of any theoretical provisions is considered the preservation of their significance for future researchers for an indefinite time. The specified scientific work by O.M. Odarchenko [6] fully corresponds to this feature, as evidenced by the repeated periodic appeal to it by the scientists of administrative and legal direction. Thus, thirty years later, Ts.A. Yampolska [7] turned to these conceptual provisions, and eighty years later – R.S. Melnik, who laid the ideas of O.M. Odarchenko [6] as the basis for the formation of a new structure of administrative law [8].

The theory of land law became another area of scientific interests of A.M. Odarchenko [6], the contribution to which was non-voluminous. The article "Legislative protection of land plots from fragmentation" is one of these works, which was published by scientist in 1925 in the Moscow publishing house "Law and life". The legislative aspects of preventing

the negative trend of excessive parceling of agricultural land is the main leitmotif of this publication, that is, the topic is also relevant for the modern agro-sphere. According to O.M. Odarchenko, at the beginning of revolution, there were 3.2 million peasant farms in Ukraine; then in 1923, there were already 4.5 million ones, and in 1925 – 4.9 million [9]. For comparison, land parceling became the result of agrarian and land reform in the 1990s, which resulted in almost 7 million owners of parcels in Ukraine as a whole (which indicates the historical commonality of the issue raised). Further, O.M. Odarchenko [9] reveals the causes of the phenomenon of land fragmentation, their socio-economic and political basis, as well as the negative significance for agricultural management. The reasons for growing in the number of farms due to their size were rooted primarily in the general economic conditions, and in particular, in the shortcomings of tax system, which sometimes made it profitable to split the plot (taxation according to the number of livestock per farm made fictitious divisions profitable). Ultimately, the scientist comes to conclusion that the farms' fragmentation itself is socially dangerous only in the case of fragmentation to such an extent that does not allow conducting a rational economy. The author sees one of the ways out of this situation in the powers of provincial authorities of government, granted by the Land Code, regarding the establishment of norms for the plot fragmentation. At

the same time, he proposes to extend this practice to the decision of individual communities and even households on a voluntary basis, but for a certain period and with the agreement of two-thirds of the society; and for the individual households – with the agreement of all full-fledged members. However, these decisions had to be subject to further registration by the volost executive committees [9].

Based on the above-mentioned, it is advisable to draw historical parallels with the modernity. In the modern agricultural production, there is also a threat to the rational and efficient land-use of farms and their existence, which may arise in the case of division of farm lands, for example, in the case of inheritance or withdrawal of members from the farm, which amount to more than 30 thousand farms (as a numerous organizational and legal form of agricultural production) with 4.8 million hectares of the own lands. Therefore, the fragmentation of farmland ownership first threatens the existence of both individual farms and this peasant form of management, and also can causes unnecessary social tension. To avoid the described situation, a special government decree [10] was adopted, aimed at optimizing the process of farms' fragmentation, considering the regional features of agricultural land-use. Regarding another proposal by A.M. Odarchenko [9] about the expansion of land rights of rural communities and individual households, it is advisable to indicate the ongoing land

decentralization, according to which most of the land powers are transferred to territorial communities.

The historical digression (implemented by O.M. Odarchenko [9]) into the land policy of Germany, Austria, France, the USA and England in terms of preventing the processes of fragmentation of land ownership of agricultural producers as a global problem is really interesting. This review is definitely of scientific interest both for the historians of law and for specialists in the field of land law.

The next one is the article “The idea of land right in its past and present”, which was published in 1926 in the same scientific publication mentioned above. In this publication, O.M. Odarchenko [9] tried to trace the development of European ideas, which (in his opinion) led to the emergence of right of the universal labor land-use. As a result, he has come to the paradoxical conclusion that bourgeois law does not aim to satisfy all personal needs and individuals do not have the right to demand goods or services from the state on the grounds that they are necessary for their existence. In contrast to this, the scientist cites the need (proclaimed by the socialist Fourier) to replace the primitive communal economic rights of widespread hunting, fishing, fruit harvesting and cattle grazing (due to the impossibility of their application) by the right to work. Moreover, according to the researcher, the right to work (more precisely, the opportunity to apply the own labor) was inextricably

linked in Russia with the idea of obtaining land, which alone could give the peasant the opportunity to exercise his right to work and take advantage of the results of the latter one [11]. Unfortunately, in contrast to the previous article, it is already traced from the first pages a politicized attempt to move from an improperly substantiated conclusion about the failure of bourgeois law to provide for individual and social needs in “pushing” the idea of progressive labor land-use compared to the European land ownership. However, the period of the so-called “dictatorship of the proletariat” broke even this rather theoretically untenable model of land-use, because during the requisitioning of agricultural products, the peasants were deprived of any right to the results of their hard work.

Building a chain of forms, transitional from the labor land-use – (the labor egalitarian land-use – socialist agriculture (the requisitioning of agricultural products was one of its the important elements) – tax in kind – the land nationalization), A.M. Odarchenko [11] expressed the opinion that the autonomy of peasant economy was even more clearly manifested with the publication of law on the unified agricultural tax, especially after the abolition of its natural form and leaving only the cash method of payment [11]. There is a rather untenable attempt to justify the nationalization of land amid the egalitarian land-use compared to the bourgeois relations of land ownership.

At the same time, the author allows himself to “juggle” facts, by arguing that jurisprudence distinguishes three main forms of ownership: public, private and mixed, which should include property that is considered a private property, but due to its social significance, placed under the state control. Further, the author tries to substantiate the advantages of the model of state ownership of land on the examples of Turkey, Mexico, New Zealand and Ancient China. At the same time, the author summarizes that public ownership of land is established in the interests of the workers themselves, united in a collective (state), and the latter ones have the right to demand land plots for themselves only for the purpose of their cultivation, which is given the public importance [11]. From the side of conditions of expressing the own thoughts that are free from the ideological “isms”, the modern researcher cannot fail to notice the identification of public and state forms of ownership of land in order to disguise the consequences of land revolution, which has been carried out in the interests of rigid nationalization of land and agrarian relations, rather than in favor of the peasants. The artificially given examples of economically backward countries of that time look unconvincing. Finally, the identification of state with the collective of workers reaches the highest level of illogicality, and the latter ones are endowed with the right to demand land from the state, that is actually from themselves.

Unfortunately, it is worth admitting the scientificity’s degeneration into the pseudo-scientificity for the sake of ideological and political platform of the ruling communist elite, which is a characteristic of totalitarian ruling regimes.

Along with this, the graduate student Andrey Dedusenko also worked on the issues of land law. He showed research abilities while writing his student’s graduation work “Legal foundations of a new land system”, which he defended as a graduate of the law faculty of the Kharkiv Institute of National Economy in 1922. In October 1924, A.F. Dedusenko was enrolled as a graduate student of the research department “Problems of Modern Law”. Professor A.F. Yevtykhiev also became his scientific supervisor. A.F. Dedusenko was interested in the French school of administrative law and researched the land law and agricultural policy in Russia and Western Europe. During the first six months of work in graduate school, he completed the topic “On the procedure for resolving land disputes.” In 1925-1926, he studied the main trends in post-war agricultural legislation in foreign countries, in particular, the issues about the institution of land-use, the organization of public service for the promotion of agriculture, the regulation of agricultural production through the administrative provisions. His achievements also includes two published books: “Agronomic Assistance to the Population of Ukraine” and “Principles of Organizing Agronomic Assistance to the Population” [1].

O.L. Malitskiy created several publications in legal magazines on land and legal topics. He studied the reform of land judicial commissions [12], he prepared a report "Issues of Peasant Law" (1924) for the Ukrainian Law Society (ULS), in which he explored the property status of members of the peasant household [13]. M.F. Matvievskiy [14] published a separate work "The rights of farm laborers in labor peasant farms". The rest of his works were about the taxation of peasant farms.

Among other Kharkiv lawyers, it is worth noting Professor S.E. Sabinin [15], who prepared the report "Collection of Legal Works on the Study of Legal Forms of Land Ownership in the Ancient World". L.S. Dubinskiy [16] wrote about the features of compensation for damage in case

of causing death to a member of the peasant household.

Conclusions

The study of theoretical views on the issues of land law of Kharkiv lawyers in the 1920-s determined a comprehensive understanding of the existing scientific center, which became the basis of the Kharkiv school of land law. The introduction of the above-mentioned little-known scientific works on this issue into the scientific circulation made it possible to reproduce the features of legal research of that time in the field of land law. At the same time, this is only the initial stage of scientific research in this area, which provides for their continuation within certain time intervals.

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Проблеми земельного права в дослідженнях харківських правознавців 1920-х років

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Анотація

У статті звернено увагу на малодосліджену сферу історико-правової науки, якою є питання виникнення, становлення і розвитку науки земельного права в Україні. Підкреслюється актуальність цього напрямку дослідження з боку можливості знаходження вже існуючих в минулому варіантів вирішення сучасних земельно-правових проблем. Констатується, що репрезентована стаття дає змогу досягти виконання щонайменше двох завдань, першим з яких є аналіз теоретичних поглядів на проблеми земельного права харківських правознавців 1920-х рр., а іншим – введення в науковий обіг маловідомих наукових праць із вказаної проблеми, що дозволяє відтворити особливості тогочасних правових досліджень у сфері земельного права. Проаналізовано наукові здобутки харківських науковців, якими є Л. С. Дубінський, О. Л. Маліцький, М. Ф. Матвієвський, О. М. Одарченко, С. Є. Сабінін. Більшість з їхніх наукових праць є маловідомими як в історико-правовій, так і в земельно-правовій науках. Аналіз представлених публікацій є вагомим підставою для висновку про існування в 1920-х роках харківського осередку науки земельного права, який став основою формування в подальшому відповідної наукової школи

Ключові слова: земельне право, історія земельного права, наука земельного права, історія науки земельного права, харківська школа земельного права



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Legal values as determinants of sustainable development of society

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The goals of sustainable development have been outlined in the outcome document of the UN Summit "Transforming our world: the 2030 Agenda for Sustainable Development", and they remain the main development model for all countries of the world. Sustainable development is formed and ensured by various determinants, among which the legal values occupy not the last place. They provide legal identification of objects recognized as benchmarks for sustainable development and form the value-legal orientations of subjects whose activities are aimed at fulfilling these tasks. The absence of a common system of legal values leads to a deformation of legal consciousness of the population, the dominance of nihilistic trends, and it makes it impossible to achieve constancy and stability in society. Therefore, the presence of a single value-legal paradigm is a consolidating factor of Ukrainian society, it forms a positive attitude of the subjects to the political and legal life of the country,

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it contributes to their legal socialization and the development of an appropriate legal position. This makes it possible to achieve social justice, build the principles of inclusive development, ensure the rule of law, eradicate corruption and restore trust in the state and its institutions, strengthen social cohesion, ensure the interaction of state authorities with the public and self-organize the activities of citizens. The following concepts occupy a special place among the legal values, which contribute to the achievement of sustainable development goals and form the foundation of legal culture: a person, justice, freedom of responsibility, equality, patriotism, religious tolerance, etc

Keywords: life choice, legal culture, legal position, legal values, legal-value orientations, sustainable development, legal-value directives

Introduction

The goals of sustainable development outlined in the outcome document of the UN Summit "Assembly Resolution 70/1 Transforming our world: 2030 Agenda for Sustainable Development: United Nations General" are still the main development model for all countries of the world [1]. The effective implementation of such global goals requires proper institutional support, which leads to further scientific research on the implementation of determinants of sustainable development of a particular society. At the same time, it is worth considering that determinism is one of the principles of scientific knowledge, which explains phenomena through empirically available factors that determine the patterns and interaction of the studied phenomena. Such factors can accelerate or moderate changes in any sphere of public life, by determining their specificity.

Any factors can be considered as determinants of sustainable development of society (for example, events, phenomena, features, individual features of an object) that

have a direct impact on society and ensure the constancy of its development.

Since the concept of sustainable development is based on its three-component nature – economic, environmental and social spheres, therefore, each of them will have their special systems of determinants, and a person will occupy a central place in each of them. It is the human that makes up the core of the concept of sustainable development of society, the human is proclaimed a high social value in some states, and human-centrism has become the dominant ideology of the 21st century. All the goals of sustainable development are determined by various manifestations of human activity and directly depend on the level of culture of a particular society. Achieving the sustainable development goals is related to the level of development of legal culture. Since legal values are the foundation of legal culture, they will act as determinants of the sustainable development of society.

A review of the literature sources of recent years showed that there were no

special scientific studies devoted to the consideration of legal values as determinants of sustainable development of society. However, the works of domestic scientists-jurisprudents show the outstanding interest of scientific community in the value-legal issues. The works of the following researchers are still in demand: O. Bandura, H. Behruz, V. Bigun, P. Gaidenko, S. Gladkiy, K. Gorobets, O. Grischyuk, V. Dudchenko, K. Zhebrovskaya, A. Kozlovskiy, L. Makarenko, S. Maksimov, Yu. Oborotov, P. Rabinovich, S. Rabinovich and others. These are the theoretical basis for the study of legal values and their role in the dialogue of legal systems: the development of the above-mentioned domestic and foreign scientists in both the theory of state and other branches of law, the humanities and social sciences. The purpose of the article is to analyze legal values as a determinants of the sustainable development of society.

Results and Discussion

The scientific category “legal value” is collective one and it includes the concepts such as “value” and “right”. Each of them is also ambiguous, which determines its interdisciplinary nature.

The author’s analysis of the phenomenon of value made it possible to identify its following properties:

- the key feature of the «value» category is its «significance» («importance», «relevance»);
- the subject builds values in the process of his life activity, starting from the stage of goal setting;

- knowledge is a cognitive component of value that allows the subject to distinguish properties of the phenomenon, and the subject will evaluate them according to their significance;

- evaluation is the emotional component of the value, which help the subject to fix what is appropriate, to assert his interest and find out whether it meets his needs and whether it is meaningful for him;

- assessment is a process or procedure of providing value to certain phenomena (appreciation or denial), which is considered as a prerequisite for establishing value and consists of the subject and the object of assessment, as well as its objective and subjective side;

- value cannot be separately identified neither with the subject and his needs, nor with the object of evaluation endowed with certain properties, since they do not provide value;

- the process or procedure of establishing a value involves the execution of certain mental and emotional actions in sequence;

- values have a purely social nature;

- the same phenomenon can have different value for different subjects. As a result, this has given the grounds for defining values as phenomena of the objective world (material and spiritual), which are important for the subject when he makes a life choice [2].

G. Ball [3] considers the values as defining feature of a personal choice, and at the same time, he points out the need to distinguish between the following two qualitatively different variants:

a) when a person has clearly defined in advance regarding the values that he/she

prefers (and values that he/she rejects); therefore, for the implementation of a specific act of choice, it is required only the identification of the representation of these values in the available alternatives;

b) when it is needed to make a choice between the values. At the same time, the researcher emphasizes that "in any case, in order to make a successful choice, the subject (albeit with a clear value certainty) needs a sufficient level of intellectual culture, that is, he must be well aware of what task he solves, what is the goal, and what is a means. Otherwise, instead of promoting the realization of values that are important to him, he runs the risk of slowing it down".

The social system covers various types of sub-systems that use their own normative regulators of social life. Any of these subsystems (be it economic, political, religious, moral or legal ones) contains its own set of values that make up their axiological foundation. Therefore, the above-mentioned general features of value will be inherent in the values of any of the indicated sub-systems of the social system. Moreover, they can be repeated. However, in any case, they will be distinguished by the nature of social phenomenon, which will determine a certain area of social regulation (economics, politics, law, religion, morality, etc.).

Regarding the legal system, in which the social regulation is determined by the specific properties of law, the legal values acquire a higher level of normativity. Therefore, legal values are material or spiritual phenomena of the objective world, which

are important for the subject of law when he makes his legal choice.

In this context, the author understands the legal choice as the intention of the subject of law to perform any lawful actions in order to achieve a certain legal result. The intentions of the person are determined by the legal position of the person. It is the latter one that shows the internally conscious readiness of a person for legal behavior, which is based on his/her value-legal attitudes and legal worldview and reflects his/her attitude to the legal reality [4].

The inner attitude of person for appropriate actions is formed in the process of training, education and communication, and its occurrence depends on the current need for the individual and the objective situation, in which this need can be satisfied [5]. Therefore, knowledge about the system of legal values that determine the value-legal attitudes of the subject of law is of great importance not only for the legal regulation of social processes taking place in a particular country, but also that are capable to ensure their sustainable development.

When it comes to the system of legal values, the author clearly understands that it is possible to talk about their hierarchy according to certain criteria. However, there is no single approach to such a classification and cannot be.

Modern Ukrainian legal opinion, when determining the hierarchy of the basic values of law, follows two fundamentally different paths. The first of them is to substantiate the system and hierarchy of law values through the prism of humanistic tradition, and the second way is normative one and

it consists in the study of the hierarchy of law values reflected in the Constitution of Ukraine, normative and individual legal acts [6]. For example, a representative of the humanistic tradition (when speaking about the classification of legal values) indicates that, according to the criterion of usefulness, the values for a person are classified as follows: values that consolidate and legally ensure the rights and freedoms of an individual (the right to life, the right to freedom and personal integrity); arise from the humanistic essence of law (humanism, freedom, equality); arise from the normative-regulatory essence of law (legality, law and order, etc.); reflect the essence of law as a measure of human freedom (freedom of movement); arise from the essence of law as a normative-value imperative as a universally binding specific behavior; are aimed at forming among citizens a positive attitude towards the law as a universal human well-being. Within each group, it is proposed to consider legal values depending on the scope: legal values as a specific expression of general values (freedom, justice, law-obedience, etc.); legal values that determine the essence and content of laws that regulate various spheres of society (legality, legitimacy, etc.); institutionalized legal values that exist in the form of various social institutions (court, law enforcement agencies, advocacy, etc.) [7].

Analyzing the system of legal values, first of all, it is worth starting from the subject that will use it during the implementation of its legal choice. In law, the individual and the state are such players. The principle of human-centrism, which has taken

a leading place in the Ukrainian legal doctrine, encourages putting the hierarchy of legal values of person in the first place. At the same time, it should be considered that the hierarchy of human legal values directly depends on the needs, which can change under the influence of life circumstances. The basic human values (which are highly likely to be manifested in all cultures) are those representing the universal needs of human communication (biological needs, the need for coordination of social interaction and the requirements for the group functioning), united in ten motivationally different basic types. According to the theory of dynamic relations between value types, the actions performed in accordance with each type of values may conflict, or conversely, be compatible with other types of values [8].

The state also faces the difficult task of enshrining the hierarchy of legal values in the law that will implement the legal needs of state as an independent subject of law and an institution that ensures stability and law and order on its territory. Such a hierarchy of values should provide for a block of such legal values that will be identical to a certain part of legal values of a single person.

Value-legal attitudes form the core of the legal position of the individual, as they allow the subject to realize his own assessment of the object and determine the readiness to act on it in accordance with the existing system of legal values. All human attitudes, including the legal ones, have the common features such as:

- 1) specific objectivity, that is, focus on a specific object, and in this particular situation;

2) vigorous activity, which means the presence of an immediate readiness to act in accordance with the assessment and situation of satisfaction [9].

Consequently, the hierarchy of legal values depends on the person who will use it to satisfy the own legal needs. For the state, this hierarchy is static, since it is normatively fixed in the formal sources of law and acts as a “legal lighthouse” that highlights a certain area of social space within which a person will satisfy his legal needs. As for people, the hierarchy of human legal values will be dynamic, since it directly depends on legal needs that will determine a specific life situation that requires a legal regulation. According to the human-centrism principle that is enshrined in the law of most countries, including Ukraine, considering the human needs is in the first place, while the static system of legal values of society will become a certain guideline for it.

Legal culture will help bring the dynamic hierarchy of legal values of people closer to the static hierarchy of legal values of the legal system, which should become a value-legal orientation point for every person. The tasks performed by legal culture make it possible to rethink the role and importance of state and legal institutions to ensure sustainable development both at the everyday and at the scientific level. These tasks include: the formation of philosophy of the sustainable development among the population, understanding of the values and needs of stakeholders, involvement of individuals in the system of legal values and legal support of all activities aimed at achieving the goals of sustainable develop-

ment outlined in the outcome document of the UN Summit on sustainable development “Transforming our world: the 2030 Agenda for Sustainable Development” [10]. By involving an individual in the system of legal values of state, the legal culture carries out his legal socialization, establishes a certain balance between his legal values and the legal values of society.

It is well known that the high level of legal culture of the state’s population indicates a high level of their legal awareness and willingness to comply with the state’s requirements regarding their behavior. In their activities, they will be guided by those legal values that will become their value-legal attitudes and which a person will include in the own hierarchy of legal values. The question arises: what legal values does a person include? What legal values will a person perceive as a guide to action? The answers to these questions depend on education, upbringing, the specifics of a person’s micro-environment and macro-environment and their mutual influence.

The state should also join this process, because the legal values that make up the static hierarchy are designed to become the value guidelines in the formation of legal worldview of the individual, which will contribute to his/her legal socialization, the acquisition of appropriate legal experience, the ability to create the own legal position and defend it. The violation of legal education of citizens by the state gives rise to various deformations of their legal consciousness (legal nihilism, legal idealism, legal infantilism, legal dilettantism, legal demagogy, legal pragmatism, etc.), it

introduces an imbalance in public life, by giving rise to various forms of deviant and unlawful behavior, the manifestation of criminal “romance” and lynching, corruption, distrust of justice, it can ensure the sustainable development of society and can also cause the emergence of separatist movements and threat to the territorial integrity of the state. Such a state will not be able to ensure the stable development of society.

A state that strives to ensure the sustainable development of its society clearly establishes a static hierarchy of legal values in the legal system that meet the current legal needs of society at a particular historical moment, and takes all measures so that these values take their proper place in the dynamic hierarchy of values of its citizens, as well as officials.

Analysis of the “Assembly Resolution 70/1 Transforming our world: 2030 Agenda for Sustainable Development: United Nations General [1]” has shown that its content is permeated with legal values that make up the hierarchy of legal values of both the individual and society. Among them, there are the human rights, dignity, rule of law, justice, equality, non-discrimination, tolerance, multiculturalism, gender equality, responsibility, intolerance to corruption, inclusion, etc. All these legal values have been defined at the international level and they can be found in the Sustainable Development Goals: Ukraine. National report [11].

However, there are a number of legal values that are not mentioned in these documents, but they have a significant impact on the level of legal culture of the population

and ensure the sustainable development of Ukrainian society. Among them, there are the virtue, good neighborliness, trust, patriotism, freedom, etc.

Conclusions

Despite the three-dimensional nature of the concept of sustainable development, which detailed in 17 goals and 169 tasks, its core is a person. It is the human that is proclaimed a high social value in some states, and the human-centrism has become the dominant ideology of the 21st century. The values play the main role in a person's life that determine his/her behavior and development. Values play an equally important role in ensuring the sustainable development of society, by uniting it both to achieve some common vital interest, and to achieve the global goal – survival and development. Each area of public life has its own values, but the legal values have a special mission – to become normative regulators of public relations in any area of public life.

Each state, which wants to effectively solve the tasks outlined by the international community to ensure sustainable development, first of all should develop a clear hierarchy of legal values. These legal values will become the determinants that will determine the proper interaction of various groups of society on the path to achieving the Sustainable Development Goals and solving problems at the national level. In addition, these legal values should also become a part of the dynamic hierarchy of legal values of each member of society and its value orientations not only in certain legal situations, but also in everyday life.

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Правові цінності як детермінанти сталого розвитку суспільства

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Анотація

Цілі сталого розвитку, окреслені у підсумковому документі Саміту ООН «Перетворення нашого світу: порядок денний у сфері сталого розвитку до 2030 року», і надалі залишаються головною моделлю розвитку для усіх країн світу. Сталий розвиток формується і забезпечується різними детермінантами, серед яких не останнє місце займають правові цінності. Вони забезпечують правову ідентифікацію об'єктів, визнаних бенчмаркінговими орієнтирами сталого розвитку, та формують ціннісно-правові орієнтації суб'єктів, діяльність яких спрямована на виконання цих завдань. Відсутність спільної системи правових цінностей призводить до деформації правосвідомості населення, панування нігілістичних віянь, унеможлиблює досягнення сталості та стабільності у суспільстві. Тому наявність єдиної ціннісно-правової парадигми є консолідуючим фактором українського суспільства, формує позитивне ставлення суб'єктів до політико-правового життя країни, сприяє їх правовій соціалізації та виробленню належної правової позиції. Це дозволяє досягнути соціальної справедливості, розбудувати засади інклюзивного розвитку, забезпечити верховенство права, викоринити корупцію та відновити довіру до держави та її інституцій, зміцнити соціальну згуртованість, забезпечити взаємодію державних органів з громадськістю та самоорганізувати діяльність громадян. Серед правових цінностей, які сприяють досягненню цілей сталого розвитку та становлять фундамент правової культури, особливе місце займають людина, справедливість, свобода відповідальність, рівність, патріотизм, віротерпимість тощо

Ключові слова: життєвий вибір, правова культура, правова позиція, правові цінності, ціннісно-правові орієнтири, сталий розвиток, ціннісно-правові установки



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General features of the system of principles of agrarian law

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In this article, it is discussed the features of the system of modern principles of agrarian law. The attention is paid to the lack of unity and significant differences between the author's individual positions when formulating a system of such principles, both in the qualitative and quantitative aspects. It is revealed the reason for this situation, which consists in the opposition of objective-subjective beginnings in the nature of the agrarian law principles. It is the predominance of the subjective component that leads to the diversity of principles proposed by scientists, which need to be discovered, rather than invented. The discrepancy between the subjective vision of scientists and the objective nature of the principles causes the inefficiency of norms, which are the result of implementation of such principles in the normative array. Insufficient level of disclosure of the theoretical aspects for the formation of the agrarian law principles leads to their identification

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with the tasks of agrarian law as a branch. It is stated that the majority of scientists introduce a two-level differentiation of the principles of agrarian law into the general and sectoral (special) ones. Attention is also paid to the lack of principles of inter-sectoral level in most of the systems proposed today, which leads to unnecessary duplication at the level of sectoral (special) principles. At the same time, it is criticized the identification of general legal and constitutional principles used in the theory of agrarian law. It is substantiated the introduction of a six-level structure of the system of principles of agrarian law in the context of general one (international and national (constitutional), inter-sectoral, sectoral, sub-sectoral, institutional and sub-institutional principles)

Keywords: agrarian law, principle, principle of agrarian law, system of principles of agrarian law, structure of principles of agrarian law

Introduction

Legal principles gained a well-deserved recognition as one of the fundamental categories of legal science. Having an objective nature, the principles of law are the basis for the formation of a normative array, its structuring and further improvement. In other words, the principles of law are a pointer that a rule-maker of any level (without exception) should strictly follow, because otherwise the created norm will have an excessive subjectivity, not responding to the social relations that it is intended to regulate. The consequence will be the absolute ineffectiveness of such a rule. The agrarian law is no exception in this mechanism, which provides the research on the principles of agrarian law with an extraordinary level of relevance.

The following scientists and lawyers in agricultural sector turned to the topic of principles of agrarian law: A.M. Stativka [1], G.I. Savchenko [2], M.Ya. Vashchysyn [3], V.V. Knysh [4], N.V. Kravets [5] and

other. However, when starting to cover the problem of principles of the modern agrarian law, first of all it is worth paying attention to the lack of unity and significant differences between the author's individual positions when formulating a system of such principles, both in the qualitative and quantitative aspects.

Therefore, the purpose of the article is to reveal the general features of modern principles of agrarian law

Results and Discussion

V.I. Polyanska [6] explains the specified position of the uncertainty of the agrarian law principles due to the dynamicity of agrarian relations, on the basis of which these principles arise. However, the problem lies primarily in the opposition of objective-subjective beginnings in the nature of the agrarian law principles, as well as legal principles in general. According to the conceptual conclusion of A.L. Zakharov [7], the principles

of law are objective in content and subjective – in form, because they are the product of the conscious creativity of legislator, and the task of science is only to “discover” the principles embedded in the law, rather than to “invent” them, as well as to show their role, meaning, content and functioning. The formal side of subjectivity is the formation of principles by scientists, based on their qualifications, life experience and situational vision, which are different for everyone. It is also worth considering the scientist’s desire to invent something own original.

That is why, there is such a discrepancy in the formation of system of the principles of agrarian law, when the objective reality is passed through the subjective filter of the researcher’s personal legal culture. At the same time, if the subjective form does not correspond to the objective content (i.e. when a legal principle is formed contrary to the requirements of objectivity), such a principle cannot be realized in a normative activities. The current norms (but inactive ones) will be the result of normative activities, as it has been mentioned above.

From the side of significant subjectivity of the author’s formulations, it is advisable to once again return to the remarks expressed by G.I. Savchenko [2] regarding the discrepancy between the principles proposed by individual scientists and their essence and level. It is worth agreeing with the proposal regarding the recognition of the following tasks of agrarian law: the completeness of legal regulation of agrarian relations, the continuous improvement of the mechanism

of legal regulation of agrarian relations and the increase in the efficiency of state regulation of the agrarian sector of the economy. As for the other components of the proposal by G.I. Savchenko [2], it is worth mentioning the precaution. Indeed, the listed principles are not special, but at the same time, they are not the tasks of agrarian law. According to the results of dissertation research by A.L. Zakharov [7], he refers the following principles to inter-sectoral ones: the principles of freedom of contract, freedom of labor, legal protection of entrepreneurship, recognition and protection of all forms of ownership, dispositivity, freedom of economic activity, support and protection of competition. The security of subjective rights of participants in agrarian legal relations, the comprehensive protection and strengthening the forms of ownership in the agro-industrial complex and organizational and legal forms of managing of agricultural producers should be allocated to a subsystem of inter-sectoral principles.

At the same time, almost all of the above-mentioned approaches at its best provide for only a two-level differentiation of the principles of agrarian law into the general and sectoral (special) ones (except for M.Ya. Vashchyshyn [3], who refers the principles of land law mainly to inter-sectoral ones), which are designed to ensure the rational use and protection of agricultural land. In the field of agrarian and labor relations, M.Ya. Vashchyshyn proposes to consider the principle of optimal combination of unity and differentiation of legal

regulation. According to this scientist, the private law sphere is characterized by the principle of granting the agricultural producers the right to freely participate in contractual, entrepreneurial, economic and other relations, unless this is prohibited by the law [3]. Certainly, not all inter-sectoral principles are considered, but the fact itself regarding the proposal to single out another classification rubric is acceptable, which allows regularizing both the scope of sectoral principles due to their redistribution to the inter-sectoral level, and also objectifying the general structure of the principles of agrarian law.

For example, the principle of equality is positioned as one of the fundamental constitutional requirements [8], which is confirmed by the content of the provisions of the Constitution of Ukraine regarding equality: human and citizen rights (Articles 21, 24), associations of citizens (Article 36); types of entrepreneurial activity (Article 42), choice of profession and labor activity (Article 43), forms of ownership (clause 5 of Article 116), etc. Thus, the principle of equality, being general, becomes inter-sectoral when projected on a separate sphere of social relations.

In addition to equality, the general principles include justice, freedom and humanism [9]. All these principles have been widely used in the author's individual approaches, and as a result, in different variations of the sectoral principles of agrarian law. In particular, the principle of justice has been differentiated into the following

principles: ownership of land that belongs to agricultural producers; real guarantee of the subjective rights of country people as citizens of Ukraine and as subjects of agrarian relations; the priority of social development of the village. Accordingly, the principle of freedom was embodied at the sectoral level in the principles of freedom of agricultural entrepreneurship, economic and legal independence, self-management of production and economic activities, expansion of the system of legal guarantees for the freedom of agricultural entrepreneurship, non-interference of government authorities in the production and economic activities of agricultural producers, etc. In turn, the general principle of equality became the basis for highlighting the sectoral principles of equality of participants in agrarian legal relations, equality of the ownership forms and organizational and legal forms of management. Finally, the principle of humanism was implemented in the agrarian and legal principles of ensuring the right of citizens to adequate, high-quality, environmentally safe nutrition in accordance with medical standards, as well as ecologization of agriculture.

Certainly, the allocation of general principles of the law with further implementation in constitutional legislation is clearly not enough for objectification of features of agricultural production, which logically requires further differentiation at the levels of inter-sectoral and sectoral principles. The question arises only about the boundaries of such differentiation, that

is, the determination of sufficiency or insufficiency of the inter-sectoral principles for the creation of effective arrays of norms of agrarian legislation, which, accordingly, will entail the need to form and implement the next sectoral level.

Based on the fact that agricultural production activity is a special type of economic activity along with industry, trade, transport, etc., the principles of economic law are the inter-sectoral ones in agricultural law. Among the latter ones, it is advisable to distinguish between the principles of freedom of economic activity, initiatives and enterprises within the state economic order, equal protection of the rights of all economic entities by the state; limiting the intervention of state authorities in economic activity [10]. The existence of these inter-sectoral principles deprives it sense to separate the relevant sectoral principles, as is it has been done in many of the aforementioned classifications, given the lack of their agrarian legal specificity. In addition, there is no need for the principle of freedom of agricultural entrepreneurship, which is fully covered by the inter-sectoral principle of freedom of entrepreneurial activity; although in the civil encyclopedic literature, it is referred to the constitutional principles [11]. At the same time, despite the external inter-sectoral nature, the principle of agriculture ecologization is not such, and moreover, the sectoral principle of ensuring the right of citizens to adequate, quality, environmentally safe and sufficient nutrition is not a subject to any replacement for the

principles of higher levels. The deep and indispensable agrarian legal specificity is the criterion for the necessity of distinguishing the stated principles at the sectoral level. This specificity is a kind of conditional line of differentiation between the inter-sectoral and sectoral principles: the latter ones have the right to exist only if it is available. In view of this criterion, the following principles are indispensable: the sectoral principles regarding the consideration of features of agricultural activities, ensuring the food security of the state and ensuring the innovative development of agriculture.

The list of principles of the EU agrarian law presented in the agrarian and legal publications is indicative:

- common market;
- preferences for Community farmers;
- financial solidarity;
- stability of legal regulation;
- non-discrimination;
- proportionality;
- open market economy with free competition;
- caution [12].

Considering the above-mentioned, the stated principles of the EU agrarian law are inter-sectoral, common to all branches of material production, since they are devoid of any agrarian legal specifics.

The identification of general legal and constitutional principles [1] used in the theory of agrarian law causes certain remarks, because the latter ones are important only for the national system of law, while the general principles extend beyond the national

boundaries. Thus, as it is stated in special studies, the understanding of general principles appeared for the first time precisely in the international law [13]. At the national level, they really find their embodiment, first of all, in the Constitution of Ukraine. However, at the same time, they deepen significantly due to the fragmentation into a much larger number of national principles. In particular, S. Pogrebnyak [9] illustrates this trend on the example of general principle of equality, implemented in the Constitution with the help of four interconnected principles: equality before the law, equality before the court, equality of rights and freedoms of person and citizen, equality of duties of person and citizen. This predetermines the need to differentiate the general array of principles of agrarian law at the international and national levels. Moreover, only in this case, the national level of general principles will acquire identity with the constitutional one.

As for the structural-hierarchical structure of the system of principles, it should be mentioned the following: according to M.Ya. Vashchyshyn [3], the structure that combines the general legal and sectoral (special) principles is the traditional structure for each branch of law. At the same time, the undoubted positive factor is the expansion of this structure proposed by it, due to the inter-sectoral principles, in particular the land law, designed to ensure the rational use and protection of agricultural land, agro-labor, in which the optimal combination of unity and differentiation

of legal regulation is considered, as well as the private-legal principles of freedom of participation in the contractual, entrepreneurial and economic relations [3]. At the same time, the institutional principles are not mentioned for some reason. N.V. Kravets [5] has made an attempt to unify different approaches, she demonstrated her vision of the system of principles of agrarian law through a four-level structure that combines general legal, inter-sectoral, sectoral (special) principles of agrarian law and the principles of individual agrarian legal institutions. In general, this is a logical structure that generally reflects the internal structure of the legal system, except for the sub-branch level. Moreover, in some few publications devoted to sub-sectors as the elements of the system of law, the presence of the own principles is perceived as one of the signs of the law sub-sector [14]. The ignoring of sub-sectoral principles is explained by the insufficient study of this issue both at the general-theoretical and sectoral levels. In addition, it was accompanied by the development of principles of the agrarian-innovation legislation [4]. Without resorting to a content-related analysis of these principles, it should be pointed to a certain logical incompatibility between the sub-branch of law and the principles of legislation intended to constitute it, instead of bringing precisely the principles of law of the sub-branch level.

The complex dissertation research performed by H.A. Grigorieva [15] looks

much more organic from this side. She proposed and substantiated the formation of a sub-branch of agricultural-protection law in the structure of agrarian law, as well as presented a system of its principles (systematic nature of state support, guaranteed state support, differentiation of state support, environmental priority, transparency of agro-protective procedures). This allows transferring the sub-sectoral level of principles of the agrarian law from theoretical stage to a practical one, which gives the grounds for introducing another level of organizing the system of the agrarian law principles. At the same time, it is worth considering in the theory of agrarian law the already completed development of a number of sub-institutional principles of legal regulation of the cultivation and sale of sunflower seeds [16], beekeeping [17], the development of housing and communal services in the village [18], the production and sale of milk and dairy raw materials [19], investments in the social development of village [20], insurance of agricultural products with state support [21], organic agricultural production [22], etc. Given the above-mentioned, as well as the

ever-increasing dynamism of the development of modern agrarian relations, accompanied by an adequate complication of the structure of the agrarian law system, the introduction of a six-level structure of the system of principles of agrarian law in the context of general ones (international and national (constitutional), inter-sectoral, sectoral, institutional and sub-institutional principles) is quite reasonable.

Conclusions

To date, it should be noted the lack of unity and significant differences between the author's individual positions in formulating the system of principles of agrarian law. The reason for this situation, first of all, is the predominance of subjective component in the formation of principles, which leads to their diversity. The structure of the system of principles of agrarian law has not been studied enough. Therefore, it is currently relevant to introduce a six-level structure of the system of principles of agrarian law in the context of general ones (international and national (constitutional), inter-sectoral, sectoral, sub-sectoral, institutional and sub-institutional principles).

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Загальні особливості системи принципів аграрного права

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Анотація

У статті розглядаються особливості системи сучасних принципів аграрного права. Звертається увага на відсутність єдності та значні розбіжності між окремими авторськими позиціями при формулюванні системи таких принципів як у якісному, так і у кількісному аспектах. Розкривається причина такого становища, яка полягає у протистоянні об'єктивно-суб'єктивних начал у природі принципів аграрного права. Саме переважання суб'єктивної складової й призводить до різноманітності запропонованих науковцями принципів, які треба не вигадувати, а відкривати. Невідповідність суб'єктивного бачення вчених об'єктивній природі принципів зумовлює недієвість норм, які є наслідком втілення таких принципів у нормативний масив. Недостатній рівень розкриття теоретичних нюансів формування принципів аграрного права призводить до їх ототожнення із завданнями аграрного права як галузі. Констатується, що більшість учених запроваджує дворівневу диференціацію принципів аграрного права на загальні та галузеві (спеціальні). Загострюється також увага на відсутності у більшості пропонованих сьогодні системах принципів міжгалузевого рівня, що призводить до непотрібного дублювання на рівні галузевих (спеціальних) принципів. При цьому критикується застосовуване в теорії аграрного права ототожнення загальноправових і конституційних принципів. Обґрунтовується впровадження шестирівневої структури системи принципів аграрного права у розрізі загальних (міжнародні і національні (конституційні), міжгалузевих, галузевих, підгалузевих, інституційних і субінституційних принципів

Ключові слова: аграрне право, принцип, принцип аграрного права, система принципів аграрного права, структура принципів аграрного права



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Peculiarities of legal regulation of ecotourism in Poland: Prospects for Ukraine

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The experience of peculiarities of legal regulation of ecotourism in Poland is being studied, since Poland is the western neighbor of Ukraine and it has passed the European integration path. Thus, the application of Poland's positive experience in the issues of legal regulation of using the natural resources for the needs of ecotourism will be really useful. In particular, special attention is paid to the issues of a clear definition of the ecotourism concept (rural green tourism), the purpose of ecotourism is determined; in addition, this scientific article directly analyzes Polish legislation; it is possible to determine the main criteria that delimit eco/rural green tourism from other types of tourism. In general, it is determined that Poland's experience regarding the legal regulation of ecotourism and the use of natural resources for the needs of ecotourism is quite progressive, since the legislation contains

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a number of provisions that regulate various issues that are not regulated in Ukraine. Therefore, this scientific article also identifies certain aspects of the legal regulation of ecotourism (rural green tourism) in Poland, which can be useful for Ukraine. In this scientific article, there are proposals that can be tested by the domestic legislator in the process of forming legislation on the use of natural resources for the needs of ecotourism

Keywords: ecotourism, legal regulation of ecotourism, eco-touristic resources, ecotourism legislation of Ukraine, ecotourism legislation of Poland

Introduction

The European experience of functioning of the ecotourism sphere clearly demonstrates that the sphere of ecological tourism (in accordance with a rational organization) has a real opportunity to provide about 30% of the total income from the tourism industry. Nevertheless, the sphere of ecotourism in Ukraine brings even less than one percent of the profit for today. The above-mentioned fact clearly indicates the untapped potential of ecotourism [1]. The author believes that the lack of proper legal regulation of relations in the field of ecotourism is one of the problems of such a situation with ecotourism in Ukraine. In this regard, the consideration of positive experience of the European states in the legal support for the use of natural resources in ecotourism is extremely relevant, since this will potentially solve both the legal and organizational problems that hinder the development and evolution of the ecotourism industry as a whole. In connection with the afore-mentioned, it is necessary to analyze the world experience in the legal regulation of ecotourism.

The following scientists studied the experience of Poland in the legal regulation of ecotourism: E. Arazna and A. Babuchowska [1], O.A. Dudziak [2], Yu.V. Zinko and M.I. Rutynskyi [3], N.M. Stupen [4] and others.

Results and Discussion

According to the author, exploring the positive experience of European states in the legal support for the use of natural resources in ecotourism, the experience of Poland seems to be the most appropriate, since Poland has made really significant progress in the development of ecotourism. This was the result of a perfect state policy in the field of tourism, and accordingly, the legal support of relations in the tourism industry, including ecotourism. In addition, the experience of Poland will be useful for Ukraine, because Poland is the western neighbor of Ukraine, and accordingly, the natural and climatic conditions are approximately the same for the development of ecotourism.

First of all, it should be noted that ecotourism in Poland began to emerge in the

early 90s of the last century due to the active support from the state [2]. At the same time, it is worth noting that there is no special profile law on ecotourism (rural green tourism) both in Ukraine and in Poland. However, in contrast to Ukraine, the rural tourism (agro-tourism) is quite qualitatively regulated by the Law of Poland "On Tourist Services" (analogous in Ukraine to the Law of Ukraine "On Tourism").

Exploring the experience of Poland, it is worth noting that the concept of rural tourism (agro-tourism) is enshrined at the legislative level in Poland. Thus, agro-tourism (rural tourism) is a form of relaxing in conditions close to the countryside. That is, it can be the joint activities of people who provide housing, and accordingly, such activities are presented as an alternative source of income for agriculture, the rural population [3].

Thus, according to observations, the rural tourism in Poland covers all manifestations of tourism activities, which is carried out in the rural areas, and accordingly, the use of natural resources for the needs of rural areas. At the same time, the presence of this type of tourism is evidenced by the fact that the following descriptive terms are found in the various legal acts of Poland: the "rental of premises for farmers" or "other agricultural services associated with the stay of tourists". In addition, it should be noted that the Article 38 of the Law of Poland "On hotel services and services of tour leaders and tourist guides" of 29 August, 1997, states that the premises rented from

farmers or places for installation of tents on farms can be yet another amenities in which the hotel services can be provided (if these establishments meet the minimum equipment requirements) [4]. It should also be noted that according to Art. 6 of the Entrepreneurs Law of 6 March, 2018, a farmer who provides services in the field of rural tourism (that is, actually provides tourists with rooms for rent, foodstuffs, as well as provides other farm accommodation services) is exempted from the obligation to register economic activities [5].

Thus, it can be seen that the concept of ecotourism in Poland is unknown, but the term "rural tourism" (agro-tourism) is used at the legislative level. At the same time, some legislative acts detailize the specifics of this type of tourism. In the process of this research, it has been given various approaches regarding the correlation of the concepts of rural/ecological/ agro-tourism. According to the author, despite the targeted differences between them, they all have a common legal nature.

In addition, when exploring the features of legal regulation of the use of natural resources for the needs of ecotourism, it is important to pay attention to its goal. According to Polish scientists, the purpose of rural (green) tourism is to promote the tourism primarily in the rural and mountainous areas, as well as the development of local residents, increasing the incomes of population, the production of souvenirs, increasing the attractiveness of rural and mountainous regions of the state, including

an increase in the price of agricultural land, and accordingly thus increasing the cost of agricultural land, the development of rural infrastructure, the support for development of ecotourism models [6].

Thus, it can be seen that rural tourism in Poland is tied to the respective territories – villages and mountainous areas. In turn, the ecotourism in Ukraine is not tied directly to rural areas for today. However, the draft of Law “On rural and rural green tourism”. No. 5206” provides that rural tourism is primarily a type of relaxing tourism, which provides for the temporary stay of tourists in the countryside (village) [7]. Therefore, in this aspect, it is considered that introduction of such a term into the legislation on ecotourism in Ukraine clearly outlines at the legislative level an indication that ecotourism is carried out exclusively in rural areas. Thus, in this case it is possible talking about the use of the Polish experience of zoning of the rural green tourism.

According to O.A. Dudziak [2], the goal of ecotourism (rural green tourism) in Ukraine is similar to that in Poland. However, unfortunately, it is impossible to say that country people are primarily engaged in ecotourism, since they do not detailize that they are engaged in ecotourism, but register their activities as other types of entrepreneurial activity. All this due to the absence of legislation regulating relations in the field of using the natural resources for the needs of ecotourism.

Therefore, in fact, there is a real need in Ukraine to adopt a special Law that would

clearly regulate the issues of ecotourism activities.

At the same time, by analyzing the Polish legislation, it is possible to determine the main criteria that distinguish ecological/rural green tourism from other types of tourism. Thus, in Poland, ecotourism (rural green tourism) is considered as a form of generally recognized cognitive tourism, and its key goal is the desire of tourist to feel the interaction with nature, its features and phenomena. The ecotourism differs from other types of tourism according to the following criteria:

- the form of active study of territories, which are of a great natural and cultural value;
- providing income for the effective protection of cultural and natural heritage, and bringing the real economic and social income to the rural population;
- knowledge of natural ecological systems and cultural specifics of local communities [8].

Conclusions

Thus, it can be concluded that the experience of Poland can be really useful for Ukraine, since Poland clearly defines the concept of rural tourism (agro-tourism), defines the goals of this type of tourism, regulates the issues related to the activities of rural residents in the field of rural tourism and defines the criteria for distinguishing the rural green tourism from other types of tourism. The regulatory and legal framework (that will be created in the fu-

ture to regulate relations in this relatively new sphere of activity of rural owners for Ukraine) should correspond to the modern realities of the Ukrainian village and should be aimed at solving important problems,

considering the prospective development of rural settlements of the state, as well as harmoniously fit into the current Ukrainian legislation and not contradict the Law of Ukraine "On Tourism".

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Особливості правового регулювання екотуризму в Польщі: перспективи для України

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Анотація

Досліджується досвід особливостей правового регулювання екотуризму в Польщі, оскільки Польща є західним сусідом України та пройшла євроінтеграційний шлях то відповідно застосування позитивного досвіду Польщі в питаннях правового регулювання використання природних ресурсів для потреб екотуризму буде дійсно корисним. Зокрема, особливу увагу приділено питанням чіткого окреслення поняття екотуризму (сільського зеленого туризму), визначається мета екотуризму, також в даній науковій статті безпосередньо аналізується польське законодавство можна визначити основні критерії, які відмежовують екологічний / сільський зелений туризм від інших видів туризму. В цілому, визначено, що досвід Польщі щодо правового регулювання екотуризму та використання природних ресурсів для потреб екотуризму є досить прогресивним, оскільки законодавство містить низку положень, які врегульовують різні питання, які не врегульовані в Україні. Саме тому, в даній науковій статті визначено також окремі аспекти правового регулювання екотуризму (сільського зеленого туризму) Польщі, які можуть відповідно бути корисними для України. В даній науковій статті в цілому наведено пропозиції, що можуть бути апробовані вітчизняним законодавцем в процесі формування законодавства про використання природних ресурсів для потреб екотуризму

Ключові слова: екотуризм, правове регулювання екотуризму, екотуристичні ресурси, екотуристичне законодавство України, екотуристичне законодавство Польщі



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Legal principles for deregulation of agricultural business in Ukraine

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The article is devoted to the analysis of legal issues on the deregulation of agricultural business in Ukraine. The historical aspects of deregulation of the economy of Ukraine are researched. It was analyzed the legislation and special literature on the issues regarding the deregulation of agricultural business, it was allocated and characterized the main measures of deregulation of the agricultural business in Ukraine. The attention is paid to the need of ensuring a balance of the public and private interests in the agrarian sector of economy when determining the boundaries of deregulation of agribusiness. Based on the analysis of the current legislation and the practice of its application, it has been concluded that deregulation of agricultural business in Ukraine is of universal character, since it covers all elements in the structure of agricultural legal relations. This allows considering it as one of

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the basic principles in the mechanism of legal regulation of institutional and functional support of agricultural relations

Keywords: legal regulation, agrarian sector, agrarian business, deregulation, State agrarian register, public administration, optimization of public administration

Introduction

According to O.H. Bondar [1], Ukraine has become a scene of numerous reforms of different content, significance and areas of implementation since its independence. This is a completely natural phenomenon, since the state is developing the new socio-economic structure, the legal system, the organizational and legal mechanisms of public administration, the system of local self-government, the humanitarian sphere, etc. [1]. The deregulation of agricultural business is one of the key reforms in the agrarian sector, which is one of the main elements of the new development model of Ukraine in the modern conditions, as well as an integral part of European integration. According to the Decree of the President of Ukraine dated January 12, 2015 № 5/2015 "On the Sustainable Development Strategy "Ukraine-2020", the deregulation is not a goal in itself, but it is a necessary tool with the mission to radically improve the business climate and investment climate in Ukraine; it is also a factor in creating new workplaces and improving the qualitative standards of living.

This problem was raised, in particular, in the works of scientists in the field of agrarian law, such as: H.A. Grigorieva, V.M. Ermolenko, H.S. Kornienko, M.A. Kopytsa, V.V. Nosik, A.M. Stativka, V.Yu. Urkevich and others.

The purpose of the article is to highlight the legal issues of deregulation of the agricultural business in Ukraine through the analysis of current legislation and scientific

sources, highlighting the main approaches to deregulation of agricultural business and determination of the main directions.

Results and Discussion

The modern deregulation of agricultural business is due to a number of objective and subjective factors, including: the decentralization of power, the presence of an excessive number of requirements for agricultural producers and licensing procedures in the field of agricultural production, the high proportion of the shadow agricultural economy, the need to form a highly effective and competitive agricultural sector of the economy on the domestic and foreign markets, ensuring the economic and food security, fighting against corruption and raiding in the agricultural sector, completing the agrarian and land reforms, adapting and harmonizing the agricultural legislation to the level of EU legislation and WTO requirements and other factors, which indicate the need to review the state role in regulating the agricultural relations. The separate elements of the deregulation of economic activity in general and the agricultural business were enshrined in the Law of the Ukrainian SSR "On the economic independence of the Ukrainian SSR" dated August 3, 1990 № 142-XII and the Concept of transition of the Ukrainian SSR to the market economy dated November 1, 1990, in which the deregulation manifested as a decrease in the overregulation of economy and a certain liberalization of the market.

Later, the role and importance of state in the legal regulation of agro-sphere, the level of its influence on the development of agrarian relations and the boundaries of intervention were constantly changing at each historical stage of the development of agrarian relations. This is about the following evolutionary directions in the development of agrarian relations: the formation of new organizational and legal forms of management in agriculture, the denationalization and privatization of lands, the restructuring of non-state agricultural enterprises, the development of agricultural market infrastructure, gaining the WTO membership, etc.

The active processes of deregulation in the economic sphere in Ukraine began with the adoption of the Decree of the Cabinet of Ministers dated January 28, 2015 № 42 "Some issues of deregulation of economic activity". The main goal of the reform of deregulation of the economy of Ukraine was as follows: the deregulation of entrepreneurial activity, bringing the Ukrainian legislation in line with the European legislation, as well as entering the top-30 of the Doing Business rating by 2020. The ultimate goal is to attract the local and international investments to the economy. Today, it is possible to observe a steady trend of improving business conditions. In particular, in 2014-2019, Ukraine rose in the ranking by 24 positions (2014 – 112th place; 2017 – 76th place; 2019 – 71st place). Now, Ukraine occupies 64th place, and according to government forecasts in 2021, Ukraine can rise by at least 10 positions in the Doing Business ranking [2].

At the same time, despite the positive developments in the field of legal regulation in the Ukrainian economy and the agricultural sector, the regulatory environment remains "complex, sometimes contradictory,

as well as has many outdated norms that do not make sense both from the economic perspective, and from the point of view of common sense" [3].

In the dictionaries and specialized literature, the deregulation (from de... and the Latin "regula" – norm, rule) is interpreted as the abolition of norms, rules, forms and methods of regulation; cancellation or reduction of state regulation in a certain area of public relations; reducing state control over business, for example, for stimulation of free competition on the market. Deregulation of the economy is considered as a set of measures of state influence on the mechanism of social reproduction, and a decrease in the administrative and legal regulation of economic relations, as one of the main directions for reforming and optimizing the state management of the economy, which implies a gradual departure from the direct regulatory role of the state [3].

There is no definition of the term "deregulation" in the Ukrainian legislation. The normative legal acts, which are adopted in the field of deregulation of the agricultural business, do not always operate with this concept; but this term is used in the regulatory legal acts as a synonym for deregulation and it is understood as a simplification of conditions for doing business (Resolution of the Cabinet of Ministers of Ukraine dated January 28, 2015 № 42 "Some Issues on Deregulation of Economic Activities", the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Simplification of Business Conditions (deregulation)" № 191-VIII dated February 12, 2015). Decree of the President of Ukraine dated July 23, 1998 № 817 "On some measures to deregulate business activities" in order to reduce the interference of state authorities in the business activities, regulated

the procedure for carrying out inspections of their financial and economic activities by the regulatory authorities. Analysis of the content of these legal acts confirms the thesis expressed in the economic literature that deregulation in the agrarian sector should be interpreted as a change in the form of state influence, rather than a “reducing the degree of state influence on the economy”, as it is usually misunderstood [4]. The essence of deregulation of the agricultural business lies in the creation of appropriate conditions for self-regulation of the market based on the transparent business relations and fair competition, rather than in a simple abolition of all measures of state regulation, which involves the active cooperation of civil society, experts, farmers and entrepreneurs, etc. [3].

Exploring the legal nature of agricultural business in Ukraine, H.S. Kornienko [5] focuses on the role of state in the need to ensure the adaptation of agricultural producers to the system of global competition in the field of agribusiness by applying the methods and means regarding the following: stabilization of agricultural legislation, its systematization, support for the small and medium-sized agricultural businesses, the formation of a system of land market transparency, the dissemination of information-educational activities, the protection against raiding, etc. The author also highlights the deregulation as a type of state support, which consists in deregulating the Ukrainian market of agricultural products and prohibiting the discrimination of rights of its owners. In particular, it is prohibited to introduce any administrative, quantitative or qualitative restrictions when moving the agricultural products and products of its processing throughout the territory of Ukraine (Article 14 of the Law of Ukraine “On the

State Support for Agriculture of Ukraine” as amended in 2020) [6].

At the present stage of development of agrarian relations in the legislation of Ukraine, the following measures (trends) of deregulation of the agrarian business can be distinguished:

- *simplification of the conditions for doing agribusiness in certain sectors of agricultural production* (in the field of grain production – it was canceled the obligation to obtain a quarantine certificate, the period for issuing a phytosanitary certificate was reduced to 24 hours, it was canceled the licensing activities of grain fumigation that is exported, etc.; in the field of plant protection – it was canceled the mandatory certification of plant protection products, including pesticides and agrochemicals, it was canceled the licensing of trade of pesticides, it was canceled the licensing regime for importing plant protection products and the procedure for their registration was improved, etc.; in animal husbandry – it was canceled the obligatory receipt of a number of permit documents, in particular: permission to import the livestock products; operational permit for the processing of fishing products; manufacturer’s certificate of the quality of fishing products, it was canceled the licensing of livestock breeding activities, it was improved the procedure for identifying animals, etc.);

- *optimization of the use of agricultural land in the agricultural business and the opening of land market* (it was simplified the procedures for conclusion and registration of land lease agreements, it was shortened the list of essential terms of the rental agreement and all integral annexes to the rental agreement were canceled; it was set a minimum rental period of land for agricultural purposes – seven years, etc.);

- *introduction of digitalization of the agricultural business as an effective tool for fighting against corruption* (the creation of electronic system for public procurement Prozorro, a unified state information system – the State Agricultural Register, and others.) [7];

- *optimization of the institutional support of agricultural business* (restoration of the profile ministry, creation of the State Service on Food Safety and Consumer Protection, creation of the consultative-advisory agencies – the Business Ombudsman Council to improve business activities and the Business Ombudsman, and others).

Conclusions

Thus, in the legislation of Ukraine, the deregulation is understood as a set of measures aimed at simplifying the conditions for doing business; improving the procedure for inspections of agribusiness entities by regu-

latory authorities, optimizing the use of agricultural land in the agricultural business and opening the land market, digitalizing the agricultural business and optimizing the institutional support of the agricultural business.

In terms of agricultural law, the deregulation of agrarian business (by its legal nature) is universal in nature, since it covers almost all elements in the structure of agricultural legal relations, which allows considering it as one of the main principles in the mechanism of legal regulation of the institutional and functional support of agrarian relations.

When determining the boundaries of agribusiness deregulation, it is necessary to ensure a balance of public and private interests in the agrarian sector of the economy, considering the inter-sectoral, complex nature of relations that arise in the field of agribusiness; the inextricable link with the social and environmental components is the feature of the above-mentioned relations.

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Правові засади дерегуляції аграрного бізнесу в Україні

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Анотація

Статтю присвячено аналізу правових питань дерегуляції аграрного бізнесу в Україні. Досліджуються історичні аспекти дерегуляції економіки України. Проаналізовано законодавство та спеціальну літературу з питань дерегуляції аграрного бізнесу, виокремлено та охарактеризовано основні заходи дерегуляції аграрного бізнесу в Україні. Звертається увага на необхідність забезпечення балансу суспільних та приватних інтересів в аграрній сфері економіки при визначенні меж дерегуляції агробізнесу. На підставі аналізу чинного законодавства та практики його застосування зроблено висновок про те, що дерегуляція аграрного бізнесу в Україні має універсальний характер, оскільки охоплює всі елементи в структурі аграрних правовідносин, що дозволяє розглядати її як один із основних принципів у механізмі правового регулювання інституційно-функціонального забезпечення аграрних відносин

Ключові слова: правове регулювання, аграрна сфера, аграрний бізнес, дерегуляція, Державний аграрний реєстр, публічне адміністрування, оптимізація державного управління



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Legal regulation of disposal of the unusable pesticides accumulated during the Soviet era

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In the article, it was made a scientific and theoretical analysis of the USSR legislation, Ukrainian legislation. Special attention is paid to the establishment of specific features in the legal regulation of extraction, disposal, destruction and neutralization of unusable or prohibited pesticides and agrochemicals and packing containers from them. The authors come to the conclusion that today, it is worth directing more efforts at the state level to disposal of pesticides accumulated during the Soviet era, considering the need to improve the state of natural environment. First of all, it is needed to approve the state program with the determination of clear measures for its implementation and sources financing. To date, the regional state administrations have the opportunity to solve problems with obsolete pesticides and agrochemicals without interference of the Ministry of Environmental Protection

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and Natural Resources of Ukraine, as well as to determine the most suitable places for disposal of these substances. Thus, to date, the process of reducing the obsolete pesticides has been launched. It is aimed at improving the ecological state in the country, it will help reduce the negative impact on the life and health of people, as well as allow developing the agriculture

Keywords: waste, industrial waste, pesticides, plant protection products, pesticide disposal, packing containers, agricultural sector

Introduction

Considering the EU declared goals as part of the European Green Deal, including the block related to agriculture – the “From Farm to Fork” Strategy, which provides for a neutral or positive impact on the environment, including a reduction in the use of pesticides and mineral fertilizers, it is extremely important for Ukraine to firstly solve the issue of disposal of pesticides accumulated during the Soviet era at the state level.

It should be noted that accumulation of the obsolete pesticides due to the absence of their safe disposal for a long time causes irreparable damage to the environment, and the possibility of unauthorized public access to the extemporaneous storage areas of the obsolete pesticides left over from the Soviet era leads to irreversible negative consequences for the environment and public health.

The work of leading domestic experts in the field of agrarian, land and environmental law are devoted to researching the issues of legal regulation of waste in agriculture, including the unusable pesticides and agrochemicals. These are the leading domestic experts: V.M. Ermolenko [1], V.I. Andreytsev, V.A. Zuev, K.B. Sakadji [2], O.A. Tregub.

The purpose of this article is to conduct the scientific and theoretical analysis of the legal basis for disposal of pesticides accumulated during the Soviet era in Ukraine. Special attention is paid to the historical analysis of regulation of such pesticides and the justification of the need to develop and adopt a state program with the determination of clear measures for its implementation and sources of funding.

Results and Discussion

On the world stage, Ukraine has always been considered as an agrarian state. Even during the Soviet era, Ukraine was the locomotive of agricultural sector, because it had all the necessary prerequisites for this. First of all, these are the large areas of chernozemic soil – one of the most fertile soils, as well as a favorable climate for doing agrarian business. However, even in such conditions, it is impossible to obtain high yields and protect agricultural crops from pests and diseases without the use of pesticides. According to V.M. Ermolenko [1], the yielding capacity decreases by 35-50% and the products' quality deteriorates

significantly with the technologies for growing crops without the use of pesticides.

It should be noted that plant protection products were used quite actively in the USSR. In the 20-30s of the twentieth century, the insecticides (arsenic compounds, DDT, etc.) were used to combat the main pests and plant diseases. In particular, in the summer of 1925, it was conducted experiments in the USSR on the use of aviation to control plant pests: it was used the locust poison (DDT), but its effect on people had not yet been studied at that time [2]. In 1956, the Ministry of Agriculture of the USSR prepared and approved the "List of chemical agents for combating pests and diseases of agricultural plants that were permitted for using in agriculture." Since that time, such lists have been published for a five-year period, but with an annual update of the list of substances and regulations for their use. At the same time, in 1961, the Intergovernmental State Commission on Chemical Methods for Controlling Pests and Plant Diseases was established under the Ministry of Agriculture of the USSR. Its main task was to organize the state researches of domestic and foreign pesticides, the registration of substances permitted by this ministry for the use in agriculture and forestry [3]. As it can be seen, a considerable attention has been paid to the use of pesticides. In particular, it was settled the issues of disposal of pesticides. Thus, in the USSR legislation, it has been fixed that pesticides, which have become unusable and prohibited for using in agriculture, are sent (as a rule, in their

original packaging) to chemical enterprises by "SILGOSPHIMIA" ("Agricultural chemistry") organizations for neutralization and disposal. The reception of pesticides coming from agricultural chemistry organizations at chemical enterprises was carried out in specially designated places allocated for the collection, accumulation and storage of toxic industrial wastes that were subject to neutralization and disposal (point 1.4. of the Procedure for accumulation, transportation, neutralization and disposal of toxic industrial waste (Sanitary rules) approved by the Chief State Sanitary Doctor of the USSR dated December 29, 1984 № 3183-84) [4]. Accordingly, at each industrial enterprise, a certain amount of industrial wastes was generated and accumulated per shift, day, in the course of technological process. Depending on the hazard class, the wastes were placed in containers – steel cylinders – especially hazardous waste of the first class of danger, in polythene bags – wastes of the second class of danger, in paper bags – wastes of the third class of danger. The wastes were weighed when filled, included into the waste register, and then delivered to the industrial site and remained in a separate place for subsequent transportation to the landfill for disposal.

However, the thousands of abandoned or dilapidated storage sites of chemicals became the results of a large-scale chemicalization of agriculture, in most cases near the water ponds. With the collapse of agricultural infrastructure, many of wastes, including the remnants of chemical

preparations left in them, turned out to be derelict. Very often, the pesticides and fertilizers were abandoned on the roadside, in forests, ravines, near water, etc. [5].

Thus, the accumulation of unusable pesticides in Ukraine began in the 70-80s of the last century, when the intensive technologies were widely used in agriculture, and the level of pesticide use was 3-4 kg per hectare of agricultural land. As a result, the prohibited and unusable pesticides were stored in large quantities in the centralized warehouses of the state association "Ukragrohim" or in the individual farms [6]. Until 1992, these were the collective farms, after that period – the collective agricultural enterprises (CAE), created on the basis of the Law of Ukraine "On Collective Agricultural Enterprise" dated November 14, 1992. As a result of the CAE reorganization, unusable pesticides were transferred to the balance of regional state administrations or district councils. This process was accompanied by the loss of documentation for plant protection products, which often left in the abandoned storage, buried in the ground or just in the open air.

According to the information contained in the Decree of the Cabinet of Ministers of Ukraine "On the Approval of the National Waste Management Strategy in Ukraine until 2030" dated November 8, 2017 № 820-r, a separate group of wastes of plant protection chemicals consists of unusable and prohibited pesticides manufactured and accumulated back in Soviet times. According to preliminary results,

the amount of accumulation of unusable chemical plant protection products in Ukraine is estimated at 8.5 thousand tons, but these figures are much higher, because there is no accurate information yet. According to the data of Food and Agricultural Organization of the United Nations (FAO), 25.000 tons of unusable pesticides are currently accumulated on the territory of Ukraine [7]. Therefore, the issue of their disposal becomes especially relevant.

According to the Procedure for extraction, disposal, destruction and neutralization of unusable or prohibited pesticides and agrochemicals and their containers, approved by the Resolution of the CMU of March 27, 1996 № 354, disposal, destruction and disposal of unusable or prohibited pesticides and agrochemicals and containers from they are carried out by the enterprises, in which they have been manufactured, as well as by other enterprises that have a license of the Ministry of Environmental Protection and Natural Resources of Ukraine to carry out operations in the field of hazardous waste management, an approval of the state sanitary-epidemiological expertise, on contractual basis (point 3). However, there is not a single plant in Ukraine that could dispose this type of waste in an environmentally safe way. Mainly, due to its high cost. Thus, due to the lack of effective legal framework, constant changes in rules and potential significant financial expenses, such a plant can cost an investor up to 10 million euros [8]. The exportation of unusable pesticides for disposal outside the territory

of Ukraine has become possible due to adoption of the Resolution of the CMU dated November 21, 2018 № 1212 “On Amendments to Point 11 of Regulation on Control for Transboundary Movements of Hazardous Wastes and Their Utilization and Disposal”. It is also important that with the adoption of the above-mentioned Resolution, the regional state administrations have opportunity to solve issues with the obsolete pesticides and agrochemicals without the interference of the Ministry of Environmental Protection and Natural Resources of Ukraine, as well as to determine the most suitable places to dispose these substances. Selection of contractors with licenses for collection, storage and transportation of pesticides, the financing of these activities – the prerogative of regional state administrations [9].

In addition to disposal, the Ukrainian legislation provides for a comprehensive inventory of the accumulation of chemical plant protection products that are prohibited and unusable in agriculture; an inventory of the accumulation of chemical plant protection products that are prohibited and unusable in agriculture is carried out at enterprises, institutions, organizations of all forms of ownership that have storage facilities for the storage of chemical plant protection products (point 2, point 1 of the Procedure for conducting a comprehensive inventory of places for accumulation of chemical plant protection products that are prohibited and unusable in agriculture, approved by the joint order of the Ministry of Agrarian Policy, the Ministry

of Environment, the Ministry of Health of October 18, 2001 № 315/376/412).

Today, the local authorities are actually engaged in the implementation of inventory and disposal of pesticides left over from Soviet times. For this, according to the Law of Ukraine “On Public Procurement” dated December 25, 2015, they should hold tenders. In particular, in the Sumy region, the regional council decided to transfer a subvention to the city budget in the amount of 719,220 UAH in order to solve the problem with the disposal of pesticides. The session adopted a decision on co-financing for the disposal of these pesticides in the amount of 179 thousand 805 hryvnias. That is, the Syniv village council was able to announce a tender for almost 900 thousand hryvnias [10]. However, this is only a small part of the funds that need to be collected in order to clear the region of unusable plant protection products.

Given the catastrophic situation in this area, the National Security and Defense Council of Ukraine adopted a decision “On measures to increase the level of chemical safety on the territory of Ukraine” dated March 19, 2021. It provides that the Ministry of Environmental Protection and Natural Resources of Ukraine together with the local executive authorities in 2021 should provide funding for projects for the disposal and neutralization of non-natural hazardous substances at the expense of funds for the protection of the environment (paragraph 2, point 3, point 6). K.M. Kravtsova [11] rightly notes that the prevention of environmental pollution

by chemicals is one of the important problems of the modern intensive farming.

Conclusions

Therefore, it should be stated that today the local authorities have been given the powers to solve the problem of disposal of unusable pesticides; but at the state level, it is just beginning to discuss the adoption of

appropriate state program. Still, it is urgent to accelerate the approval of state programs with the determination of clear measures for its implementation and the sources of funding and strengthening control over the execution of the powers assigned to local authorities and responsibility in case of ignoring or negligence with the handling of obsolete pesticides.

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Правове регулювання утилізації непридатних до використання пестицидів, що накопичені за часів СРСР

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Анотація

У статті здійснено науково-теоретичний аналіз законодавства СРСР, українського законодавства. Окрема увага приділяється встановленню особливостей у правовому регулюванні вилучення, утилізації, знищення та знешкодження непридатних або заборонених до використання пестицидів і агрохімікатів та тари від них. Автори доходять висновку, що нині, ураховуючи необхідність покращення стану навколишнього природного середовища, варто більше зусиль на рівні держави направити на утилізацію пестицидів, що накопичені за часів СРСР, в першу чергу затвердити державну програму із визначенням чітких заходів для її реалізації і джерел фінансування. Сьогодні обласні державні адміністрації мають можливість без втручання Міністерства захисту довкілля та природних ресурсів України вирішувати проблеми із застарілими пестицидами та агрохімікатами, а також визначати, де найбільш вигідно здійснювати утилізацію цих речовин. Таким чином, на сьогоднішній день процес зменшення непридатних пестицидів запущено. Він спрямований на покращення екологічного стану в країні, сприятиме зменшенню негативного впливу на життя та здоров'я людей та дозволить розвиватися сільському господарству

Ключові слова: відходи, промислові відходи, пестициди, засоби захисту рослин, утилізація пестицидів, тара, сільське господарств



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Current state and prospects for the development of legal support for hydrotechnical land reclamation

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The article is devoted to the analysis of the current state of Ukrainian legislation in the field of hydrotechnical land reclamation, as well as highlighting the prospects for the development of legal support for a certain area of public relations. It has been established that hydrotechnical land reclamation contributes to an increase in the soil fertility, increase in the productivity and sustainability of agriculture, and the creation of a guaranteed food fund of state. However, in recent years, the efficiency of hydrotechnical land reclamation has been declining, which is explained by a number of objective and subjective reasons: insufficient material and technical support and shortcomings in usage of hydrotechnical structures, the deterioration of ecological and reclamation state of agricultural land, insufficient interest and responsibility of the landowners and land users. These factors include the incomplete use of scientific developments, insufficient information support, imperfect and outdated legal and regulatory framework. Considering the great importance of hydrotechnical land reclamation for the development

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of the country's agriculture, these relations require proper legal regulation. It has been concluded that it is impossible to solve the following problems through the organization of land reclamation: combating desertification, providing resources and food for the state in years with adverse weather conditions, providing agriculture with water. All this due to the fact that this problem is complex. To achieve the goals of irrigation and drainage strategy in Ukraine for the period up to 2030 within certain priority directions, it is necessary to ensure the effective interaction of legal, organizational, economic and financial mechanisms for the restoration of irrigation and drainage in Ukraine

Keywords: land reclamation, hydrotechnical land reclamation, land irrigation, land drainage, agricultural land

Introduction

According to the Food and Agriculture Organization of the United Nations, the agro-resource potential of Ukraine allows producing the agricultural products in volumes that provide food for at least 450-500 million people. Today, these opportunities are used no more than one third, although Ukraine with its agricultural potential fully ensures its food security and has a real opportunity to become one of the leaders in world agricultural production. The insufficient level of using the existing agro-resource potential is limited by a number of factors. The main factors are the loss of fertility of agricultural lands as the main means of production in agriculture, suboptimal conditions for natural moisture supply in more than half of the territory of Ukraine, which are constantly deteriorating due to the global climate change. As a result, the efficient farming without irrigation has become practically impossible; there is a threat of progressive desertification of land and the transformation of certain regions into depressive ones.

The solution of these problems is contained in the plane of application of land reclamation as one of the most effective factors for improving the natural properties of

agricultural land. At the same time, the state of reclamation agriculture in Ukraine can be characterized as a crisis one with the threat of deterioration.

The following scientists-lawyers were engaged in the study of legal problems in the field of land reclamation: N.S. Havrish, V.M. Ermolenko, I.A. Ikonytska, T.G. Kovalchuk, P.F. Kulynich, V.I. Semchik, V.A. Sytnik, N.I. Titova, M.V. Shulga and other scientists. However, certain aspects of the legal support of hydrotechnical reclamation on agricultural lands in Ukraine remain without the researchers' attention.

The purpose of the article is to analyze the current state of Ukrainian legislation in the field of hydrotechnical land reclamation, as well as to highlight the prospects for the development of legal support for a certain area of public relations.

Results and Discussion

The principles of legal regulation of social relations that arise in the process of land reclamation, the use of reclaimed lands, as well as the powers of executive authorities and local self-government authorities in the field of land reclamation are defined by "On

Land Reclamation: Law of Ukraine dated January 14, 2000" [1]. Land reclamation is a set of measures (hydrotechnical, agro-forestry, chemical, crop-engineering, agro-technical) aimed at improving the soil properties, preserving and increasing soils fertility, ensuring their resistance to adverse natural conditions and anthropogenic factors, with the aim of using them most effectively as a rule in accordance with the needs of agriculture, with mandatory compliance with environmental requirements established by law.

The hydrotechnical reclamation of agricultural land is one of the main methods of land reclamation in Ukraine, and at the same time, it is one of the main means of stabilizing agricultural production. The hydrotechnical reclamation of agricultural land is a set of measures aimed at ensuring the improvement of agricultural land with an unfavorable water regime (waterlogged, over-dried, etc.), regulation of the water and air regime of soils in order to protect them from the harmful effects of water (flooding, under-flooding, erosion, etc.) by creating special hydraulic structures.

Practice shows the high efficiency of realization of hydrotechnical reclamation measures. The hydrotechnical reclamation of agricultural land contributes to an increase in the soil fertility, increase in the productivity and sustainability of agriculture, and the creation of a guaranteed food fund of state. However, in recent years, the effectiveness of hydrotechnical melioration of agricultural land has been declining, which is explained by a number of reasons: insufficient material and technical support and shortcomings in usage of hydrotechnical structures, deterioration of the environmental and reclamation state of agricultural land, insufficient interest and responsibility

of landowners and land users. These factors include the incomplete use of scientific developments, insufficient information support, imperfect and outdated legal and regulatory framework. Considering the great importance of hydrotechnical reclamation of agricultural land for the development of the country's agriculture, these relations require proper legal regulation.

The legal principles for conducting hydrotechnical land reclamation are defined by "On Land Reclamation: Law of Ukraine dated January 14, 2000" [1], by the Decree of the Cabinet of Ministers of Ukraine "On the standards for environmentally safe irrigation, drying, watering management and water drainage" dated September 2, 2020, №766, SBN V.2.4-1-99 "Reclamationsystems and structures", State Standard of Ukraine (SSU) 7286:2012 "Quality of natural water for irrigation. Environmental criteria", SSU 7591:2014 "Irrigation. Water quality for drip irrigation systems. Agronomic, ecological and technical criteria", SSU 2730:2015 "Environmental protection. The quality of natural water for irrigation. Agronomic criteria" and some other regulatory legal acts.

SBN V.2.4-1-99 "Reclamation systems and structures", approved by the State Committee for Construction, Architecture and Housing Policy of Ukraine dated June 25, 1999 № 153 (entered into force on January 1, 2000), fix the determination of main types of hydrotechnical melioration: irrigation and drainage of lands, watering of the territories. Thus, land irrigation process is the supply of water to fields for artificial soil moistening in order to improve the nutritional and thermal regime of plants, the soil microclimate and the surface air layer. Land drainage process is the removal of excess moisture from the root-containing

layer of soil. Irrigation of territories is the water supply to waterless and low-water areas by means of using the local water resources and passing water through canals and pipelines from other territories.

According to SSU 2730:2015 “Environmental protection. The quality of natural water for irrigation. Agronomic criteria”, it is determined the quality of water for irrigation by its effect on soils, for preserving and increasing soil fertility, as well as for preventing the processes of salting and alkalization. Regulation of quality indicators of irrigation water according to agronomic criteria is carried out considering the composition and properties of soils. When assessing the quality of irrigation water, three classes of its suitability are distinguished: class I – “Suitable”, which is suitable for irrigation without restrictions; class II – “Restrictedly suitable”, which is used provided the mandatory application of a set of measures to prevent the soil degradation or improve water to the indicators of class I; class III – “Unsuitable” – water with the quality indicators that go beyond the values established for irrigation water of the second class, it is unsuitable for irrigation without preliminary improvement of its composition. Assessment of water quality for irrigation according to environmental criteria, according to SSU 7286:2012 “Quality of natural water for irrigation. Environmental Criteria”, is carried out in order to prevent the possible negative impact on the components of natural environment and public health.

However, a number of issues in the field of hydrotechnical reclamation, which require immediate solutions, remain relevant. These are the following issues: the inability of irrigation and drainage systems to perform the functions of resource and food

supply for the state in years with adverse weather conditions due to the extremely low level of use of existing potential; imperfection of legislation on water resources management and land reclamation; imperfection of the system of water resources’ management and land reclamation; unsettled mechanisms for the use of intraeconomic systems.

For solving the outlined issues (of the strategy) – “On the approval of the Irrigation and Drainage Strategy in Ukraine for the period up to 2030: Order of the Cabinet of Ministers of Ukraine dated August 14, 2019 No. 688” [2], the purpose of which is to determine the strategic directions of the state policy on irrigation and drainage, to ensure sustainable eco-balanced development of agriculture in Ukraine. The goal of the Strategy should be achieved through the following ways: reforming the public administration system for irrigation and drainage based on the integrated water resources management according to the basin principle, considering the need to separate the function of water resources management (in particular, the implementation of state policy, water use planning and water distribution among users) from the function of water infrastructure management; preservation and reproduction of soil fertility, protection of territories and populated localities from the harmful effects of water, achievement and maintenance of a good state of river basin areas; restoration and increase in the areas of irrigated lands, drainage systems; stimulation of the mechanism of public-private partnership; support for scientific research, training of qualified personnel, etc. The implementation of the Strategy is aimed at restoring the potential of irrigation and drainage systems in order to further increase the areas of irrigation and

water regulation as a basis for achieving the maximum level of efficiency and environmental safety of agricultural production.

For performing the goals and objectives – “On the approval of the action plan for the implementation of the Irrigation and Drainage Strategy in Ukraine for the period until 2030: order of the Cabinet of Ministers of Ukraine of Ukraine 21.10.2020. No. 1567-p” [3]. The implementation of the adopted Plan of Measures will ensure the development of irrigated agriculture, increasing crop yield, increasing the area of irrigated land, drainage systems and expanding the agrarian potential of Ukraine.

In order to reform the public administration system for irrigation and drainage on the principles of integrated water resources management according to the basin principle and considering the need to separate the functions of water resources management from the function of water management infrastructure “Some issues of distribution of individual powers of central executive bodies in the field of land reclamation: Resolution of the Cabinet of Ministers of Ukraine dated 24.05.2021 No. 539” [4]. The Decree limited the functions of the State Water Resources Agency of Ukraine regarding the hydrotechnical land reclamation; the

tasks of the State Water Resources Agency of Ukraine regarding the development of land reclamation and management of the operation of irrigation and drainage systems were terminated; the functions of the State Agency of Fisheries of Ukraine were expanded, which renamed into the State Agency of Land Reclamation and Fisheries of Ukraine; the powers regarding the formation of a policy in the field of hydrotechnical land reclamation were transferred to the Ministry of Agrarian Policy of Ukraine, etc.

Conclusions

The approved strategy regarding the irrigation and drainage in Ukraine for the period up to 2030 and the action plan for the implementation of this strategy indicates that it is impossible to solve the following problems through the organization of land reclamation: combating desertification, providing resources and food for the state in years with adverse weather conditions, providing agriculture with water. All this due to the fact that this problem is complex. To achieve the goals of the Strategy within certain priority areas, it is necessary to ensure the effective interaction of the legal, organizational, economic and financial mechanism for the restoration of irrigation and drainage in Ukraine.

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Сучасний стан і перспективи розвитку правового забезпечення гідротехнічної меліорації земель

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Анотація

Стаття присвячена аналізу сучасного стану законодавства України у сфері гідротехнічної меліорації земель, а також виокремлення перспектив розвитку правового забезпечення окресленої сфери суспільних відносин. Встановлено, що гідротехнічна меліорація земель сприяє підвищенню родючості ґрунтів, зростанню продуктивності і стійкості землеробства, створенню гарантованого продовольчого фонду держави. Проте в останні роки ефективність гідротехнічної меліорації земель знижується, що пояснюється низкою причин об'єктивного і суб'єктивного характеру: недостатнім матеріально-технічним забезпеченням і недоліками в експлуатації гідротехнічних споруд, погіршенням еколого-меліоративного стану земель сільськогосподарського призначення, недостатньою зацікавленістю та відповідальністю землевласників і землекористувачів. До цих факторів належить і неповне використання наукових розробок, недостатнє інформаційне забезпечення, недосконала та застаріла нормативно-правова база. Зважаючи на неабияке значення гідротехнічної меліорації земель для розвитку сільського господарства країни, зазначені відносини потребують належного правового регулювання. Зроблено висновок, проте, що проблеми боротьби з опустелюванням, ресурсного та продовольчого забезпечення держави в роки з несприятливими погодними умовами, забезпечення водою сільського господарства неможливо вирішити лише шляхом організації меліорації земель, адже ця проблема є комплексною. Для досягнення цілей Стратегії зрошення та дренажу в Україні на період до 2030 р. у рамках визначених пріоритетних напрямів необхідно забезпечити ефективну взаємодію правового, організаційного, економічного та фінансового механізмів відновлення зрошення та дренажу в Україні.

Ключові слова: меліорація земель, гідротехнічна меліорація земель, зрошення земель, осушення земель, землі сільськогосподарського призначення



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Natural resource and resource-based relations: the hierarchy of industries and the relationship between subjects

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This article studies the place of natural resource law and the resource-based branches of law in the system of law; it was proposed a hierarchy of these branches and outlined the relationship between the subjects of natural resource and resource-based relations. The qualitatively homogeneous natural resource relations are defined as the subject of legal regulation of natural resource law, which develop regarding the use and restoration of natural resources – a legally defined part of the natural environment that has signs of natural origin and is in ecological relationship with the environment and with each other, which are used or can be used as a source satisfaction of human needs. All natural resources, as well as relations on their use and restoration are closely interconnected. This bond will always be inseparable and mutual. It has been established that in the

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system of natural resource law, the public relations regarding the use and restoration of individual natural resources are actually its sub-sectors and provide a differentiated approach to the environmentally sound use of each of the relevant natural resources. Natural resource law is not a conglomeration of land, water, forest, subsoil law, but it is their qualitative unity based on a single nature, development factors and the internal structure of social relations. It has been concluded that neither the long history of legislation development, nor a significant amount of normative legal acts (that are sources of resource-based industries) are grounds for denying the inseparable and mutual connection of resource-based branches of law with each other and with the natural resource law, and the objective need to single out an independent area of natural resource law

Keywords: natural resource law, land law, water law, forest law, subsoil law, faunistic law, floristic law, natural resource relations, resource-based relations, system of law, branch of law

Introduction

Public relations on the use and restoration of separate natural resources are now the subject of legal regulation of recognized resource-based branches of law (land, water, forest, subsoil, floristic, faunistic law, etc.). These industries have their own specifics, internal structure, subject, method of legal regulation, sources of law, and they develop in accordance with their own characteristics, and at the same time, it has not broken their relationship with each other, it has not separated them from the natural-resource branch of law, which current stage of development is characterized by the absence of a generally accepted approach to determining its place in the system of law.

The following scientists were engaged in the study of problems of the formation and development of natural resource law:

V.I. Andreytsev, Yu.A. Vovk, A.P. Getman [1], V.M. Ermolenko [2], M.D. Kazantsev [3], I.B. Kalinin [4], I.I. Karakash [5], V.V. Kostitskiy [6], M.V. Krasnova [7], P.F. Kulinich, N.R. Malysheva [8], M.V. Shulga [9] and others. However, the preliminary creative searches of scientists were directed mainly to clarifying the place of natural resource legal relations in the system of environmental law, a general characteristic of natural resource legal relations and the study of certain aspects of a particular research topic.

The purpose of the article is to study the place of natural resource law and resource-based branches of law in the system of law, to determine the hierarchy of these branches and to determine the relationship between the subjects of natural resource and resource-based relations.

Results and Discussion

Natural resource law initially developed within the differentiated (resource-based) approach to the problems of nature management. At the beginning of the XX century, the relations (that developed regarding the use of individual natural resources, and above all, the land, forest and subsoil relations) were subjected to legal regulation [10]. This period is characterized by the beginning of the formation of natural resource legislation. However, only in the middle of the XX century, the government realized the need for a comprehensive integrated approach to this problem; an ecosystem approach to the use and protection of natural resources began to form, and the legal regulation of land relations began to expand simultaneously.

In the 60-s of XX century, M.D. Kazantsev [3] has stated that differentiation of the branches of law that regulate relations in the use and protection of natural resources raises the issue of integrating these branches and the formation of natural resource law. At the same time, the resource-based branches of law and environmental law (while maintaining their independence as branches of law in the generally accepted sense of this term) formed a special part of the natural resource law as an integrated branch of law.

In contrast to the scientific position of M.D. Kazantsev [3], in 1976 A.S. Kolbasov put forward the idea of forming the integrated branch of law – environmental law,

which combines the natural resource law (including land) and environmental law. The emergence of the theory of environmental law is associated with the scientific ideas of V.V. Petrov [11]. Already in 1987, the scientist came up with the concept of environmental law as a new branch of law, which is formed on the basis of consolidation of the natural resource and environmental law.

The theory proposed by V.V. Petrov [11] caused a number of positive reviews from the scientists-lawyers. Currently, the concept of environmental law in the field of scientific research of legal problems of interaction between society and nature occupies a dominant position. Therefore, in order to determine the correlation between the subjects of legal regulation of natural resource and resource-based branches of law (directly land sector), it will be conducted a study of scientific approaches of domestic and foreign scientists regarding the correlation of land and environmental law.

In the 90s. of XX century, during the period of transition to the market relations, when the land (like other natural resources) moved into the sphere of a special combination of interests, mainly the private property and public environmental ones, the heated debate started regarding the attribution of land-legal norms to civil or environmental law or the recognition of this industry as independent.

Thus, the most common point of view is that the land law is recognized as an independent branch of law, which is on a par with civil, environmental, administrative, constitutional and other branches of law. M.V. Shulga [9] has noted that a set of legal norms occupies an extremely important place in the system of domestic law, united by land law as an independent branch in this system. Its place in the legal system of Ukraine is determined by the role and importance of the legal regulation of land relations. According to the scientist, land law is one of the main branches of law in the legal system. The land law has all the specific features in order to be determined as an independent legal branch. Later, the scientist (after recognizing the independence of land law) has noted that the subject of land law includes the land-environmental relations, the characteristic feature of which indicate that the sole or predominant function of land within these relations is to ensure environmental protection, environmental safety, human health, etc. At the same time, M.V. Shulga [12] points out that there is no limit between the subjects of land and environmental law, which would isolate one subject from another.

V.I Semchyk [13] has defined the land law as an independent branch of law, which is a set of land-legal norms aimed at regulating land relations in Ukraine regarding the land ownership, the use of land plots for their intended purpose, the

establishment of legal regime of land plots, considering the land category to which they belong, creating conditions for the rational use and protection of lands, the preservation of their natural properties, the protection of land rights of citizens, legal entities, the state and the Ukrainian people. According to the scientist, land law is coordinated, interacts, but it is not identified with environmental law.

A.M. Miroshnichenko [14] studies the land law as an independent branch of law, by characterizing it as a system of legal norms that regulate relations related to the use, protection and restoration of land as part of the earth's surface with the space above and below it, which is necessary for its intended use (including construction), including the soil cover located within this space. V.K. Gurevsky [15] recognizes land law as an independent branch of law, which is a system of legal norms that regulate land relations in order to ensure the rational use of land, to protect it from negative influence, to protect the rights of citizens and legal entities to land and comply with the established legal order in the field of land relations. The named scientists define the land law as an integral part of the national legal system, which is in close relationship with other branches of law, in particular, with natural resources and environmental ones.

I.I. Karakash and T.E. Kharitonova [10] draw attention to the fact that land law is a fundamental principle for

certain branches of law. This significance of land law takes place in the regulation of the whole complex of natural resource relations [16]. S.V. Sharapova [17] recognizes land law as a branch of law, an independent element of the legal system of Ukraine. However, according to the scientist, it should be considered that all natural resources (including land, as well as relations for their use and protection) are closely interconnected.

Many other scientists, namely the representatives of the Ukrainian land-legal doctrine, also point to the independence of land law. Among foreign scientists, a number of scientists adhere to the same opinion: A.P. Anisimov, S.O. Bogolyubov [18], I.A. Ikonitskaya, O.I. Krassov, V.V. Petrov [19] and others.

According V.V. Petrov [16], the land law is a separate branch of the national legal system. The scientist argues that the land law cannot be fully included in the environmental law, since there are many norms and institutions in the land law that are not directly related to ecology [20]. At the same time, he noted earlier that the forest law, water and subsoil law emerged precisely from the land law [19].

The scientific position of I.B. Kalinin [4] is interesting. The scientist draws attention to the fact that experts in the field of natural resource law often include the land law in it. Meanwhile, the land law has originated much earlier than the natural resource law, so it seems illogical to include an “older” branch of law into a “younger” one. The pre-existing branch

of law should not constitute a subsystem (sub-branch) of a newer branch [4].

A.P. Getman and V.A. Zuev rightly note that “adherents” of independence of the land law, when substantiating the concept of separating land law from environmental one, refer to the historical experience of regulating land relations, as well as a significant number of land legislative and regulatory legal acts. Indeed, more than 20 regulatory legal acts of the level of law or code that directly regulate the legal relations in the protection and use of land give grounds to assert that land law occupies an extremely important place in the system of environmental and legal relations. However, does this give grounds to assert its independence? The reference to historical experience is a certain legal fiction, since the consideration of legal phenomena through the prism of a system-historical connection helps to better understand their essence, predict the directions of further development, but it is not decisive for securing the sustainable nature of the legal system [1]. V.M. Ermolenko [2] notes that the long history of the existence of land legislation is by no means a reason to ignore the objective need to single out an independent branch of natural resource law, although this circumstance imposes appropriate features on this process.

According to another point of view, the land law is not an independent branch, but it is included in the system of environmental law. Thus, Yu.S. Shemshuchenko [21] emphasizes that a characteristic

feature of environmental law as a complex branch is considered the inclusion to it of other branches of law recognized for today – land, subsoil, water, forest, faunistic, atmospheric-protection. These industries have their own internal structure, subject and method of legal regulation [21]. In the system of environmental law, they are actually its sub-branches and provide a differentiated approach to the environmentally sound use of each of the relevant natural resources. V.V. Kostitskiy [6] adheres to the same scientific opinion. He draws attention to the fact that the peculiarity of environmental law as a complex branch consists in the following: the environmental law includes land, water, forest, water, faunistic, floristic, air, conservation, which are already formed into separate branches of law (land, water, forest, subsoil) and together constitute natural resource law, or they exist as areas of legislation, the process of formation of which in the field of law continues, as well as the law of environmental safety [6].

Most Russian scientists also express the point of view that land law is included in the system of environmental law. Thus, speaking about the system of environmental law as a complex industry, M.M. Brynchuk [22] points to the presence recognized branches of law in his system – land, subsoil, water, forest, faunistic and air-protection. Land law (although it is an industry) forms environmental law along with others (subsoil, water, etc.) [23]. The development of these branches and environmental law as a whole is associated

with the implementation of a differentiated approach to the legal regulation of public relations in environmental management and environmental protection for individual natural resources. These branches are largely independent in relation to the field of environmental law. In the system of environmental law, they can be considered as its sub-sectors. They have their own internal structure [24].

B.V. Erofeev [25] is an adherent of the fact that land, water and forest law should be sub-branches of environmental law. Any system is a multiplicity of its constituent elements, which are united and integrated by the system-forming factors. For this reason, environmental law is implemented through the land, water, forest, subsoil and other sectors that make up a single legal family, and therefore should be sub-sectors of environmental law [25].

According to I.A. Krasnova [7], the idea of complete independence of land law has already lost support in science. The scientist refers to the heterogeneity of the object of land relations. Earth is a part of the natural environment, which acts in unity and interconnection with all other elements of nature. At the same time, the land is declared a real estate next to the buildings and structures, other objects of the material world. Such legal heterogeneity of land makes it possible to divide the land relations into at least two parts – environmental and civil. Hence, there is reason to assert that land relations as an independent group of relations do not exist [7]. Nevertheless, according to

I.A. Krasnova [7], the land affairs are part of environmental law, and the land law is a part of environmental law. Other components (sub-branches of environmental law that stand on a par with land law) are forest, water, subsoil, atmospheric, faunistic law. Forests, water, subsoil, atmospheric air, fauna and other components of nature are the objects of corresponding public relations, which have an equal social significance and form a single world of nature in the interaction with the earth [7].

The position of G.A. Volkov is interesting [26], who argues that land law is not included in the environmental law, but it is included in the community of industries called “natural resource law”, that is, it does not have full independence. Indeed, today the land law is a sub-branch of natural resource law, consisting of normative legal regulations that regulate the use of land and land plots through the private and public law interests.

On this occasion, S.A. Bogolyubov [18] notes that natural resource law is an integral part of environmental law, designed to ensure the protection and rational use of individual natural resources – land, its subsoil, water, forests, fauna and atmospheric air. The main factor that determines the difference between one industry and another – is the subject of legal regulation, that is, a qualitatively homogeneous type of public relations that require legal regulation. Environmental law as a branch of law is a full-fledged independent set of interrelated legal norms that regulate a peculiar sphere of life that

requires a special and legally autonomous regulation. The distribution of ecological super-sector of law into environmental and natural resource, and the natural resource sector – into land, subsoil, water, forest and other sub-sectors suggests a further multi-level structure, which includes the general and special parts, legal institutions, norms of law [18].

Land law is often considered as a part (sub-branch) of natural resource law. Land relations are the basis (foundation) of all resource relations (floristic, faunistic, water, subsoil, etc.), as stated in the Article 3 of the Land Code of Ukraine.

Most scientists argue that the land law in many cases is consistent with environmental law, since the land is one of the main objects of nature. In the Article 13 of the Constitution of Ukraine dated June 28, 1996, it is stated that land, subsoil, water, atmospheric air are the objects of the right of ownership of the Ukrainian people. The peculiarity of land as an object of nature is the fact that it is used to ensure the life of a person, all living beings. The main foundations of environmental law are the protection of land, as well as other environmental objects, the creation of favorable conditions for conservation and rational use by the legal means.

The Constitution of Ukraine classifies the land as one of the most important objects of natural resources. It is a natural asset of humanity, the main national wealth and it is subject to special state protection (the Article 14 of the Constitution of Ukraine).

Since the land is one of the most important objects of nature, it is clear that the relations arising in the process of land use are regulated by the norms of both environmental and land law. Based on this, individual institutions of land and environmental law are complex in nature. Without duplicating, they complement each other in their totality, provide legal protection of land as an object of nature, as well as rational economic use of land in accordance with its intended purpose as an object of land and natural resource relations.

The relationship of land law with environmental law is determined by the state of land as an object of natural environment, which functions as part of ecosystem and is in ecological relationship and interaction with the entire environment. Regulating the predominantly economic land relations arising due to the provision and withdrawal of land and the procedure for their use, the land law at the same time contains the rules, which provide for special requirements that ensure the preservation of environment. In turn, the environmental legislation contains the numerous norms of general and special nature, and its implementation implies ensuring the protection of land from adverse anthropogenic influence [5].

Land law constitutes fundamental principles for certain branches of law. This significance of land law plays role in regulation of the whole complex of natural resource relations [5]. The direct connection between the norms of land law and

the norms of subsoil, water and forest law, regulatory legal acts of natural-vegetative (floristic) and natural-reserve legislation lies in the impossibility of using these natural resources without simultaneous use of the spatial basis, namely the land [5]. The legislation on natural resources provides for special rules that consider the interconnection of natural resources and regulate the issues of preventing adverse environmental consequences of the impact of using some natural resources on others.

At the same time, the use of each of the natural resources has its own characteristics. The connection between the land and other resource-based branches of law will always be inseparable and mutual.

Indeed, land is primarily a natural resource, a part of the natural environment. This phenomenon is objective and does not depend on the desires or decisions of a person. The land exists and develops according to the laws of nature, which are not subject to humanity. People did not create the earth, they created only buildings, structures and other objects of material world. People got it in the process of evolutionary development. Whatever the land is called, whatever what legal definitions are given to land, it does not cease to be a natural resource.

According to the above scientific positions regarding the place of land law in the system of law, it would be more correct to call the land law a sub-branch of natural resource law as an independent branch of law. At the same time, as I.A. Krasno-

va [7] states that it is quite acceptable to use the term “branch of land law” in scientific and educational legal literature in the interests of convenience, conciseness, considering the habit, but without forgetting that this term is ambiguous and can reflect any scientific position.

Most domestic and foreign scientists involved in the study of environmental and legal problems consider the following: a characteristic feature of environmental law as a complex industry lies in the inclusion of currently recognized other branches of law in it – land, water, forest, subsoil, floristic, faunistic, atmospheric protection. These industries have their own internal structure, their subject and method of legal regulation. In the system of environmental law, they are actually its sub-branches and provide a differentiated approach to the environmentally sound use of each of the relevant natural resources. In this regard, the relationship between the subjects of legal regulation of natural resource and resource-based branches of law is obvious.

According to V.M. Ermolenko [2], there is a need to clarify the range of social relations that make up the subject of natural resource law, and its relationship with the resource-based branches of law that have already existed for a long time – land, subsoil, forest, water, air, as well as those that are in a state of formation – floristic, faunistic, etc. At the same time, the scientist (based on the traditional sectoral structure of each independent branch of law) notes that it will be advisable to in-

clude the law such as land, water, subsoil, forest, air law, etc. in the natural resource law as relevant sub-sectors [2].

The following domestic and international scientists were engaged in the process of determining the place of water law in the system of law and its correlation with environmental and natural resource law, in particular: A.V. Agafonov [27], M.M. Brinchuk [24], V.A. Protsevskiy, D.A. Sivakov, E.M. Shumilo and others.

Water law is the result of natural development of the legal system, which satisfies the primary economic needs for water resources and responds to the environmental challenges of modernity. In the process of development of water legislation and law as an independent branch (starting from the 70s., when the fundamentals of water legislation of the USSR and the union republics of 1970 and the Water Code of the Ukrainian SSR dated 1972 were adopted), the issue of the place of water relations in the system of law was resolved in different ways. Currently, according to scientists, the water law has all the necessary features of a sub-branch of environmental law, in case of recognizing the latter one as a branch (and not a super-branch) of law. In the case of not considering the environmental law as a branch of law, the water law can also act as a completely independent branch in the system of law [27]. Consequently, it is precisely those social relations that are fixed and regulated by the norms of water law and function in the sphere of ownership, use and protection of waters or water

objects, act as the subject of this law. In this regard, water law can be characterized as a sub-branch of natural resource law, which is a system of legal norms that regulate social relations in the field of use, protection and restoration of water objects.

Other scientists have also studied certain legal aspects of social relations in the field of use and protection of water resources, which are the subject of legal regulation of water law.

According to S.V. Korostelev [28], the forest law is an independent and recently formed complex branch of law from the land law, which has its own subject of regulation, method, its own sources of law, which has not stopped its connection with land law and other branches of law, as well as has not singled out from the totality of natural resource branch of law. Thus, forest law is a branch of law included in the natural resource law as a sub-branch.

Other scientists also share his scientific position: B.V. Kindyuk, V.V. Kostitskiy [6], A.Yu. Puryaeva, V.P. Pechulyak [29] states that the forest law of Ukraine is a sub-branch of environmental law, which is implemented through the plurality of elements, through land, water, forest, subsoil and other branches of law, which constitute a unified legal family. Forest law is a sub-branch of environmental law, which consists of legal norms that regulate relations related to the forest management, use, restoration and protection of forests in their inseparable connection with the environment [29].

The formation and development of subsoil law in Ukraine is the subject of research, primarily by R.S. Kirin [30]. According to the scientist, mining (subsoil law) is an integral branch of natural resource law – a complex branch of environmental law [30].

Foreign scientists also explore the problems of formation of subsoil law. These are G.E. Bystrov, D.V. Vasilevskaya, M.V. Dudikov [31], B.D. Klyukin, S.V. Koladaev, O.V. Lagutkin, M.E. Pevzner [32]. M.E. Pevznera [32] defines subsoil law as a set of legal norms established by the state that regulate social relations in the field of study, use and protection of subsoil. M.V. Dudikov [31] believes that subsoil law is a complex, integrated, independent sub-sector of the natural resource law, the norms of which regulate relations arising in the process of rational, integrated, efficient and safe use and protection of subsoil, as well as waste from mining and related processing industries.

It should also be noted the statement of M.I. Matuzova and O.V. Malko [33], who consider the forest, subsoil, water law as sub-sectors of the land law. However, this opinion is rather controversial.

A.K. Sokolova [34] considers the floristic law as a sub-branch of environmental law. Like land, water, faunistic and other sub-sectors that regulate the use of natural resources, the floristic law is a sub-sector of environmental law. The recognition of all of them as sub-sectors of the environmental law is correct by nature, although they all have their own

specifics and develop in accordance with their own characteristics. At the same time, the scientist notes that in the process of substantiating the allocation of new sub-branches of environmental law, the provision on their systemic connection should be the starting point [34].

S.V. Ivanova [35] put forward the concept of the formation of faunistic law. The scientist believes that faunistic law at the present stage should be considered as a sub-branch of environmental law, which has signs of an independent structural unit in the system of environmental law. The main criterion for sub-sectoral differentiation is the presence of the own subject of legal regulation – faunistic relations as relations for the use and protection of animal world, which is an integral element of the natural environment and biological diversity of the Earth [35].

It is also important to be aware of the effect of a differentiated and integrated approach in the natural resource law. On the one hand, the integration of resource-based industries into the field of natural resource law does not imply the loss of their specificity. At the same time, it should contribute to the enrichment of resource-based industries due to their interaction with each other and with an array of general norms. Thus, a certain level of differentiation is provided. However, the priority role in the system of natural resource law should be given to an integrated approach, within which the tasks of regulating natural resource relations are solved.

The complex genetic and structural relationships between the land, forest, water, and subsoil law ensure their consistency and complementarity. However, at the same time, it is clear that such coherence and complementarity cannot arise automatically. This requires a certain “common denominator”, a system within which the mentioned legal communities can successfully interact. The role of such a denominator is performed by the natural resource law.

Conclusions

The qualitatively homogeneous natural resource relations are the subject of legal regulation of natural resource law, which develop regarding the use and restoration of natural resources – a legally defined part of the natural environment that has signs of natural origin and is in the ecological relationship with the environment and with each other, and which are used or can be used as a source of satisfaction of human needs. All natural resources, as well as relations regarding their use and restoration are closely interconnected. This bond will always be inseparable and mutual.

In the system of natural resource law, public relations on the use and restoration of individual natural resources are in fact its sub-sectors and provide a differentiated approach to the environmentally sound use of each of the relevant natural resources. Natural resource law is not a conglomeration of land, water, forest, subsoil law, but it is their qualitative unity based on a

single nature, development factors and the internal structure of social relations.

Neither long history of the development of legislation, nor the significant amount of regulatory legal acts (which are the sources of resource-based industries) are

grounds for denying the inextricable and mutual connection of the resource-based branches of law with each other and with the natural resource law and the objective need to single out an independent branch of the natural resource law.

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Природоресурсні та поресурсні відносини: ієрархія галузей і співвідношення предметів

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Анотація

У статті досліджено місце природоресурсного права і поресурсних галузей права у системі права, запропоновано ієрархію цих галузей та окреслено співвідношення предметів природоресурсних і поресурсних відносин. Предметом правового регулювання природоресурсного права визначено якісно однорідні природоресурсні відносини, що складаються з приводу використання та відтворення природних ресурсів – юридично визначеної частини навколишнього природного середовища, що мають ознаки природного походження і знаходяться в екологічному взаємозв'язку з навколишнім природним середовищем та між собою, використовуються або можуть бути використані як джерело задоволення потреб людини. Усі природні ресурси, а також відносини щодо їх використання і відтворення тісно пов'язані між собою. Цей зв'язок завжди буде мати нерозривний і взаємний характер. Встановлено, що у системі природоресурсного права суспільні відносини щодо використання і відтворення окремих природних ресурсів є фактично його підгалузями й забезпечують диференційований підхід до екологічно обґрунтованого використання кожного з відповідних природних ресурсів. Природоресурсне право – не конгломерат земельного, водного, лісового, надрового права, а їх якісна єдність, заснована на єдиній природі, факторах розвитку і внутрішньої структури суспільних відносин. Зроблено висновок, що ні тривала історія розвитку законодавства, ні значний обсяг нормативно-правових актів, що є джерелами поресурсних галузей, не є підставами для заперечення нерозривного та взаємного зв'язку поресурсних галузей права між собою і з природоресурсним правом та об'єктивної необхідності виокремлення самостійної галузі природоресурсного права

Ключові слова: природоресурсне право, земельне право, водне право, лісове право, надрове право, фауністичне право, флористичне право, природоресурсні відносини, поресурсні відносини, система права, галузь права



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On the issue of legal support for the use of green bonds for the development of organic production in Ukraine

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Abstract

In this article, it has been conducted a scientific and theoretical analysis of the legislation, which introduces the green bonds as a tool for financing organic production, and also it has been identified the ways to improve it. It has been determined that a new type of valuable securities – green bonds can become one of the tools to support the development of organic agricultural production. It is proved that singling out of environmental projects as a direction, which involve the use of funds raised from the issue of green bonds, organic farming, is debatable due to the lack of a regulatory definition of this concept, which can complicate the

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practical implementation of legislative prescriptions and compliance with the standards for issuing green bonds (Green Bond Principles). Based on the analysis of legal doctrine in terms of defining the concepts “organic farming”, “organic crop production”, “organic production”, as well as the features of organic production, it has been concluded that organic crop production, animal husbandry, aquaculture fully meet the categories of environmental projects, stipulated by the GBR principles (such as: environmentally sustainable agriculture, animal husbandry and aquaculture; agricultural technologies that do not harm the climate, etc.). It is proposed to lay out the first paragraph of the Part 2 of the Article 18 of the Law of Ukraine “On Capital Markets and Organized Commodity Markets” in the following wording: “an environmental project is a project in the field of alternative energy, energy efficiency, minimization of the formation, disposal and processing of wastes, the introduction of environmentally friendly transport, organic production, conservation of flora and fauna”, water and land resources, adaptation to climate change, as well as another project aimed at protecting the natural environment, introducing environmental standards, reducing emissions into the environment.”

Keywords: government support, green bonds, legal support, environmental project, organic production, organic farming, organic products

Introduction

Ukraine, being an agrarian state, has a significant potential for the development of organic agricultural production. More and more agricultural producers are choosing specifically this vector of activity (in particular, according to the latest monitoring data of the Ministry of Economy in 2019, there were 617 organic market operators in Ukraine, and 470 of them – agricultural producers) [1]. This indicates an increase in demand for organic products both in the domestic and foreign markets. According to official data, the domestic market of organic products in 2020 amounted to 25.1 million hryvnias, by demonstrating

the growth by 3% [2], and the total export of Ukrainian organic products for the same period amounted to 204 million US dollars [3]. However, further positive dynamics in the development of organic production largely depends on the state's position, methods, directions, support volume for this area.

It is worth noting that in 2021, great attention has been paid to the state support for organic production. Namely, the Law of Ukraine “On Amendments to Certain Laws of Ukraine on the Functioning of the State Agrarian Register and the Improvement of State Support for Agricultural Producers”

dated November 5, 2020 № 985-IX changed the Article 17-2 of the Law of Ukraine “On State Support for Agriculture of Ukraine” dated June 24, 2004 № 1877-IV – it is provided three new areas of state support for agricultural producers: 1) allocation of budget subsidies counting upon unit of cultivated land and/ or one head cattle; 2) reimbursement of up to 30% of the cost of certification of organic production; 3) reimbursement of up to 30% of the cost for the purchase of approved plant protection products and fertilizers, seeds, planting material and fodder. As for the volumes of financing, the budget for supporting organic production for 2021 was expected to be in the amount of UAH 100 million [4].

Undoubtedly, such innovations are positive, but the state must and can support the organic production sector in a comprehensive manner, in different ways, by providing the producers of organic agricultural products with greater choice and more opportunities to attract financial resources for the development of their business.

The establishment of the market of so-called green bonds Ukraine can become one of these ways – a new type of valuable securities introduced (from July 7, 2021) by the Law of Ukraine “On Capital Markets and Organized Commodity Markets” dated February 23, 2006 № 3480- IV as amended by the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Related to the Simplification of Attracting Investments and Introduction of New

Financial Instruments” dated June 19, 2020 № 738-IX. Since green bonds are a novelty for Ukraine, a study of the issues of legal support for their use in various areas, in particular for financing the projects for organic production, has not yet been carried out, which emphasizes the timeliness and relevance of this work.

Existing developments in the field of legal regulation of organic production (which include the works by A.V. Gafurova, V.M. Ermolenko, V.M. Kornienko, P.F. Kulinich, T.V. Kurman, S.I. Marchenko, V.A. Melnik, A.M. Statovko, O.M. Tueva, V.Yu. Urkevich and others) have been carried out related to the mentioned legislative changes and they have not touched upon the indicated aspects.

The purpose of the article is a scientific and theoretical analysis of the legislation that introduces green bonds as a tool for financing organic production, highlighting the main problematic aspects in this area and developing proposals for their solution.

Results and Discussion

According to part 5 of the Article 11 of the Law of Ukraine “On Capital Markets and Organized Commodity Markets”, the green bonds are bonds, the prospectus of which provides for the use of funds raised exclusively to finance the environmental project or its separate stage. In turn, the Article 18 of the same normative act defines the concept “project of ecological direction” – this

is a project in the field of alternative energy, energy efficiency, minimization of the formation, disposal and processing of wastes, the introduction of environmentally friendly transport, organic farming, conservation of flora and fauna, water and land resources, adaptation to climate change, as well as another project aimed at protecting the natural environment, introducing environmental standards, reducing emissions into the environment. As it can be seen, the legislator has taken the path of separating projects related to organic farming into a separate type of environmental projects.

It should be noted that the dynamics of development of the world market in the sectoral context shows that the priority areas of “green” projects are currently as follows: the energy efficiency of buildings (37% of the total volume of green bonds issued since 2007), renewable energy sources (26%), environmentally friendly transport (16 %), water resources management (12%), waste management (4%), other (5% [5]. That is, the organic farming is included in the last and least significant category. However, for Ukraine, with its prospects for the development of agrarian sector, the problems in the use of natural resources, the establishment of proper financing for projects related specifically to agricultural production, are extremely relevant and timely tasks. According to the author’s opinion, they should not be limited to organic farming. The very use of this definition raises a number of objections, which will be discussed below.

The fact is that according to the world-recognized standards for issuing green bonds (Green Bond Principles (GBR)), the main principles of this type of valuable securities include the targeted use of proceeds from their placement [6]. To do this, the financed project should bring the environmental benefits, which can be assessed by the issuer in terms of qualitative and (if possible) quantitative indicators. In case of neglecting the GBR principles, that is, when misleading investors, state authorities and etc. regarding the areas of using funds received from the issue of green bonds, the so-called “greenwashing” concept will take place. Specialists emphasize that even an isolated case of “greenwashing” can cost Ukraine a loss of confidence and launch the irreversible process of investors’ withdrawal [7]. Hence, Ukrainian legislation should outline as clearly as possible which projects can be included in the above-mentioned ones.

However, at this time, the term “organic farming” is not defined legally, and scientific research in this direction continues. For example, R.A. Tsilyurik [8] in his dissertation research on the legal regulation of the use of land for organic farming proposes to consider the organic farming as “a production activity that is inextricably linked with the direct cultivation of certified agricultural land intended for a specific purpose – the production of organic products of plant origin that meets the established requirements”. That is, the organic farming is essentially included in the concept

“organic crop production”, which in turn is an integral part of organic production [8]. O.V. Khafurova and B.D. Psuturi [9] express a similar opinion and refer to organic crop production the following: firstly, the plant growing as a traditional branch of agricultural production, which includes organic farming; secondly, the harvesting of such organic classes of the plant world as wild plants, algae and fungi.

Analyzing the features of organic production and its requirements, first of all, they are determined by the basic Law of Ukraine “On the basic principles and requirements for organic production, circulation and labeling of organic products” dated July 10, 2018 № 2496-VIII, it is clear that organic crop production, animal husbandry, aquaculture fully meet the categories of environmental projects provided for by the GBR principles. For example, such as: environmentally sustainable agriculture, livestock and aquaculture; climate-friendly agricultural technologies, etc. [6].

This thesis is supported by the developments of legal science. Thus, D.S. Poddubna [10] highlights the following actions as the positive consequences of organic production: the restoration of the fertile soil layer, the preservation and improvement of soil fertility, the prevention of erosion processes. Another scientist – I.V. Ignatenko [11] (when considering the organic production in the context of the concept of sustainable development of the agrosphere) emphasizes that preservation of the natural environment and increasing

the soil fertility is the main task of organic agriculture. In ecological terms, the author states that organic agriculture is able to produce and apply new technologies that do not violate the natural functioning of the environment [11]. M.A. Deinekha [12] and other scientists consider organic farming as a sustainable form of agriculture, which improves the state of the environment and resource provision.

The spread of implementation of the organic production methods as a way to encourage modern and sustainable agricultural production (considering the need to protect the environment and animals) is recognized in the Article 404 of the Association Agreement between Ukraine, as well as the European Union, the European Atomic Energy Community and their Member States, ratified by the Law of Ukraine dated September 16, 2014 № 1678-VII. Another basic international document in the field of legal regulation of organic production – the Decree of the Council (EC) № 834/2007 dated June 28, 2007 regarding the organic production and labeling of organic products and cancellation of the Decree (EEA) № 2092/91 – establishes that the method of organic production plays a dual social role: on the one hand, it provides a specific market that meets the needs of consumer in organic products, and on the other hand – it provides a common good, by contributing to the protection of environment, the proper maintenance of animals, as well as the development of rural areas [13].

Certainly, the inexhaustible list of environmental projects (according to the Law of Ukraine “On Capital Markets and Organized Commodity Markets”) does not exclude the possibility of using green bonds to finance the organic agricultural production. However, according to the author’s opinion, it would be more advisable to foresee this direction (a broader direction compared to organic farming) in order to simplify the practical implementation of legislative regulations.

It is also important that operation of the category “organic production” already fixed in the regulatory field will greatly facilitate the work both in terms of preparing projects financed with funds received from the placement of green bonds, and in terms of monitoring the intended use of such financial resources. This follows from the fact that the current Ukrainian legislation in the field of organic production is already sufficiently developed, it meets the international requirements in general (in particular, the aforementioned Decree of the Council (EC) № 834/2007 dated

June 28, 2008, the Decree of the Commission (EC) № 889/2008 dated September 5, 2008 [14] and provides an appropriate level of legal regulation of the relevant relations. Thus, it will be much easier for the issuers of green bonds to adhere to all four Green Bond Principles [6]: the use of funds, the process of evaluating and selecting projects, fund management and reporting.

Conclusions

Therefore, it should be stated that today the local authorities have been given the powers to solve the problem of disposal of unusable pesticides; but at the state level, it is just beginning to discuss the adoption of appropriate state program. Still, it is urgent to accelerate the approval of state programs with the determination of clear measures for its implementation and the sources of funding and strengthening control over the execution of the powers assigned to local authorities and responsibility in case of ignoring or negligence with the handling of obsolete pesticides.

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До питання правового забезпечення застосування зелених облігацій для розвитку органічного виробництва в Україні

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Анотація

У статті проведено науково-теоретичний аналіз законодавства, яким запроваджуються зелені облігації як інструмент фінансування органічного виробництва, а також визначено шляхи його удосконалення. Визначено, що новий вид цінних паперів – зелені облігації, можуть стати одним із інструментів для підтримки розвитку сфери органічного сільськогосподарського виробництва. Доведено, що виокремлення в якості напряму проектів екологічного спрямування, які передбачають використання залучених коштів від емісії зелених облігацій, органічного землеробства, є дискусійним, зважаючи на відсутність нормативного визначення даного поняття, що може ускладнити практичну реалізацію законодавчих приписів та дотримання стандартів емісії зелених облігацій (Green Bond Principles). На основі аналізу правової доктрини в частині визначення понять «органічне землеробство», «органічне рослинництво», «органічне виробництво», а також особливостей органічного виробництва, зроблено висновок про те, що органічне рослинництво, тваринництво, аквакультура повною мірою відповідають категоріям екологічних проектів, передбачених принципами GBR (таким як: екологічно стале сільське господарство, тваринництво та аквакультура; сільськогосподарські технології, що не шкодять клімату та ін.). Запропоновано викласти абзац перший ч. 2 ст. 18 Закону України «Про ринки капіталу та організовані товарні ринки» в такій редакції: «проект екологічного спрямування – це проект у сфері альтернативної енергетики, енергоефективності, мінімізації утворення, утилізації та переробки відходів, впровадження екологічно чистого транспорту, органічного виробництва, збереження флори і фауни, водних і земельних ресурсів, адаптації до змін клімату, а також інший проект, спрямований на захист навколишнього природного середовища, впровадження екологічних стандартів, скорочення викидів у навколишнє природне середовище»

Ключові слова: державна підтримка, зелені облігації, правове забезпечення, проект екологічного спрямування, органічне виробництво, органічне землеробство, органічна продукція



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Land sub-category as an important element of the conceptual apparatus of the land law science

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The article is devoted to the concept "land sub-category", which is insufficiently studied in the theory of land law. The author established the fact that despite the widespread use of the phrase "sub-category of lands" by domestic and foreign scientists, there are no studies aimed specifically at revealing this concept and defining the same sub-categories of lands. During the study, it has been found that the current land legislation has about 119 sub-categories of land, which are within different categories of lands. Using the methods of theoretical and legal science, it was made an attempt to reveal the concept of "land sub-category" and provide it with an appropriate definition. It is stated that land sub-categories play an important role in the normal functioning of the current land legislation in Ukraine, because the lack of allocation and proper legal regulation of land sub-categories can lead to the massive violations (intentional or reckless)

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in the use of land according to their intended purpose. For the effective solution of the issue of proper legal regulation of land sub-categories, the author has analyzed the successful experience of the United States of America regarding the relevant issue. In addition, it is proposed the development of a normative legal act that could perfectly regulate the relevant land-legal categories, establish a complete classification of the main categories and sub-categories of lands, as well as provide them with a detailed characteristics. In the final stage of the study, the author notes that there is an urgent need to pay proper attention to this issue by legislators, scientists and practitioners

Keywords: land sub-category, category of lands, division of land into sub-categories, purpose of land, land legislation

Introduction

Recently, the problem of dividing land into categories according to their intended purpose has increasingly become the object of research in the scientific work of domestic scientists. Some researchers consider the division of land into categories as a relic of the Soviet land law, while others defend the position of impossibility of the normal existence of land legislation without land categories and the inadmissibility of their replacement or expropriation [1]. However, amid this doctrinal discussion, the concept of “land sub-category” remains deprived of scientific attention, which is completely in the shadow of the concept “category of lands”, and this, in turn, causes its little research. Despite the current situation, the correct disclosure of the concept “land sub-category”, the provision of qualification signs for it and the definition of land sub-categories requires proper attention from lawmakers, scientists and practitioners for a long time, since the deprivation of sufficient legislative regulation of lands that belong to the land sub-category can lead to a massive violations (intentional

or reckless) of land legislation, in the context of using lands within the category not according to their intended purpose. In turn, this can also lead to the weakening of foundation of an element of land law – the category of land, which basis consist of the land sub-category. The author is convinced that the above-mentioned statements predetermines the relevance of this topic within the land law science.

Despite the numerous mentions of scientists in their works about the “land sub-categories”, after a detailed analysis of scientific works that were in the author’s access, there were not found studies by domestic and foreign scientists that would reveal the concept “land subcategories” (even without specific reference to the title “sub-category”). Thus, in particular, the following researchers mention the concept “land subcategory” in their scientific works: T.M. Magomedova [2], Yu.S. Petlyuk [3], A.P. Anisimov [4], A.P. Ushakova [5]. However, ignoring the fact that there are no scientific works that reveal the concept and content of “land subcategory”, some issues that

somehow relate to the subject of this study have been disclosed by V.M. Yermolenko [1].

The purpose of the article is a scientific and legal analysis of the concept “land sub-category”, determination of its content and composition, substantiation of the importance of proper legal regulation of the land sub-category from in terms of land-legal science and practice, as well as an attempt to find ways to create such legal regulation.

Results and Discussion

Starting the study of the concept “land sub-category”, it should be noted that the current Land Code of Ukraine does not contain the concept “land sub-category”. For comparison, despite the list of existing land categories defined by the Land Code, the latter one does not disclose the concept “land category”. It is only possible to guess about the existence of land sub-categories based on the content of norms that regulate a particular category of land, and the content of classifier of the types of designated purpose of lands. Thus, according to the Classification of types of special purpose, there are 119 land sub-categories [6].

Considering the lack of legislative and doctrinal definitions of the concept “land sub-category”, the author considers it appropriate to try to reveal this concept. Thus, for the interpretation of the concept, it is worth resorting to the theoretical foundations of legal science and logic. E.A. Pryashnikov [7] in his work draws attention to the unity of elements such as the phenomenon of reality – the concept – the term. The main, defining and primary concept – the phenomenon of reality. The concept is a reflection of such a phenomenon in the

people’s mind, and the term serves as a verbal expression of concept [7]. The concept as a form of thinking is a way of reflecting reality, due to which the subject is revealed through the totality of its important features. The definition of concept is a logical operation that reveals its content. The name of the definition operation comes from the Latin word “*definite*”. Etymologically, the word “definition” means “setting boundaries”, “determination”. Therefore, often instead of the name of the concept, the name of the definition is used. With the help of definition, it is formed a meaning for a term that is introduced into the communicative process for the first time, or it is clarified the meaning of already used term [8].

Based on this, it should be initially analyzed the concept “sub-category”, the definition of which has already been provided. Thus, the explanatory dictionary of the Ukrainian language defines a “sub-category” as a category, which in turn is part of a broader category [9]. In the context of the author’s study, the category of land refers to the broader category, which includes the land sub-category.

First of all, it is worth agree with the opinion of V.M. Ermolenko [1] that the category of land is a generic concept, which unites the land types that are related in terms of common homogeneous properties. At the same time, the consideration of the category of lands as a generic concept is a common feature (classification grouping), while the special feature is the inter-relationship of lands according to common properties (natural and social) [1].

According to the author opinion, the land sub-category is a part of lands that are

part of the corresponding category. However, despite their common features, they have some features that allow them to be relatively isolated from other lands of the corresponding category. That is, the sub-category is also a generic concept, but it combines a narrower list of lands according to their common homogeneous and specific properties (which allows them to be distinguished from their parent or main category).

The importance of existence and proper registration of the land sub-category can be cited on the example of the most valuable category of land for Ukraine – agricultural land. Thus, the moratorium on the alienation (acquisition) of agricultural land for certain subjects of land legal relations, established by the paragraph 15 of the “Transitional Provisions” of the Land Code of Ukraine, covers only some sub-categories of agricultural land, rather than the entire category (for commercial agricultural production, land plots allocated in kind (on the ground) to the owners of land shares. Thus, if all lands in the category of rural land were reduced exclusively to one category without dividing them into sub-categories, then the mentioned moratorium would cover all agricultural land without exception. At the same time, in practice, the subjects of state registration of rights to real estate (when carrying out registration actions regarding the agricultural land plot) pay attention primarily to the land sub-category, as well as to the fact – whether it is allowed for one or another subject to acquire it for the own right.

The land sub-category plays an equally important role in the legal regulation of relations that arise from the protection and use of lands for residential and public

buildings. Thus, for example, the construction of an apartment building is allowed only on the land sub-category “for the construction and maintenance of an apartment building”, and its construction on other lands of residential and public buildings will be considered a violation of the target use of the land, despite the fact that this category in general implies a construction of buildings on it (including apartment buildings). However, relevant examples can be given for any category of land.

Meanwhile, most citizens are more familiar with the right for free privatization of land, defined in the Art. 121 of the Land Code of Ukraine [10], it also provides for a one-time receipt within the limits of norms of various land sub-categories within the one category. In the case when legislator notes the free land acquisition for citizen, for example, only for agricultural purposes (without distinguishing sub-categories) within a certain norm, then it will be excluded the possibility of differentiated acquisition of land for farming, for individual farm household and for gardening, which, in turn, will limit the ordinary citizen in the implementation of various types of agricultural activities.

According to the author’s opinion, each land sub-category should be properly characterized. For example, the experience of the United States, namely the state of North Carolina, is interesting. Thus, in the corresponding state, “A Standard Classification System for Mapping of Land Use and Land Cover” has been existing there for 27 years [11], aimed at the efficient use of land plots located within the state, considering their natural properties in order to

protect the entire environment from the negative impact of people on the ecosystem created by nature. It is interesting that the corresponding document contains not only classification of the main categories and sub-categories of lands, but also their detailed characteristics. It is worth noting that the detailed description of corresponding lands is not limited to the categories only; sub-categories are given even more attention in their determinations. The author believes that it is advisable to create a similar regulatory legal act in Ukraine. To develop it, it is necessary to involve the specialists from various fields (land law, land management, soil science, ecology, chemistry, etc.) in order to provide a professional characteristics of this or that land sub-category and the established norms for its use. Such a document should describe in detail each sub-category of lands that currently exists in Ukraine, and establish its specific legal regime. This regulatory legal act should establish an effective mechanism for changing the intended use within one category, considering the consequences of such a change for the environment, or establish restrictions on such a change, for example, for especially valuable sub-categories of lands.

Conclusions

Considering all of the above-mentioned, it is worth noting that such an important element of the conceptual and categorical apparatus of land-legal science as "land sub-category" currently remains almost

unexplored, and it is often identified with the concept "category of lands". However, there are numerous references to the concept "land sub-category" in the works of domestic and foreign scientists, although none of them reveals this concept. This study allows concluding that the land sub-category is part of the lands, which are included in the corresponding category. However, despite their common features, they have some features that allow them to be relatively isolated from other lands of the corresponding category. In general, the land sub-category is a generic concept that unites a narrower range of lands according to their common homogeneous and specific properties. The author is absolutely convinced that the land sub-categories, their composition and legal regime are quite important for the development of land legislation and countering the misuse of lands, which make up the land fund of Ukraine. Thus, there is an urgent need for proper legal regulation of this element of land law. In author's opinion, the relevant legal regulation should take place through the development and adoption of a completely new normative legal act, which would contain the list of all sub-categories of land, as well as establish a legal regime for each of them, including the effective and simple mechanism for changing the intended use within the category of land. However, before the adoption of the relevant legal act, it is worth holding a number of conferences and round tables among the scientists and practitioners of various industry areas.

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Субкатегорія земель як важливий елемент понятійного апарату земельно-правової науки

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Анотація

Стаття присвячена недостатньо дослідженому в теорії земельного права поняттю «субкатегорія земель». Автором встановлено той факт, що попри широке використання вітчизняними та зарубіжними науковцями словосполучення «субкатегорія земель», відсутні будь-які дослідження, що спрямовані саме на розкриття цього поняття та окреслення тих самих субкатегорій земель. У процесі дослідження встановлено, що чинне земельне законодавство налічує близько 119 субкатегорій земель, які перебувають в межах різних категорій земель. Використовуючи методи теоретико-правової науки здійснено спробу розкрити поняття «субкатегорія земель» та надати йому відповідне визначення. Констатується, що субкатегорії земель відіграють важливу роль в нормальному функціонуванні чинного земельного законодавства нашої держави, адже відсутність виділення та належного правового регулювання субкатегорій земель може призвести до масових порушень (умисних чи необережних) у використанні земельних ділянок за їх цільовим призначенням. Для ефективного вирішення питання щодо належного правового регулювання субкатегорій земель, автором було проаналізовано успішний досвід Сполучених Штатів Америки, що стосується відповідного питання та запропоновано розробку нормативно-правового акта, який би зміг досконало врегулювати відповідні земельно-правові категорії, встановити повну класифікацію основних категорій та субкатегорій земель, а також надати їм детальну характеристику. У завершальному етапі дослідження автором наголошується на тому, що існує гостра потреба в приділенню належної уваги до даного питання законотворців, науковців та практиків

Ключові слова: субкатегорія земель, категорія земель, поділ земель на субкатегорії, цільове призначення земель, земельне законодавство



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General characteristics of internal and external agrarian financial legal relations

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The article is devoted to singling out the specific features of internal and external agrarian financial legal relations. It is proved that the features of the first group of legal relations are due to the organizational and legal form of business entities in which they arise, change and terminate. These features are established in the legislation that regulates the legal status of these entities. In particular, it determines the procedure for the formation of property funds of agricultural enterprises, the distribution of financial result (profit) among the founders and participants (members) (for example, the payment of dividends (in business entities), dividends and patronage dividends (in agricultural cooperatives), as well as making a deductions in these funds. At the same time, internal documents are adopted in such enterprises, on the basis of which such distribution is made. In addition, the procedure for exercising control over their financial and economic activities is regulated. The procedure for making settlements with members (participants) is also specific in the case of termination of the business entity's activity or withdrawal of its members (participants). The opinion is

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substantiated that the peculiarities of external agrarian financial legal relations are caused by the nature of activity carried out by the business entity. Therefore, these relations are regulated by agrarian legislation in the field of state financial support for agriculture and the social sphere of the village; implementation of certain types of agricultural activities; insurance and crediting of agricultural producers. According to the author's opinion, such legal relations include: the settlement legal relations; credit legal relations (including legal relations of monetary leasing); insurance legal relations; relations with the state and local budgets (regarding the payment of taxes and other obligatory payments and fees; obtaining the state financial support); investment legal relations

Keywords: agrarian legislation, agrarian financial legal relations, internal financial legal relations, external financial legal relations, agricultural enterprise, agricultural producer

Introduction

The agrarian sector of the economy (the agriculture is its basic component) forms the following types of security: food security, within certain limits – economic, environmental and energy security; it ensures the development of technologically related sectors of national economy and the creation of socio-economic conditions for rural development. It generates about 18% of the gross value added of the state, it is one of the main budget-forming sectors of the national economy; in recent years, its share in the consolidated budget of Ukraine is an average of 12%, but in the commodity structure of exports – more than a third (Concept of the State Target Program for the Development of the Agricultural Sector of economy for the period up to 2022, approved by the Cabinet of Ministers dated December 30, 2015, № 1437-r.) At the same time, the agricultural production remains a resource-intensive one, it has a significant duration of the production cycle and dependence on natural and climatic conditions. Accordingly, to ensure further economic growth of

agricultural producers, it becomes especially relevant to study the issue of legal regulation of the financial support of their current activities. The above-mentioned is impossible without understanding the peculiarities of functioning of the agrarian financial legal relations: both internal, arising at the level of business entities, and external – that mediate their interaction with counterparties and relevant state authorities.

The works of the following well-known scientists in the field of agrarian law became a theoretical basis of the study: V.M. Ermolenko, A.M. Stativka and V.Yu. Urkevich [1], V.Z. Yanchuk [2], O.M. Pashchenko [3].

The purpose of the article is to describe the general characteristics of internal and external agrarian financial legal relations and highlight their specific features.

Results and Discussion

In the agrarian legal science, the agrarian legal relations are traditionally divided into internal and external ones. For the agrarian financial legal relations, the specified

division is also applied [2; 3]. At the same time, according to A.M. Pashchenko [3], the first group includes the financial legal relations to ensure the financial discipline established by the law (implementation of various forms of accounting, reporting, accrual of dividends on shares or property and land shares) at enterprises. According to the author's opinion, this approach to understanding the indicated group of legal relations requires some clarification. After all, compliance with financial discipline is associated with the fulfillment of financial obligations to other external entities (credit institutions, counterparties, etc.). That is, these legal relations cannot be considered as internal ones.

According to V.Z. Yanchuk [2], the purpose of internal financial legal relations is to create the necessary financial base for production of food, foodstuff and raw materials of plant and animal origin by structural production divisions. Accordingly, they should be linked, firstly, with the formation of financial capital of enterprise (the creation of property funds of business entities). Thus, in order to ensure the statutory activities, an agricultural cooperative forms an authorized capital (in the manner prescribed by the charter), as well as a development fund and a reserve fund (point 1, Article 21 of the Law of Ukraine dated July 21, 2020 "On agricultural cooperation"); limited liability company – authorized and reserve capital (Article 12; point 1 Article 25 of the Law of Ukraine dated February 6, 2018 "On Limited and Additional Liability Companies"); farming – a compound capital (Article 19 of the Law of Ukraine dated June 19, 2003 "On Farming").

Secondly, the above-mentioned legal relations are related to the internal distribution of the financial result (profit) of enterprise among its founders and participants (members) (for example, the payment of dividends (in business companies), dividends and patronage dividends (in agricultural cooperatives), as well as the implementation of deductions in these funds. At the same time, such enterprises adopt internal documents, and the distribution is carried out based on them. Thus, the financial plan is the main planning document of a state commercial enterprise, and according to this financial plan, the enterprise receives income and incurs expenses, determines the volume and direction of funds for performing its functions throughout the year in accordance with the constituent documents (point 2 of the Article 75 of CCU). In the agricultural cooperative – these are the Rules for on-farm activities. They should contain, in particular, the following information: the procedure for determining the size of additional contribution of each member of the cooperative and its contribution; the size of the total share of contributions of associate members in the authorized capital; the procedure for determining the size, accrual and distribution of patronage dividends in the context of types of activities of the cooperative; a mechanism for distributing the financial result (profit) of agricultural cooperative, remaining after the payment of taxes, fees and other mandatory payments provided for by the law; requirements for pricing and financial relations (point 2, Article 9 of the Law of Ukraine "On Agricultural Cooperation").

It should be noted that the legislation establishes a requirement for approval of the

annual report (exclusive competence of the general fees) (point 1, Article 33 of the Law of Ukraine dated September 17, 2008 "On joint-stock companies", point 2 of the Article 30 of the Law of Ukraine "On Companies with Limited and Additional Liability", point 2 of the Article 16 of the Law of Ukraine "On Agricultural Cooperation") and storage of the annual financial statements at enterprises (point 1, Article 77 of the Law of Ukraine "On Joint-Stock Companies", point 1, Article 43 of the Law of Ukraine "On Limited and Additional Liability Companies"). In addition, the shareholders (participants) are guaranteed the right to get acquainted with the financial statements (Article 78 of the Law of Ukraine "On Joint Stock Companies", point 3 of the Article 43 of the Law of Ukraine "On Limited and Additional Liability Companies").

To control the financial and economic activities of these business entities, the appropriate authorities should be created: an audit commission (auditor) in agricultural cooperatives (Article 18 of the Law of Ukraine "On Agricultural Cooperation") and joint stock companies (Article 73 of the Law of Ukraine "On Joint Stock Companies"). In addition, it provides for an audit of financial statements for limited liability companies (Article 41 of the Law of Ukraine "On Limited and Additional Liability Companies"), agricultural holding companies (Article 8 of the Law of Ukraine "On Holding Companies in Ukraine"), state unitary agricultural enterprises (point 8, Article 73 of CCU), as well as a public joint-stock company (point 1, Article 75 of the Law of Ukraine "On Joint Stock Companies").

Thirdly, the internal agrarian financial legal relations operate when making settlements with members (participants) in case

of termination of the activity of business entity or withdrawal of its members (participants) (Articles 25-25, Article 89 of the Law of Ukraine "On Joint Stock" Companies", Article 23, points 4, 5 Article 33 of the Law of Ukraine "On Agricultural Cooperation", point 1 of the Article 5, Articles 53, 54 of the Law of Ukraine "On Limited and Additional Liability Companies", point 2 of the Article 36 of the Law of Ukraine "On Farming").

The above-mentioned proves that the features of this group of legal relations are due to the organizational and legal form of business entities in which they arise, change and terminate, and therefore they are established in the legislation governing the legal status of these entities.

Let's focus on the analysis of agrarian legal relations, which can be attributed to external financial legal relations. It is stated in the scientific literature that the goal of the latter ones is to assist the agricultural producers (through the provision of loans, crop insurance, etc.) in their statutory activities, as well as in the sale of their products (products, raw materials, including after their processing) in accordance with the requirements of a modern market economy [2]. In fact, this is about the relationship of state financial support for business entities in the agricultural sector of the economy. Indeed, most representatives of agrarian legal science note that external agrarian legal relations include relations in the field of state support for agricultural producers, and primarily in the form of financial support and assistance to the village [1; 4].

Such support is carried out in certain legal forms (budget financing, dating or payment of compensations, concessional lending,

competitive distribution of resources, conclusion of pledge agreements, insurance of agricultural crops, commodity credit, financial lease (leasing), etc.) [4; 5]. Although, according to V.Yu. Urkevich [6], among the varieties of external agrarian legal relations (when they are defined depending on the content), it is not worth singling out relations in the field of state support for agriculture, since they are included in the group of relations on state regulation of agriculture. According to the author's opinion, it is worth supporting H.A. Grigoriev [7], who has substantiated in detail the need to distinguish between these concepts. In addition, tax relations should also be attributed to external agrarian financial relations [1; 2; 4].

In addition, A.M. Pashchenko [3] states that this group of relations includes the relations of agricultural enterprises with the financial authorities of state, as well as relations in which the enterprise is the founder of new business entities; relations associated with the implementation of settlement, credit and cash operations of such enterprises.

It should be pointed out that the subjects of external financial legal relations include not only the financial authorities of state (first of all, this concerns tax legal relations), but also other authorities of state executive power and local self-government (in particular, when it comes to legal relations of state financial support), as well as others business entities and financial-credit institutions. Thus, the group of external agrarian financial legal relations consists of the following: settlement legal relations; credit legal relations (including the legal relations of financial leasing); insurance legal relationship; relations with the state and

local budgets (on the payment of taxes and other obligatory payments and fees; obtaining the state financial support); investment legal relations. It should be noted that not all of the above-listed relations are regulated by the agricultural legislation. This primarily concerns settlement, tax and investment relations. Although, the tax legislation contains norms that establish a separate procedure for taxation of agricultural producers – payers of the 4th group of the unified tax. However, the peculiarities in the legal regulation of the vast majority of them are provided for by the agricultural legislation. These are the normative-legal acts that regulate the legal status of business entities in the agrarian sector of the economy: the Laws of Ukraine “On farming”, “On agricultural cooperation”, dated May 15, 2003, “On private peasant farming”, dated June 25, 2009, “On wholesale markets for agricultural products”. This is also the legislation that establishes the basic principles of state financial support for agricultural production and the social sphere of village (framework Laws of Ukraine “On State Support for the Agriculture of Ukraine” dated June 24, 2004, and “On priority of social development of rural areas and agro-industrial complex in the national economy” dated October 17, 1990). Special legislation also regulates the issues of preferential insurance and lending in agriculture (Laws of Ukraine dated February 9, 2021 “On the peculiarities of insurance, agricultural products with state support”, dated November 6, 2012 “On agricultural receipts”). It is possible to single out a separate group of normative-legal acts regarding the state financial support of certain types of agricultural

activity (for example, the Laws of Ukraine dated July 4, 2002 “On grain and the grain market in Ukraine”, dated July 10, 2018 “On basic principles and requirements to organic production, circulation and labeling of organic products”, dated September 18, 2012. “About aquaculture”). Therefore, the peculiarities of external agrarian financial legal relations are determined not only and not so much by the legal status of the economic entity, but as a rule, by the nature of activity it carries out, and they are established in the agrarian legislation.

Conclusions

Thus, the internal agrarian financial legal relations include: the legal relations for the formation of financial capital of enterprise (creation of appropriate property funds of the business entities); the legal relations on

the internal distribution of financial result (profit) of the enterprise among its founders and participants (members) (for example, the payment of dividends (in business companies), dividends and patronage dividends (in agricultural cooperatives), as well as the implementation of deductions to these funds; legal relations for settlements with members (participants) in case of termination of the activity of business entity or withdrawal of its members (participants). The group of external agrarian financial legal relations consists of the following: the settlement legal relations; credit legal relations (including legal relations of financial leasing); insurance relationship; relations with the state and local budgets (on the payment of taxes and other obligatory payments and fees; obtaining the state financial support); investment legal relations.

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Загальна характеристика внутрішніх і зовнішніх аграрних фінансових правовідносин

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Анотація

Статтю присвячено виокремленню специфічних ознак внутрішніх і зовнішніх аграрних фінансових правовідносин. Доводиться, що особливості першої групи правовідносин обумовленні організаційно-правовою формою суб'єктів господарювання, в яких вони виникають, змінюються і припиняються. Вказані особливості встановлюються у законодавстві, що регулює правове становище цих суб'єктів. Зокрема, ним визначається порядок формування майнових фондів сільськогосподарських підприємств, розподіл фінансового результату (прибутку) серед засновників та учасників (членів) (наприклад, виплата дивідендів (в господарських товариствах), дивідендів та патронажних дивідендів (в сільськогосподарських кооперативах), а також здійсненням відрахувань до зазначених фондів. При цьому в таких підприємствах приймаються внутрішні документи, на підставі яких проводиться такий розподіл. Крім того, регламентується порядок здійснення контролю за їх фінансово-господарською діяльністю. Специфічним є і порядок проведення розрахунків з членами (учасниками) у випадку припинення діяльності суб'єкта господарювання або виходу із його членів (учасників). Обґрунтовується думка, що особливості зовнішніх аграрних фінансових правовідносин викликані, як правило, характером діяльності, яку здійснює суб'єкт господарювання. Тому, вказані відносини регулюються аграрним законодавством у сфері державної фінансової підтримки сільського господарства і соціальної сфери села; здійснення окремих видів сільськогосподарської діяльності; страхування та кредитування сільськогосподарських товаровиробників. До таких правовідносин належать: розрахункові правовідносини; кредитні правовідносини (включаючи правовідносини фінансового лізингу); страхові правовідносини; відносини з державним та місцевими бюджетами (щодо сплати податків та інших обов'язкових платежів і зборів; отримання державної фінансової підтримки); інвестиційні правовідносини

Ключові слова: аграрне законодавство, аграрні фінансові правовідносини, внутрішні фінансові правовідносини, зовнішні фінансові правовідносини, сільськогосподарське підприємство, сільськогосподарський товаровиробник



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Occupational safety when working with pesticides: The state of legal security

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The article is devoted to the analysis of current state of the legal security of labor protection when working with pesticides, as well as the formulation of conclusions and proposals based on it, aimed at improving the current legislation in this area. It has been established that currently in Ukraine, there is a process of updating legislation in the area under study. In particular, through the adoption of regulatory acts governing the rules of labor protection when working with certain types of chemicals (for example, ammonium nitrate). As a result of a study of the current legislation in the field of labor protection when working with pesticides, it has been concluded that the basic documents (SSR 8.8.1.2.001-98 "Transportation, storage and use of pesticides in the national economy" and DSanPiN 8.8.1.2.3.4-000- 2001 "Permissible doses, concentrations, quantities and levels of pesticides in agricultural raw materials, food products, air of the working area, atmospheric air, water of water ponds, soil") are not able to properly regulate the relevant relationships due to their outdated provisions. The main shortcomings of SSR 8.8.1.2.001-98 are identified: reference in its content to already inactive regulations

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on labor protection, non-compliance with modern developments in the field of hygiene and toxicology of pesticides; unreasonably detailed regulation, which entails an excessive burden on business entities and leads to formalism in the implementation of provisions of this document by employers; incorrectly “rigid” regulation of the choice of means of personal protection for work with pesticides. It has been determined the directions of improvement of legislation in the field of labor protection when working with pesticides. Among them: the introduction of a risk-based approach to the organization of labor protection, including in the field of agriculture; borrowing positive international experience in the field of awareness of interested parties about the hygienic regulation of the use of pesticides, the necessary safety measures for working with the use of such substances

Keywords: occupational safety, dangerous occupational factor, normative act on labor protection, labor protection, pesticides, legal support, agriculture

Introduction

Modern agricultural creation is characterized by the high level of chemicalization. It is generally proven that pests (insects, rodents, nematodes), diseases of viral, fungal and bacterial etiology, weeds, etc. are capable of causing significant harm to both animal husbandry and crop production, even to the complete destruction of crops or farm animals. According to available information, the average annual crop losses in Ukraine from pests, diseases and weeds are 20-30%, including wheat – 27%, corn – 29%, sugar beet – 27%, potatoes – 32%, fruit – 48% [1]. The impossibility of abandoning the use of pesticides is primarily due to the need to prevent a decrease in the gross production of agricultural products and its quality, as well as the need to promote productivity in the crop industry. However, this causes another problem – these substances pose a threat to the health of workers, and in the case of uncontrolled use, they are dangerous for the life

and health of people and the environment. Agriculture is traditionally one of the most dangerous industries in terms of industrial injuries and occupational diseases. According to statistics in 2020, the total number of people injured as a result of accidents related to production reached the mark of 6646 people, and 243 of them – employees of the agro-industrial complex. This is the fifth place after such healthcare sectors (in which this indicator of industrial injuries increased by 13 times compared to 2019 due to the COVID-19 pandemic, and it amounted to 3238 people in 2020) and the coal industry. As for the cases of fatal occupational injuries, the agriculture is “in the top three” – out of 393 fatalities, 45 people are from this industry [2]. The situation is also complicated with occupational diseases (poisoning) of persons employed in agriculture. For example: according to the Social Insurance Fund of Ukraine in the Cherkasy region in 2019, 62.5% of the

total number of established occupational diseases were in agriculture [3]. Although, according to the existing data at the state level, the level of occupational diseases in agriculture is low [4]. However, the author fully agree with Yu. Konovalov [5], who states that the available data do not reflect the real picture, since a significant part of occupational diseases of people employed in the agricultural production is not recorded due to the destruction of medical care system in rural areas, primarily the occupational pathology care system.

In turn, the work with pesticides is one of the most hazardous jobs for health in agriculture. Improvement of situation is possible only through the comprehensive approach to the organization of labor protection of persons employed in such work. The proper legal support is key factor in this process, which determines the relevance of this scientific work [6].

Various aspects of labor protection of persons employed in agricultural production have repeatedly been the subject of scientific research by both the scientists-lawyers and representatives of other sciences. For example, these are the developments by A.P. Berezovetskyi [7], O.V. Voinalovich [7], V.M. Garashchuk, I.M. Gorodetskyi [7], V.V. Zhernakova, P.A. Izuita, L.I. Lazora, V.M. Lapina, O.A. Miroshnichenko, P.D. Pilipenko, V.G. Rotan, V.P. Skaf, G.I. Chanysheva, I.I. Shamshina, O.M. Eroshenko, V.Z. Yanchuk and others. At the same time, many problems of legal support of labor protection in agriculture remain unresolved, which necessitates the conducting of scientific research in this direction.

The purpose of the article is to analyze the current state of legal security for labor protection when working with pesticides, as well as formulate conclusions and proposals based on it, aimed at improving the current legislation in this area.

Results and Discussion

The Rules for labor protection in agricultural production, approved by the order of the Ministry of Labor and Social Policy of Ukraine dated August 29, 2018 № 1240 are the basic regulatory act on labor protection that establishes safety requirements when working with pesticides. However, this document is limited only to individual instructions regarding transportation and usage of pesticides and mineral fertilizers, preparation of pesticide solutions, and it also establishes the conditions for workers' admission to perform such work (passing special training, having an appropriate certificate and the absence of medical contraindications).

Point 1 of subsection 1 of the section IV of the Regulations for Labor Safety in agricultural production contains a rule that "the transportation, storage and use of pesticides must be carried out in compliance with the requirements of the Law of Ukraine "On pesticides and agrochemicals" and other regulatory legal acts in terms of safe work on transportation, storage and use of pesticides". The latter ones include the State Sanitary Rules SSR 8.8.1.2.001-98 "Transportation, storage and use of pesticides in the national economy", approved by order of the Ministry of Health of Ukraine dated August 8, 1998 № 1. The

point 1.4 of this document is mandatory for compliance for all persons who perform any actions with pesticides. However, a significant part of provisions enshrined in the given SSR 8.8.1.2.001-98 is outdated, which makes it difficult to comply with their requirements.

Above all, SSR 8.8.1.2.001-98 contains references to invalid regulations such as: The procedure for the use of pesticides and agrochemicals in areas subjected to radioactive contamination and in areas of environmental emergency situations, approved by the Cabinet of Ministers of Ukraine dated January 16, 1996, № 92; GOST 12.0.004-90 "Occupational safety standards system. Organization of labor safety training. General Provisions"; Regulations on the procedure for conducting medical examinations of workers of certain categories, approved by order of the Ministry of Health of Ukraine dated March 31, 1994; GOST 19433-88 "Dangerous cargoes. Classification and labeling"; SNiP 11-108-78 "Warehouses for dry mineral fertilizers and plant protection chemicals"; GOST 12.2.003-91 "Industrial equipment. General safety requirements" and others.

Another disadvantage of SSR 8.8.1.2.001-98 is that it "does not keep pace" with the changes arising on the market of pesticide, the vast majority of which are currently imported, and their range is increasing every year. The author fully shares the opinion of experts that the following documents are developed considering the scientific achievements in the field of hygiene and toxicology of pesticides for 2000 [7]: the SSR 8.8.1.2.001-98, and

another key document in the field under study – DSanPiN 8.8.1.2.3.4-000-2001 [6], which determines the permissible doses, concentrations, quantities and levels of pesticides in agricultural raw materials, food products, air of the working area, atmospheric air, water of water ponds, soil.

The regulation of SSR 8.8.1.2.001-98 for the choice of personal protective equipment when working with pesticides is an important aspect that needs improvement. Very fruitful work has been done in this direction [7]. The authors (using the example of a comparison of the recommended protective equipment for workers when applying pesticides of hazard class II according to SSR 8.8.1.2.001-98 and according to the safety data sheet of Fungicide Acanto Plus manufactured by the DuPont International according to Regulation (EC) No. 1907/2006 with amendments [8]) came to the correct conclusion that compliance with the requirements of SSR 8.8.1.2.001-98 on providing employees with the same types of protection for various operations is vague and it causes errors in the selection of personal protective equipment, which leads to dangerous working conditions [7]. That is, the "strict" regulation adopted in Ukraine's regulatory legal acts on labor protection of the choice of one or another personal protective equipment in modern conditions (considering the significant update of both the range of pesticides and the range of personal protective equipment (both the domestic and foreign production)) does not give the expected result – it does not protect the worker at the proper level.

These are the possible steps to improve situation: firstly, providing at the level of SSR 8.8.1.2.001-98 the possibility of choosing personal protective equipment, depending on the information given in the safety data sheet of a particular pesticide. Secondly, it is necessary to expand the list of mandatory information about pesticide when entering it into the State Register of Preparations, considering the provisions of Regulation (EC) № 1907/2006. For comparison: according to the Procedure for carrying out state testing, state registration and re-registration, publication of a list of pesticides and agrochemicals permitted for the use in Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 4, 1996 № 295, The State Register of Preparations include the following: registration number of product, date of issue, series, name and content of the active substance, trade name of the product and designation of its formulation, classification of the product, name of the applicant and his address, name of the product's manufacturer, scope of application (list of crops), consumption standards (grams, kilograms, liters/hectares, sq.m. tons), term of registration of the product, date of cancellation (suspension) of the state registration of the product. In turn, the Annex II "Requirements for the safety data sheet" of Regulation (EC) № 1907/2006 provides for the inclusion of the following information in the safety data sheet of the product: identification of the substance/mixture and the company/enterprise; hazard identification; information about the composition and ingredients;

first aid measures; fire fighting measures; measures for accidental release of substances; handling and storage; control over the influence (personal protection); physical and chemical properties; stability and reactivity; toxicological information; environmental information; disposal; transportation information; regulatory information; other information. It is obvious that the provision of this information to all interested parties through its publication in the public domain in the State Register of Pesticides and Agrochemicals permitted for the use in Ukraine can greatly simplify the solution of the issue regarding the protection of employees working with such substances.

In addition to the above-mentioned, the analysis of the content of SSR 8.8.1.2.001-98 shows a very detailed regulation of carrying out the work with pesticides, as well as a reference to a significant number of other mandatory regulations. On the one hand, this can be considered a positive moment, since a clear fixing of the rules of conduct is intended to contribute to the organization of labor protection in the direction under study. However, on the other hand, such an "overload" of the employer's obligations in practice often leads to the formal fulfillment of requirements.

The above-mentioned information clearly illustrates the already recognized fact in the scientific community that the labor protection legislation of Ukraine is outdated and does not keep up with changes in technological processes, technologies, means of protecting workers, etc. Experts prove that it is necessary to respond to

challenges in the field of labor protection, first of all, at the level of an enterprise, institution, organization, business entity. This should be carried out through the management strategies and should be objectified in labor protection management systems [9]. Ukraine should introduce a risk-oriented approach to the organization of labor protection; that is, an approach based on the study and analysis of industrial risks, and further development of labor protection measures at the enterprise level, which would consider the specifics of this business entity.

The legal field is already beginning to from for this; in particular, it has been developed the drafts of the Methodology for conducting occupational safety and health measures by the employer based on a risk-related approach [10], the Law of Ukraine "On the safety and health of employees at work" [11]. In this research, it has been analyzed the provisions of the latest draft law and it has been concluded that they generally meet international standards in the field of labor protection and allow solving the main problems in terms of motivating employers and employees to comply with labor protection legislation; they lay the foundation for a gradual shift in emphasis when organizing the labor protection directly for the business entity regarding the prevention of onset of accidents and occupational diseases, reduce bureaucratic pressure on employers and give it greater freedom in responding to changes in production processes and economic conditions for conducting the relevant activities [12].

Simultaneously with the development of general legislation, the work for updating the industry regulations on labor protection should be carried out, namely those ones that regulate the safety requirements when working with pesticides and agrochemicals. These changes should be based on a preliminary analysis of industrial risks existing in this particular area, objective data on industrial injuries and occupational morbidity in agriculture. It should also become mandatory to provide the owner of agricultural enterprise with a legally fixed opportunity to quickly respond to new risks while ensuring an appropriate level of safety for employees who work with pesticides and agrochemicals. And here, it is possible to cite as a positive moment the adoption of the Minimum requirements for the safety and health of employees at work during storage and packaging of ammonium nitrate and its use for the manufacture of complex and liquid mineral fertilizers, approved by order of the Ministry of Economic Development, Trade and Agriculture of Ukraine dated April 15, 2021, № 775-21, which extended their effect to all business entities and/or institutions of all forms of ownership, whose activities are related to the storage (in the amount of 500 kg or more), packaging, loading and unloading operations with ammonium nitrate and/or its use for the manufacture of complex and liquid mineral fertilizers and/or its consumption. Thus, it was canceled the Order of the State Committee of Ukraine regarding the industrial safety, labor protection and mining supervision "On approval of the Rules for labor protection during pro-

cessing and storage of ammonium nitrate in bulk” dated September 1, 2009, № 142, which created an excessive burden on the business entities by unreasonable regulation, contained numerous references to the rules, DSTU, SBS, BS and GOST, (which are canceled and do not belong to regulatory legal acts on labor protection).

Conclusions

Thus, currently in Ukraine, there is a process of updating the legislation that regulates relations in the field of labor protection of persons employed in work with pesticides. Along with this, the basic documents (SSR 8.8.1.2.001-98 “Transportation, storage and use of pesticides in the national economy”

and DSanPiN 8.8.1.2.3.4-000-2001 “Permissible doses, concentrations, amounts and levels of pesticides in agricultural raw materials, food, working area air, atmospheric air, water of water ponds, soil”) are not able to properly regulate the relevant relations due to their outdated provisions. Further scientific research should be concentrated in the following directions: the introduction of a risk-based approach to the organization of labor protection, including the agriculture field, borrowing positive international experience in the field of awareness of interested parties about the hygiene regulation of the use of pesticides, the necessary safety measures for working with the use of such substances.

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Безпека праці при виконанні робіт із пестицидами: стан правового забезпечення

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Анотація

Стаття присвячена аналізу сучасного стану правового забезпечення охорони праці при виконанні робіт із пестицидами, а також формулювання на його основі висновків та пропозицій, спрямованих на удосконалення чинного законодавства у зазначеній сфері. Встановлено, що на даний час в Україні триває процес оновлення законодавства у досліджуваній сфері. Зокрема, через прийняття нормативних актів, що регламентують правила охорони праці при роботі з окремими видами хімічних речовин (приміром, аміачної селітри).

У підсумку дослідження чинного законодавства у сфері охорони праці при виконанні робіт із пестицидами зроблено висновок, що базові документи (ДСП 8.8.1.2.001-98 «Транспортування, зберігання та застосування пестицидів у народному господарстві» та ДСанПіН 8.8.1.2.3.4-000-2001 «Допустимі дози, концентрації, кількості та рівні вмісту пестицидів у сільськогосподарській сировині, харчових продуктах, повітрі робочої зони, атмосферному повітрі, воді водоймищ, ґрунті») не здатні належним чином врегулювати відповідні відносини через застарілість їх положень. Визначено основні недоліки ДСП 8.8.1.2.001-98: посилання у його змісті на вже нечинні нормативні акти з охорони праці, невідповідність сучасним напрацюванням у галузі гігієни та токсикології пестицидів; необґрунтовано деталізоване регулювання, що має наслідком надмірне навантаження на суб'єктів господарювання та призводить до формалізму при виконанні положень цього документу роботодавцями; некоректно «жорстка» регламентація вибору засобів індивідуального захисту для виконання робіт із пестицидами. Визначено напрями удосконалення законодавства у сфері охорони праці при виконанні робіт із пестицидами. Серед яких: впровадження ризикоорієнтованого підходу до організації охорони праці, зокрема й в галузі сільського господарства; запозичення позитивного міжнародного досвіду у сфері поінформованості зацікавлених осіб щодо гігієнічного нормування використання пестицидів, необхідних заходів безпеки для робіт із використанням таких речовин

Ключові слова: безпека праці, небезпечний виробничий фактор, нормативний акт з охорони праці, охорона праці, пестициди, правове забезпечення, сільське господарство



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The role of the state in combating COVID-19: Vaccination problems

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The article emphasizes that the health of the population, which is one of the greatest values, is a necessary condition for socio-economic development of the country and emphasizes that in the fight against acute respiratory disease COVID-19, vaccination of the population of Ukraine is important. The legal acts are analyzed, the problematic issues related to vaccination of the population are revealed. One of the reasons for mistrust is the spread of false information about vaccination. It is emphasized that the solution of the existing problems of vaccination puts before the state the need to take appropriate organizational and legal measures. The Law of Ukraine "On the Public Health System", № 4142, which is in the Verkhovna Rada of Ukraine, should play an important role in this issue

Keywords: State, government, regulations, health, COVID-19, vaccination

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Introduction

The issue of independence of Ukrainian statehood, caused by Russia's military aggression against Ukraine, along with the fight against the COVID-19 are one of the most important and problematic issues of the state today. Along with tens of thousands of deaths, the pandemic has also hit all the world's economies. Last year, international tourism and related industries alone suffered \$ 2.4 trillion in losses. This year's forecasts are also disappointing. The only way out is to vaccinate the population. Vaccination rates vary around the world, and the steps countries take to involve people in vaccinations are creative in some countries. In particular, cash cards worth 150 euros are distributed to vaccinated people in Greece, Poland has launched a lottery, and in the United States there are raffles with cash prizes, tickets to the Baseball Super Cup and cruises, even vaccinated beer is given, and so on.

Solving the existing problem of the vaccination procedure makes the state take appropriate organizational measures, as a result of which the order of the Ministry of Health of Ukraine approved the "Roadmap for vaccination against acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, and mass vaccination response to the COVID-19 pandemic in Ukraine in 2021-2022" as of 24.12.2020. At the same time, the implementation of a vaccination program largely depends not only on the availability of vaccines, but also on the existing, albeit insignificant, anti-vaccine movement.

Thus, the issue of vaccination or, more precisely, the problem of insufficient coverage of the population with vaccination is particularly urgent today. Under such conditions, there is a need to intensify the Ministry of Health and the media in terms of explanatory policy on vaccination of the population of Ukraine.

Despite the fact that the issue of COVID-19 is constantly covered by the Ministry of Health and the media, the issue of research on the problematic issues of countering the pandemic to date, still attracts little attention of legal scholars, which indicates the need for research.

The aim of the article is to study the issues related to COVID-19 and the problems of vaccination of the population in Ukraine.

Results and Discussion

An outbreak of coronavirus infection COVID-19 (a new type of pneumonia) began in late December 2019. The first cases of pneumonia of unknown origin were found in residents of Wuhan, Hubei Province, central China. The disease was associated with the local animal and seafood market. On December 31, 2019, the Chinese authorities reported an outbreak of unknown pneumonia to the World Health Organization (WHO). On January 30, the WHO recognized the outbreak of the new coronavirus as an international health emergency. On February 11, 2020, the disease was named the new coronavirus pneumonia – COVID-2019 (official name SARS-CoV-2).

Problematic issues caused by the COVID-19 pandemic in the world and Ukraine prompted the Cabinet of Ministers of Ukraine, which is the highest body in the system of executive authorities, to adopt a resolution "On preventing the spread of coronavirus COVID-19 in Ukraine" from 11.03.2020 № 211, which from 12.03. In 2020, measures aimed at counteracting the spread of quarantine measures were introduced throughout Ukraine. Subsequently, the Government adopted a number of decrees and orders to combat the pandemic.

Given that the spread of acute respiratory illness COVID-19 caused by SARS-CoV-2, which poses a threat to personal, public and national security, has severe socio-economic

and demographic consequences, in order to strengthen public protection, immediate action to combat the spread of COVID-19 in Ukraine, by the Decree of the President of Ukraine 16.03. 2020 № 88/2020 the Coordination Council for Combating the Spread of COVID-19 was established, and the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus (COVID-19)". From 17.03.2020 № 530-IX, which is extremely important for citizens, society, state.

In general, according to Johns Hopkins University in the United States, more than 183 million 788 thousand cases of COVID-19 have been registered since the beginning of the pandemic, of which more than 3 million 977 thousand died, including, according to the Ministry of Health of Ukraine. The state registered 2 million 300 thousand cases of COVID-19, 54758 – fatalities [1]. Vaccination of Ukrainian citizens should help solve the problem of preserving health and life. Vaccination is one of the most important elements in overcoming the COVID-19 pandemic.

In order to effectively implement the vaccination plan, the Ministry of Health of Ukraine has an operational headquarters, which aims to cover at least 50% of the population of Ukraine (20 million people) with COVID-19 vaccination in 2021-2022. At the same time, vaccination against COVID-19 in Ukraine will be voluntary for all groups of the population and occupational risk groups. It will not interfere with routine vaccination in accordance with the Vaccination Calendar to prevent a reduction in vaccination against other diseases.

The plan approved 4 stages of vaccination of the population:

1. January-April 2021 – people at critical risk of infection and development of COVID-19

and those who perform critical functions in the fight against the COVID-19 pandemic.

2. April-June 2021 – people with an extremely high risk of infection and development of COVID-19 and those who provide medical services.

3. June-September 2021 – people at high risk of infection and development of COVID-19 and those who perform functions to maintain the security and livelihood of the state.

4. September 2021 – March 2022 – people at increased risk of infection and development of COVID-19 and those who perform functions to support the security and livelihood of the state.

The population will be vaccinated on the basis of available vaccination points, mobile immunization teams, as well as in temporary vaccination centers.

The order of the Cabinet of Ministers of Ukraine of April 12, 2021 approved the National Plan for vaccine prophylaxis of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, for the period up to December 31, 2021. Given that both in Ukraine and in the world, there is distrust in vaccines against COVID-19, the order of the Cabinet of Ministers of Ukraine instructed the Ministry of Health, together with the Ministry of Culture and Information Policy to ensure effective outreach on vaccination of the population in order to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine. All oblast and Kyiv city state administrations and local self-government bodies are called upon to ensure vaccination coverage of the majority of the adult population by December 31, 2021 for the formation of collective immunity from COVID-19.

In addition, the resolution of the Cabinet of Ministers of Ukraine «Some issues of formation and use of a certificate confirming

vaccination against acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, a negative test result or recovery from this disease» from 29.06.2021. № 677, approved the Procedure for the formation and use of a certificate confirming vaccination against COVID-19, which have a negative result of testing or recovery of the person from this disease, taking into account the recommendations of the European Commission 2021/472 from 17.03.2021.

This resolution obliges: The Ministry of Foreign Affairs to ensure the inclusion of data on the possibility of using the COVID-certificate to cross the state border of foreign countries in the interactive resource to reflect the peculiarities of entry into foreign countries; to ensure the conclusion of international agreements on mutual recognition of COVID-certificates in accordance with the established procedure in agreement with the Ministry of Health; to inform the Administration of the State Border Guard Service about the terms of the concluded international agreements on mutual recognition of COVID-certificates. Administration of the State Border Guard Service: to ensure the verification of the availability of COVID-certificates, the affiliation of the presented COVID-certificates to citizens of Ukraine, foreigners and stateless persons permanently residing in Ukraine, persons recognized as refugees or in need of additional protection by Ukraine, or citizens of states which Ukraine has concluded international agreements on mutual recognition of COVID-certificates.

Today, Ukraine is actively negotiating with EU countries on mutual recognition of COVID certificates. As for vaccination, as of July 5, 2021, 850.394.000 people, or 2% of the country's population, received full vaccination, 2.074.986 citizens, or 5% of the population, received at least one vaccination

dose, while 24% of the world's population at least one dose of the vaccine [1].

Despite the significant number of public administration entities involved in the fight against coronavirus infectious disease COVID-19, whose activities take place in the form of management activities and are carried out by legislative and executive authorities, local governments, as well as individual non-governmental bodies and institutions, that the state and its authorized subjects as a whole are not ready to fulfill the instructions established by them [2].

At the same time, the current health care system in Ukraine is critical. If European countries have chosen in recent decades to move from health surveillance and communicable disease control to "new" public health, focusing on health promotion, disease prevention and cross-sectoral interaction that goes beyond the health care system. This reorientation has allowed the countries of the European Union making a significant leap in public health. In the latter, the average life expectancy of men comprises 72 years, women – 80. Instead, Ukraine's indicators over the past 20 years remain at the same level and on average 5 years lower than in Europe. Men in Ukraine live an average of 66 years, and women – 76 [3].

It should be noted that disease prevention and sanitary-epidemiological control are provided by the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States, on the other hand, from 16.09.2014 №1678-VII (according to Article 427 Chapter 22 "Public Health" of Section V "Economic and Sectoral Cooperation" of the Agreement). The issues related to COVID-19 are not limited to the following in this article, and therefore, necessitates further scientific

research to overcome coronavirus disease and related issues.

Conclusions

The strategic goal of the Ministry of Health of Ukraine is to form in Ukrainians a collective immunity to a deadly disease. To this end, at least 60% of the population needs to be immunized, but public distrust of vaccination, due to the dissemination of false and unverified information, has posed problematic issues for the state.

Given the unsatisfactory state of sanitary and epidemiological well-being, despite the presence of a significant number of

regulations governing relations in the components of the system (sanitary and epidemiological well-being, health, environment and other areas related to public health Ukraine), Ukraine still lacks a single normatively defined public health system capable of responding to challenges related to the health and well-being of the population, and the current legislation in the field of sanitary and epidemiological well-being has not been systematically updated since late 90's, so it is necessary to adopt the draft Law of Ukraine "On Public Health", which should play an important role in a pandemic.

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Роль держави у сфері боротьби з COVID-19: проблеми вакцинації

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Анотація

У статті підкреслено, що здоров'я населення, яке є однією з найбільших цінностей, необхідною умовою для соціально-економічного розвитку країни та підкреслено, що в умовах боротьби із гострою респіраторною хворобою COVID-19, важливого значення набуває вакцинації населення України. Проаналізовано нормативно-правові акти, розкрито проблемні питання пов'язані вакцинацією населення. Одна з причин недовіри – поширення неправдивої інформації щодо вакцинації. Акцентовано увагу, що розв'язання існуючих проблем вакцинації ставить перед державою необхідність здійснення відповідних організаційних та правових заходів. Важливу роль у цьому питанні повинен відіграти Закон України «Про систему громадського здоров'я», законопроект № 4142 якого перебуває у Верховній Раді України

Ключові слова: держава, уряд, нормативні акти, здоров'я, COVID-19, вакцинація



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Current state of activity of public governance bodies in the field of waste management

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The article is dedicated to the study of the activities of public administration authorities in the field of legal waste handling. Normative legal acts are analyzed, scientific opinions on the important role of administrative authorities are presented, the role of administrative law in the researched sphere is emphasized. It is proved that the regulation of relations in the field of waste handling is impossible without a system of public administration entities, which in accordance with laws and other regulations, within their competence are designed to solve the tasks of the state. It is identified that in addition to the executive authorities, other subjects of administrative law that do not belong to public authorities can have certain administrative functions in the field of waste handling. They can be legal entities and collective entities that have the status of a legal entity. In some cases, regulations

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may provide for the involvement of individuals of private law to implement management functions in the field of waste handling

Keywords: entities, public administration, waste, activity, normative legal acts

Introduction

Regardless of the field of research, the activity of public administration authorities has always attracted the attention of researchers. This fully applies to the activities of public administration authorities in the field of waste handling. One of the reasons for this interest in the activities of public administration entities is that throughout the period of Ukrainian independence, the activities of public authorities have experienced constant changes. This led not only to changes in their competence, but also to their elimination and / or reorganization, which did not always have a positive effect on the regulation of public relations in the field of waste handling. In view of this, as well as taking into account the existing problems, the study of the current state of public administration authorities is important from both theoretical and practical points of view, which determines the relevance of this article.

The scientific and theoretical basis of the study were the works of legal scientists of various branches of law, in particular: V. Andreytseva, L. Vasylenko, N. Kobetska, V. Kostytsky, M. Krasnova, N. Malysheva, V. Nosik, K. Ryabets, A. Oskirko, O. Ulyutina, Y. Shemshuchenko and other scientists, who in their works considered the activities of public authorities in the field of waste handling.

Results and Discussion

Regulation of relations in the field of waste handling is impossible without the subjects of public administration, which, in

accordance with regulations, within their competence are designed to solve the tasks of the state. In order to determine the composition of the system of public administration entities, to clarify the competence (functional powers) to perform the relevant functions in the field of waste handling, the regulations were analyzed.

According to Art. 75 of the Constitution of Ukraine, the only body of legislative power in Ukraine is the Parliament – the Verkhovna Rada of Ukraine, which is authorized to exercise parliamentary control within the limits set by the Constitution and laws of Ukraine. The Verkhovna Rada has a Committee on Environmental Policy and Nature Management. The importance of the social significance of the issue of waste handling is evidenced by the fact that the Committee has a subcommittee on state policy in the field of waste handling.

In accordance with the provisions of the Constitution of Ukraine, the President of Ukraine is the head of state and acts on its behalf. On the basis of and in pursuance of the Constitution and laws of Ukraine, the President issues decrees and orders that are binding on the territory of Ukraine. The President is the Chairman of the National Security and Defense Council of Ukraine, which coordinates and controls the activities of executive bodies in the field of national security and defense, forms its personnel [1].

Despite the fact that the President of Ukraine does not belong to the executive

branch, the Constitution of Ukraine imposes on the President of Ukraine certain powers of the subject of executive power. The post (position) of the President of Ukraine belongs to the system of executive power purely functionally, or more precisely – competently, so through a certain amount of his powers (competencies). But it is not referred to it structurally, as an independent component of the system of executive bodies [2].

The Cabinet of Ministers of Ukraine plays one of the leading roles in the field of waste handling. Art. 18 of the Law of Ukraine “On Waste” of 05.03.1998 No 187/98-VR, determines the competence of the Cabinet of Ministers of Ukraine in the field of waste handling [3].

According to the Regulation on the Ministry of Environmental Protection and Natural Resources of Ukraine, the Ministry of Environment is the main body in the system of central executive bodies, which ensures the formation of state policy in the field of waste handling [4]. Direct implementation of state tasks in the field of waste handling is entrusted to the State Ecological Inspectorate of Ukraine, which within the powers provided by law, carries out state supervision (control) over compliance with legislation, in particular, on waste handling [5].

Despite the fact that relations in the field of different types of waste are regulated by almost identical legislation, there are certain differences between different types of waste, which are defined by the Law of Ukraine “On Waste”. This makes some adjustments to the activities of public administration entities in the field of waste handling. Thus, the Ministry of Development of Communities and Territories of Ukraine is the main body in the system of central executive bodies, which ensures the formation and implementation of state policy in

the field of household waste handling [6].

However, according to the Regulations on the State Inspectorate of Architecture and Urban Planning of Ukraine, which is the central executive body whose activities are directed and coordinated by the Cabinet of Ministers through the Minister of Communities and Territories [7], and the Regulations on interregional territorial bodies of the State Urban Planning Inspectorate bodies, the mentioned authorities unlike the Ministry of Development of Communities and Territories of Ukraine [8], are not authorized to exercise state control in the field of household waste handling.

This function is entrusted to local authorities – local state administrations and executive bodies of village, settlement, city councils. The powers of these bodies in the field of waste handling are regulated by the norms of the Laws of Ukraine “On Local State Administrations” of April 9, 1999, No 586-XIV [9] and “On local self-government in Ukraine” on May 21, 1997 No 280/97-VR [10]. Thus, local authorities are part of the overall system of public administration in the field of waste handling.

The body of general state control in the field of radioactive waste handling is the Ministry of Energy of Ukraine [11], which is the main body in the system of central executive bodies, which ensures the formation and implementation of state policy in the fuel and energy sector of the country. State management in the field of radioactive waste handling at the stage of their long-term storage and disposal is carried out by the State Agency of Ukraine on Exclusion Zone Management [12].

Certain functional powers in the field of waste handling are assigned to the State Service of Ukraine for Food Safety and Consumer

Protection [13], which carries out state veterinary and sanitary control over the collection, disposal and destruction of dead animals and animal waste, as well as materials and waste that may create a danger to the life and health of the population (except for measures related to the implementation of health surveillance (epidemiological surveillance (supervision), as well as in addition to the functions of radiation control of workplaces and radiation doses of workers). This also applies to the State Service of Ukraine for Geodesy, Cartography and Cadaster [14], which organizes and carries out state supervision (control) to prevent land owners and users of land to damage by contamination with chemical and radioactive substances and wastewater, industrial, household waste and other pollution.

The field of waste handling involves compliance with state sanitary rules and regulations. According to the Regulation on the Ministry of Health of Ukraine, the Ministry of Health [15] ensures the formation and implementation of state policy in the areas of sanitary and epidemiological well-being of the population.

Art. 1 of the Law of Ukraine "On ensuring the sanitary and epidemiological well-being of the population" from 24.02.1994 No 4004-XII [16] determines that the sanitary and epidemic well-being of the population is the standing of health of the population and the environment of human life, in which morbidity rates are at a stable level for the area, living conditions are favorable for the population, and environmental vital factors are within the limits set by sanitary norms.

For a long time, the state sanitary and epidemiological surveillance of populated areas was carried out by the State Sanitary and

Epidemiological Service of Ukraine, but the system of the State Sanitary and Epidemiological Service of Ukraine was reorganized by establishing the State Service of Ukraine on Food Safety and Consumer Protection [13].

It should be noted that when establishing the State Sanitary and Epidemiological Service of Ukraine in 2013, all district, city, district in cities, regional, Kyiv and Sevastopol city, Crimean Republican sanitary and epidemiological stations, as well as the Central Sanitary and Epidemiological Station of Ukraine were liquidated without succession. According to the statutes, all liquidated SES were health care institutions. Therefore, during their liquidation, Part 3 of Art. 49 of the Constitution of Ukraine [1] (the existing network of such institutions cannot be reduced). The issue of the absence of the State Sanitary and Epidemiological Service is especially acute, the country and society feel it now, when the coronavirus is rampant in the country.

In addition to the executive authorities, public entities in the field of waste handling, for example, legal entities of public law should be included. For example, the Ukrainian Research Institute of Environmental Problems is one of the leading scientific organizations in the system of environmental protection of Ukraine and is subordinated to the Ministry of Environmental Protection and Natural Resources of Ukraine, organizes work on the issues of statutory direction [17], is created for the purpose of scientific support of the state policy of Ukraine in the field of environmental protection, use of natural resources, ecological safety. One of the activities of the institute is the development of systems and methods of industrial and solid waste handling [18].

In some cases, regulations may provide

for the involvement of individuals of private law to implement management functions in the field of waste handling. This is provided for in Part 2 of Art. 36 of the Law of Ukraine "On Environmental Protection" of 25.06.1991 No 1264-XII [19], which provides for the participation of public inspectors in environmental protection.

At the same time, it is necessary to mention the institution of delegation of powers, the content of which is the right of public authorities and local governments to delegate part of their powers to other entities of public and private law.

Taking into account the above considerations, it can be concluded that the system of public administration in the field of waste handling is carried out by a wide range of entities, from public authorities to individuals. The affiliation of their activities to "management activities" is due to the fact that the latter act in the interests of society, pursuing the goal of satisfying the public interest.

Conclusions

Thus, drawing a general conclusion from the above, it can be noted that in the field of waste handling, significant number of public and private law entities are involved, the purpose of which is to meet the interests of the state and society. Today, taking into account the provisions of current regulations, the system of public administration authorities in the field of waste handling, according to the existing approach in the scientific literature it can be formulated as follows: Bodies of general competence (public administration) are: the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers Of Ukraine, the National Security and Defense Council of Ukraine, local state administrations, executive bodies of village,

settlement, city councils within the limits of delegated powers.

Along with the entities of general competence involved in the implementation of public administration, certain management functions in the field of waste handling are performed by sectoral bodies. These are: the Ministry of Development of Communities and Territories of Ukraine, the Ministry of Health of Ukraine, the Ministry of Energy of Ukraine, the State Agency of Ukraine on Exclusion Zone Management, the State Service of Ukraine on Food Safety and Consumer Protection, the State Service of Ukraine for Geodesy, Cartography and Cadastre.

The peculiarity of these bodies is that they perform sectoral functions of public administration, in accordance of their powers they perform only certain functions in the field of waste handling, which, unlike the entities of special competence, for the first, are endowed only with certain functional powers, for the second, in the field of waste handling, their powers are limited to certain tasks.

The bodies of special competence in the field of public waste handling are: the Ministry of Ecology and Natural Resources of Ukraine and the State Ecological Inspectorate of Ukraine. The element of the system of entities of public administration are structural ones of these bodies and subordinate legal entities of public law.

The performed analysis of the system and activities of public administration entities gives grounds to state that public administration entities in the field of household waste handling are bodies of general, sectoral (intersectoral) and special competence, which are endowed with different competence to perform state tasks.

Thus, taking into account the above, it can be concluded that in accordance with the

powers defined by regulations, public administration in the field of waste handling is carried out by a wide range of entities: public authorities, local governments, public law en-

ties and certain individuals. In general, the issue of public administration in the field of waste handling remains relevant and debatable and requires additional detailed research.

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Сучасний стан діяльності органів публічного управління у сфері поводження з відходами

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Анотація

Стаття присвячена дослідженню діяльності органів публічного управління у сфері правового поводження з відходами. Аналізуються нормативно-правові акти, наводяться наукові думки щодо важливої ролі органів управлінської діяльності, підкреслюється роль адміністративного права у досліджуваній сфері. Доведено, регулювання відносин у сфері поводження з відходами неможливе без системи суб'єктів публічного управління, які відповідно до законів та інших підзаконних нормативно-правових актів, в межах своєї компетенції покликані вирішувати поставлені перед ними завдання держави. Встановлено, що крім органів виконавчої влади, окремими управлінськими функціями у сфері поводження з різними видами відходів можуть бути наділені й інші суб'єкти адміністративного права, які не відносяться до органів державної влади. Ними можуть бути юридичні особи та колективні суб'єкти, які наділені статусом юридичної особи. В окремих випадках нормативними актами може бути передбачено залучення фізичних осіб приватного права для реалізації управлінських функцій у сфері поводження з відходами.

Ключові слова: суб'єкти, публічне управління, відходи, діяльність, нормативні акти



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Administrative responsibility for violations in the field of natural environment protection

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The scientific work studies the features of administrative responsibility for violations in the field of natural environmental protection. It is investigated the issues, essence, features and measures of administrative coercion in the field of nature protection, the system and types of administrative penalties, the causes and conditions for committing violations in the field of ecology. In addition, in the scientific article, it is made an attempt to analyze the main mechanisms for prevention of the administrative violations in this area. Based on this analysis, the authors provide their own conclusions regarding the improvement of administrative and legal mechanism for natural environmental protection

Keywords: administrative violations, environmental protection, administrative and legal mechanism, elements of administrative violations, administrative coercion, administrative and legal measures

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Introduction

Nature is of global economic, industrial and social importance. Today, unfortunately, there are global environmental problems in Ukraine. The ecological state shows a tendency to decline. This is reflected in the large climate changes, lack of clean drinking water, pollution of atmospheric air, soil, vegetation and the environment in general. Due to this, there is reason to assert that the problem of interaction between human and nature has recently become one of the most discussed and it attracts additional special relevance and interest among scientists.

Speaking about the importance of the concept of environmental safety in the field of administrative and legal relations, it should be noted that environmental safety is a generic object of administrative violations that encroach on the environment.

Public relations in the field of natural environmental protection have established themselves as one of the most important components of public relations. They arise between people and natural environment. These are the following special objects of environmental violations: water, land, air, etc.

Responsibility for administrative violations in the field of environmental protection is a necessary part of the legal support for the appropriate use of natural resources, restoration of environmental facilities and environmental protection. The formation of legislation in this area is developing due to the definition of a range of illegal actions that encroach on the procedure for using the natural resources, as well as the subjects of violations, and the establishment of responsibility for committing the violations.

The works of many domestic and foreign scientists were devoted to the study of this issue. For example: I.V. Aristova, Yu.P. Bityak, V.V. Galunko and V.I. Kurilo [1], L.A. Golovko, L.P. Kovalenko [2], T.A. Kolomoets [3], I.A. Kuyan [4], V.V. Ladychenko, etc.

The purpose of this scientific article is a comprehensive scientific analysis of the legal means established by administrative legislation in the field of natural environmental protection, their theoretical and practical issues when applied to the lawbreaker.

Results and Discussion

The concept of environmental administrative violation is revealed through its constituent elements: object, objective side, subject, subjective side. The object is the first definite element of the legal administrative violation. Under the object of administrative violation, it is implied the public relations in the field of public administration, regulated by the norms of administrative law and protected by the measures of administrative responsibility. The object of violation is divided into general (the entire set of public relations protected by law), generic (a set of homogeneous social relations) and direct (specific social relations that face with harm from certain violations) [5].

A certain and legally enshrined environmental legal order is the common object of environmental violations. It is based on the public attitude to rational use of natural resources and natural environmental protection [6].

According to the author, the environmental safety should be considered the generic object of administrative violations in

the field of natural environmental protection. A state that is safe for human life and health is the target object. The objective side of elements of an administrative violation is a system of signs provided for by the administrative-legal norm that characterizes the external side of legal violations. These are its components: the own illegal action – action or inaction; harmful consequences of an action, a causal relationship between an unlawful action and the resulting harmful consequences; time, place, conditions, ways and means of committing violation. These are the constituent elements of the objective side of environmental violation: wrongfulness of behavior (worsening or failure to comply with the requirements of environmental legislation); infliction or presence of a real threat of causing the environmental harm or violation of the legal rights of subjects of environmental law; a causal relationship between the wrongful behavior of a person and the harm caused [7].

It is worth noting that the onset of dangerous consequences is a mandatory sign of the objective side of material elements of violations, including the administrative violations in the field of natural environmental protection; such consequences are not provided for the formal elements of the onset of such consequences.

The subject is a delinquent individual or legal entity who has committed administrative violation. In accordance with the provisions of the Code of Ukraine on Administrative Violations (CUoAV) [8], the responsible individual entity aged 16 years is the subject of administrative responsibility. As for the

legal entities, they are not the subjects of administrative responsibility according to the general rule. However, at the legislative level, administrative responsibility is also established for legal entities. The intensive development of this type of responsibility began after the independence of Ukraine, and it was due to the growth of entrepreneurship and the formation of a market economy, which led to the formation of a significant number of legal entities based on the private ownership. Associations of citizens can also be subjects.

These are the main features of an individual entity-subject of an administrative responsibility: age, sanity, individual characteristics (service, professional status), citizenship status, belonging to the service, which is subject to disciplinary statutes, the status of a People's Deputy of Ukraine. Public officials are responsible for committing violations in the field of environmental safety, if the control over compliance with the relevant rules and their implementation is part of their official duties.

The subjective side of administrative violation in the field of environmental safety is a set of signs that characterize the subjective (mental) attitude of a person to the unlawful act committed by him/her and its negative consequences, namely guilt, motive and purpose of violations. The guilt is mandatory among them – the direct influence of mental attitude to the committed socially dangerous action (inaction) and its negative consequences [1].

These are the characteristic features of the subjective side: guilt, motive and purpose

of the violation. Guilt is the mental attitude of individual to the socially harmful action committed by him/her and its consequences, which manifests in the form of intent or negligence. The definition of these forms is contained in the Article 10 and 11 CUoAV [8]. The intent takes place when the subject (who committed it) is aware of the illegal nature of his action or inaction, implies and desires the occurrence of harmful consequences. In turn, intent can be direct – the violator consciously implies and desires the onset of harmful consequences, or indirect – the violator assumes the onset of consequences and consciously allows them. For example, the following actions are committed in the form of intent: forests are contaminated with wastes (Article 72 CUoAV) [8], mixing or disposal of wastes, and there is an appropriate technology for disposal in Ukraine, without a special permit (the Article 82-4 CUoAV) [8].

Administrative violation is recognized as committed through negligence, when the subject (who committed it) foresaw the possibility of harmful consequences of his unlawful action or inaction, but thoughtlessly counted on their prevention or did not foresee the possibility of such consequences, although he was able to and should have done that.

Since environmental administrative violations are quite diverse, the scientists have repeatedly classified them according to different criteria. The classification criterion for the object of encroachment is the most common.

It is worth noting that a separate group of administrative violations consists of violations relating to the property rights to

natural resources, in particular: violation of the state ownership of subsoil (Article 47 CUoAV) [8]; violation of the state ownership of water (Article 48 CUoAV) [8]; violation of the state ownership of forests (Article 49 CUoAV) [8]; violation of the state ownership of animal world (Article 50 CUoAV) [8]; unauthorized occupation of a land plot (Article 53-1 CUoAV) [8].

The presence of this group of administrative violations and the imposition of sanctions for their commission is due to the fact that the natural resources of Ukraine are the property of the people of Ukraine; on behalf of the people of Ukraine, the rights of the owner are exercised by the state authorities and local self-government authorities within the limits determined by the Constitution of Ukraine and legislation.

In addition, among the administrative environmental violations, it should be singled out those ones that violate the environmental rights of citizens. Thus, in accordance with the Article 9 of the Law of Ukraine “On Environmental Protection”, these are ones of the basic environmental rights of citizens: the right to free access to information about the state of natural environment (environmental information) and free receipt, use, distribution and storage of such information, except the restrictions established by law. Refusal to provide or untimely provision of complete and reliable environmental information upon request (provided for by law) entails the imposition of a fine on officials or public servants (Article 91-4 CUoAV) [8; 9]. According to the same criterion, other scientists group violations into the following groups:

- 1 – damage and pollution of agricultural and other lands;
- 2 – improper use of water resources;
- 3 – about forests and lands of the forest fund;
- 4 – about flora and fauna;
- 5 – related to the protection of atmospheric air;
- 6 – subsoil [10].

I.A. Kuyan [4] carried out the classification of environmental violations according to the content of value (good) protected by the norms of environmental law and administrative penalties; by the component of environment that is used or subjected to unlawful negative impact; by the source of negative impact, type of activity or substance used in the process of such activity and which is potentially hazardous to the environment. Using these criteria, the scientist singles out: a group of environmental administrative violations that infringe on environmental safety; that violate the environmental rights of citizens; a group of environmental violations that violate the requirements for the protection and use of environmental components (natural resources, objects, ecosystems).

According to the peculiarities of emergence of legal relations caused by the legal fact – an environmental administrative violation, I.A. Kuyan [4] singles out simple violations (arise due to the commission of administrative violation and end, as a rule, with the implementation of administrative sanction); permissive (licensed) (violations related to the conduct of environmentally significant activities in violation of the terms of permits for the use of natural resources); functional

(associated with the failure to fulfill specific duties that are the content of activity or are within the competence of public servant); contractual.

The classification of administrative violations can be made through their differentiation according to the normative act that establishes administrative responsibility: violations – responsibility for them is provided for by the Code of Administrative Violations of Ukraine [8], and violations – responsibility for them is provided for by other normative acts. According to the degree of social harmfulness: violations of an increased degree of social harmfulness; offense of minor social harmfulness; not malicious violations of the original character.

By the nature of sanctions: environmental administrative violations for which a fine is imposed; environmental administrative violations for which the objects of violations are confiscated; environmental administrative violations for which the deprivation of the right to engage in special activities is provided; environmental administrative violations for which the confiscation of instruments of violations is provided; environmental administrative violations for which it is provided the restriction, suspension, termination of the activity or operation of facilities.

According to the elements of administrative environmental violations: environmental administrative violations with material and formal elements. According to the criterion of classification of environmental administrative violations, there is an agency authorized to bring to administrative responsibility: environmental administrative

violations considered by: the administrative commissions; agencies of the National Police, agencies of state inspections and other agencies (officials) authorized by law; courts (judges).

Considering the subject elements, it can be distinguished three types of environmental violations:

- committed by the owners of natural resources;
- committed by nature users;
- committed by persons who are not the owners of natural resources or users of natural resources.

Thus, the author can classify administrative violations in the field of natural environmental protection with the help of the following things: the object of encroachment; differentiation according to the normative act, which establishes administrative responsibility; according to the degree of social harmfulness; by the nature of sanctions, by the elements of environmental administrative violations; agency authorized to bring to administrative responsibility; subject structure.

The causes and conditions for committing environmental violations can be divided into two group: subjective (i.e. circumstances arising from a person's desire to commit them) and objective, which include negative consequences for the nature of some achievements of science and technology.

Among the main objective reasons that give rise to such violations, it is possible to single out the following: social (shortcomings in legal education, lack of awareness of the population regarding the requirements

of current legislation), organizational (for example, lack of control over the land use), economic (lack of appropriate material interest in the rational use of natural resources) and legal (presence of gaps in the legislation, non-application of legal measures against lawbreakers). The following concepts determine subjectively the commission of violations in the field of natural environmental protection – legal nihilism; low level of ecological culture; the desire of individuals to neglect environmental regulations in order to increase production and make a profit; untimely detection and response to environmental violations by the law enforcement and regulatory authorities, their corruption, etc. These are the main reasons for such violations: gaps in the environmental legal awareness of citizens and officials (when a person considers natural resources inexhaustible and overestimates nature's ability to self-repair), indifference to the fate of nature and the desire to profit at its expense, etc.

Violations in the environmental sphere are committed in the vast majority for selfish motives (selfish, economic motive is not directly the cause of violation, but it creates conditions for the formation of defective psychology and anti-sociality).

According to the author's opinion, these are the main conditions for committing administrative environmental violations: the low level of funding for environmental protection measures and services, inconsistency in the work of authorized agencies, the lack of effective mechanism for public participation in the fight against environmental

violations, insufficient application of measures of responsibility against guilty persons, etc.

There are cases when the causes and conditions for committing administrative violations in the field of natural environmental protection can be detected immediately. In this case, the law enforcement officials should promptly respond to them. Otherwise, the causes and conditions can be revealed only after revealing the violation. Therefore, the employees of law enforcement agencies involved in the fight against environmental violations need to remember this and organize their work to disclose violations of environmental legislation based on the specific conditions of violations. As practice shows, the specific motives (for example, illegal cutting down of coniferous trees on the eve of the New Year holidays) are the dominant reason for violations of environmental legislation.

According to N.M. Nesterenko [11], the main reasons for committing environmental violations are divided into three groups: social (economic, psychological, cultural); organizational and legal; technological. The low ecological culture of population is the reason for committing social violations, and the author notes that natural resources are an inexhaustible source of income, therefore their use and protection do not need the state legal regulation [11].

L.P. Kovalenko [2] identifies the following reasons and conditions for committing violations in the field of natural environmental protection: organizational and economic circumstances; shortcomings in the legal

regulation of the activities of administrative and environmental authorities; shortcomings in the work of agencies that identify and consider cases of administrative violations; shortcomings in the mechanism of proceedings in cases of administrative violations; insufficient efficiency of proceedings in cases of administrative violations; weak educational influence of the procedure for considering cases and the decisions made on the imposition of administrative penalty; failure to ensure the reality of the execution of provisions; inadequacy of the imposed penalty to the committed violation; lack of stability and consistency in the administrative criminal practice; ignorance of administrative violations by the subjects of application of legislation; low authority of the law enforcement authorities (this is manifested in the insufficient number of voluntary execution of decisions, evasion of execution); drunkenness and drug addiction, etc.

Analysis of the legal literature on environmental issues shows that most scientists understand the administrative warning measures and measures for administrative termination and administrative penalties as the administrative and legal means aimed at combating violations of environmental standards.

Administrative warning measures are methods (determined by the norms of administrative law) of official physical or psychological influence of authorized state agencies (in some cases public organizations) on individuals and legal entities in the form of personal, property, organizational restrictions on their rights, freedoms and

interests in order to prevent and identify illegal actions, ensuring public order and public safety, preventing and localizing the consequences of emergency situations.

The peculiarity of these measures is included in the following a) they are applied in the case of absence of a wrongful act; b) they are applied to prevent, detect illegal actions, ensure public order and public safety, as well as prevent emergency situations [3].

These are the main goals of preventing administrative violations: limiting the effect of negative social phenomena and processes that are the causes and conditions for committing administrative violations; education of citizens in the spirit of strict observance of the requirements of legality, the formation of a high level of legal culture; influence on persons belonging to the risk group regarding the commission of administrative violations in order to reduce the likelihood of committing illegal actions by them.

Persuasion is another administrative measure in the field of ecology. These are the forms of persuasion: legal education; constant informing the population about changes in legislation; individual and mass educational work; social advertisement; encouragement and stimulation; instructing the owners or their authorized agencies of enterprises, institutions, organizations and citizens and business entities who are obliged to ensure the processing, recycling and timely disposal of waste that pollutes the environment. Prevention of environmental violations refers to measures to ensure environmental safety, which is a set of means defined by the legislator, used by specially authorized agencies

in the established procedural order with the aim to ensure environmental safety [12].

The author can refer the following concepts to preventive measures in the field of environmental protection: regulation of the conditions for the design, construction and reconstruction of enterprises and other facilities that affect or may affect the state of the environment; standardization and regulation in the field of environmental protection; measures to comply with environmental protection requirements when introducing discoveries, inventions, utility models, industrial designs, rationalization proposals, the use of new technology, imported equipment, technologies and systems, etc.

The study of practice of the police preventive activities in the field of environmental safety shows that the following moments are most frequently used: administrative detention; personal inspection; confiscation of illegally obtained things and instruments of violation; drawing up a protocol and other important legal documents.

The purpose of administrative detention of violators of the rules of environmental legislation is to stop their unlawful behavior and take the necessary measures to bring the perpetrators to administrative responsibility. Thus, when committing forest violations, rules of hunting, fishing and other violations of legislation on the protection and use of wildlife (if it is impossible to identify the personality of violator at the crime scene), the employees of specified departments (in order to draw up a protocol) may detain such persons and deliver them to the police or premises of local authorities.

In the field of natural environmental protection, it is customary to define the administrative compulsion as a method of influencing by the numerous and specially authorized agencies (officials) on the behavior of subjects, which consists in the negative consequences of a personal or organizational nature established by the administrative legal norms, aimed at correcting and re-educating violators, as well as the prevention of harmful effects on the environment and human health [13].

Administrative-precautionary measures in the system of measures of administrative coercion occupy an independent place, which is due to the performance of law enforcement functions and the own preventive focus. Unlike the measures of administrative restraint, they do not directly interrupt the violation, but warn and prevent its commission [14].

Consequently, the administrative and legal means for the prevention of administrative violations in the field of natural environmental protection (besides establishing the legal norms, rules, regulations and standards) include: state control over environmental protection; measures of persuasion; measures of administrative coercion used to prevent, suppress violations in the field of natural environmental protection and bring the perpetrators to administrative responsibility, as well as restorative measures.

Considering modern research, the author can conclude that the following concepts are the biggest problematic issues for creating an effective environmental protection mechanism: low information support, inconsistencies with modern legislation,

insufficient funding for environmental programs, the development of innovative technologies. These are the following most important directions in the development of human relations and the environment in developed countries: the use of a legal, scientifically based approach, the formation of "environmental consciousness" of citizens, the creation of a public environmental movement, the preservation or return of state ownership of natural resources [15].

Conclusions

Thus, summing up the results of this scientific study, it should be noted that the following general legal signs are inherent in an administrative violation in the field of environmental protection: action or inaction, that is, deeds, and not thoughts, desires or other similar manifestations of people's mental activity; antisocial orientation (some people identify this sign with social danger or social harmfulness); the wrongfulness of the specified action, which always encroaches on the generally binding rules established by a certain normative act; guilt (such an action as the manifestation of the will and consciousness of the individual should always be guilty, that is, committed intentionally or by negligence); administrative punishment – an unlawful, guilty action will be recognized as the administrative violation only when administrative responsibility is provided for by law for its commission.

As for the features of elements of environmental violations, they consist of: object – public relations in the field of natural environmental protection; subject – a

physical responsible person aged 16 years; the objective side – illegal behavior, causing harm to the environment or violation of the legal rights of subjects of environmental law; a causal relationship between the unlawful behavior of person and the harm caused, the subjective side – guilt, motive and purpose of committing a violation.

With regard to the causes and conditions for committing environmental violations, they can be divided into two groups: objective and subjective. It is possible to single out the main objective reasons that give rise to such violations: social, organizational, economic and legal ones. The following concepts stipulate subjectively the commission of violations in the field of environmental

protection: legal nihilism; low level of ecological culture; the desire of individuals to neglect environmental regulations in order to increase production and make a profit; untimely detection and response to environmental violations by law enforcement and regulatory authorities.

The following measures are applied among the main mechanisms for preventing administrative violations in the field of ecology: state control over environmental protection; measures of persuasion; measures of administrative coercion used to prevent, suppress violations in the field of natural environmental protection and bring the perpetrators to administrative responsibility, as well as restorative measures.

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Адміністративна відповідальність за правопорушення у сфері охорони навколишнього природного середовища

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Анотація

У науковій роботі проводиться дослідження особливостей адміністративної відповідальності за правопорушення у сфері охорони навколишнього природного середовища. Досліджуються питання, сутності, особливостей та видів заходів адміністративного примусу в галузі охорони природи, система та види адміністративних стягнень, причини й умови здійснення правопорушень у сфері екології. Також, у науковій статті робиться спроба проаналізувати основні механізми попередження адміністративних правопорушень у цій сфері та на основі цього аналізу, автори надають власні висновки, щодо удосконалення адміністративно-правового механізму охорони навколишнього природного середовища

Ключові слова: адміністративні правопорушення, охорона навколишнього природного середовища, адміністративно-правовий механізм, склад адміністративних правопорушень, адміністративний примус, адміністративно-правові заходи



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About the issue of punishment for juveniles

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Abstract

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The article is dedicated to the analysis of the institute of criminal liability and punishment for minors under the Ukrainian legislation. Theoretical and practical features of sentencing for criminal offenses are examined and the main tendencies of sentencing at the present stage are determined. It is stated, that certain provisions of the Criminal Code of Ukraine on the sentencing of minors do not correspond to the worldwide practice of humanizing the punishment for juveniles. It is determined that the purpose of criminal punishment for minors is the process of education. Also, it is proved, that this goal should be confirmed in the current Penal Code. Attention is focused on the fact that the backbone of the state strategy on criminal law counteraction to juvenile delinquency should be a child-friendly system of juvenile justice. The necessity of adding new types of punishment into Penal Code of Ukraine which would be applied only for young offenders is defined. Moreover, the expediency of forming a new system of punishment for juveniles, which would take into account more sophisticated and new educational measures is proved. The

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peculiarities of imposing criminal punishment on minors according to the legislation of other foreign countries are clarified. It is shown that special penalties for minors, which are not connected with isolation, are provided by the criminal legislation of most European countries

Keywords: Juvenile, sentencing, criminal liability, sanity, punishment, delinquency, criminal law policy, humanism, condemnation, psychological features

Introduction

Ukraine as a democratic, social, law-based state in should focus on the principles of the rule of law, humanism, individualization of measures of a criminal nature during the implementation of criminal policy. Thus, the implementation of the principle of inevitability of criminal liability and punishment must undergo some changes. Nevertheless, socially dangerous act that contains features of a criminal offense cannot be unpunished. However, not every person who commits it should be punished. In certain cases, if only touching upon minors, state damnation will be an effective measure for reformation of a person and preventing them from committing new criminal offenses. That is why, the primary provisions of the criminal law policy of our state should provide, in particular, the mitigation of criminal liability and the possibility of the state to refrain from punitive measures against certain persons, namely minors.

Such measure in criminal law as the release of minors from punishment and its serving is becoming increasingly important in Ukraine, because of the psychological peculiarities of people who have committed criminal offenses under the age of eighteen. Long-lasting application of this measure has proved that the availability of potential release from punishment and (or) it serving creates favorable conditions for accelerating the process of reformation and achieving the goals of criminal liability for minors.

According to the statistics of the State Judicial Administration of Ukraine, the level of recidivism among juveniles, for whom the types of release from punishment and (or) serving it have been applied, is low and stable in recent years.

The problem of juvenile delinquency and the development of effective types of punishment remains relevant for the world community, concerned about the search for both humane and efficient measures to prevent and combat this dangerous phenomenon.

A holistic understanding of the essence of the institution of sentencing and serving in the context of criminal law has been studied in the works of a great variety of scholars such as: V.I. Arkov, Yu.V. Baulin, N.L. Berezovska, A.A. Berezovskyi, R.I. Briashchei, V.P. Herasymenko, V.V. Holina, O.P. Horokh, O.O. Horshenin, O.M. Dzhuzha, T.I. Dmytryshyna [1], O.O. Dudorov, Yu.I. Yemets, A.P. Zakaliuk etc.

There are some scholars in the foreign criminal law doctrine because of the most progressive ideas of the development of the institution of juvenile punishment. Namely: Gabriel Chapman, Darren Carver, Janet Ainsworth. Some issues of formation and development of the institution of criminal liability and punishment of minors were studied by N.L. Berezovska, M.A. Bilokon, Ye.M. Vecherova, O.V. Dashchenko, Yu.V. Yehorova, Yu.I. Yemets, A.O. Klevstsov, etc. At the same time, some issues of sentencing

juveniles remained insufficiently studied or are not examined at all. That is why, the relevance of this research is obvious.

The purpose of the article is to conduct a scientific and theoretical analysis of the legislation regulating the sentencing of minors for committing criminal offenses.

Results and Discussion

Problems of differentiation of criminal liability and individualization of punishment of minors are very actual. Criminal law and the theory of criminal law of different countries have tried and are trying to find optimal solutions. Ukraine's integration into the international community is impossible without fully bringing national legislation in accordance to generally accepted international standards in the sphere of juvenile justice, as well as implementation of the most effective forms, methods, measures and tools used in world practice in preventing and combating juvenile behavior.

Each state, which is taking care for its juveniles, especially those who have committed a criminal offense, aims to implement the provisions of international law in the field of justice. In particular, in Europe and the USA special laws, procedures, bodies and institutions have been created that are directly related to juveniles who have committed a criminal offense. There is a fixed minimum age in the provisions of the criminal law of different countries below which children are considered incapable of violating criminal law. Moreover, there's some differentiation of criminal liability depending on age, severity of socially dangerous acts and personal traits of minors. During the sentencing, a great attention is paid in order to protect juveniles from criminal influence, thus, application of imprisonment to such category is

minimized and an alternative to this type of punishment is used [2].

Punishment is one of the means of implementing the criminal policy of the state. Punishment, on the one hand, as a measure of state coercion, is applied by the court to a convicted person and consists in restrictions of rights and freedoms, and on the other hand, is established by the state in favor of society to achieve a positive result.

Criminal liability of minors and the practice of sentencing them is realized through the application of the main provisions of the criminal law policy of Ukraine in this area, which is formed on the basis of a special approach to the implementation of criminal liability to this category of offenders. Analysis of the current state of national and world criminal policy shows that its defining feature is the humanization of criminal repression against such a "specific" subject of criminal law relations. Currently, a minor, as a "specific" subject of criminal law relations is considered in a number of international acts. Therefore, these are the standard UN rules on the administration of juvenile justice (the Beijing Rules) and other international legal instruments under which a juvenile may, within the existing legal system, be prosecuted in a form different from the form of liability applied to an adult [3].

The course of the humanization of criminal repression against minors in Ukraine is indicated by statistics data, which show a gradual decrease during 2015-2019 in the number of people convicted of criminal offenses under the age of minors. Thus, in 2019, 47.6% less than in 2015, adolescents aged 14 to 18 were convicted; their portion among all convicted also decreased from 4.8% to 3.4%. Every second juvenile was convicted of committing serious and especially serious

criminal offenses. However, almost every third teenager committed a criminal offense by a group of people [4].

The current criminal legislation provides certain peculiarities of criminal liability and punishment for minors. Analysis of the norms of the Penal Code allows concluding that these peculiarities are declarative in nature because there is no mechanism for their implementation. It should be noted that a number of criminal law rules are formulated without taking into account the legal status of minors in other areas of law. At the same time, the list of punishments applied to juveniles in relation to adults is significantly limited. According to Article 98 of the Penal Code of Ukraine to minors as the main punishment can be applied only a fine, community service, arrest and imprisonment for a specified period, and as additional – a fine and deprivation of the right to hold certain positions or engage in certain activities. According to Part 1 of Article 99 of the Penal Code, the fine is applied only to minors who have independent income, own funds or property that can be levied. However, there is a small number of juveniles who have officially independent income and their own funds, therefore, this type of punishment might not be effective and is rarely used. Punishments such as community service and correctional labor have also been significantly reduced. According to Article 100 of the Penal Code, these types of punishment can be imposed only on minors from 16 to 18 years old. Article 101 of the Penal Code states that such form as the arrest provides keeping minor in a solitary confinement in special facilities and can be applied only to minors who have reached the age of sixteen at the time of sentencing [1]. Thus, the list of types of punishment that can be applied to

a juvenile should be recognized as limited, which does not comply with the provisions of the UN Standard Minimum Rules. In accordance with paragraph 5.1 of the Beijing Rules, measures that should be taken into account to influence minors must consider not only the severity of the offense committed by them, but also the personal traits of the offender. The person who has committed a criminal offense must be sentenced to the punishment that is sufficient to correct them and prevent from committing new crimes.

Analyzing the statistics of the last five years on the imposing of the main types of punishment for minors, it should be noted that there is a positive tendency towards the use of non-custodial sentences. Thus, the largest number of convicted juveniles was fined by the courts as the main punishment. Their ratio during 2015-2019 averaged 24.6% of all convicted people for all crimes.

Over the last five years, the number of cases in which the courts have imposed fines has increased. Thus, if in 2015 this type of criminal punishment was applied to 19.7% of convicted people, in 2019 this amount has increased to 30.4% [4].

It should be mentioned, that special punishments for minors that are not related to isolation are provided by the criminal law of most European countries. For example, the fundamental principle of juvenile criminal law in Germany is the educational idea where the main purpose of criminal law measures applicable to minors is special (individual) prevention. The purpose of such educational impact is to deter minors from committing a crime in the future. Thus, in this particular country there are social training courses that provide opportunities for minors to rehabilitate, to re-evaluate their behavior in general. In Germany, arrest is used as a last resort. In

Croatia, one of the main remedial measures of a recommendatory or preventive nature is a warning by a court. The court warns the person that in case of committing a crime, the person will face with more severe punishment. Therefore, the juvenile system of the Republic of Croatia has a number of corrective measures, which provide the humanistic gradual strengthening of corrective measures. Under the Polish Criminal Code, there is a number of measures of educational impact on minors used by family courts: reprimand; special supervision of the child by parents, participation in trainings, attending educational programs, etc. [5]. The age characteristics of juveniles, the specifics of the crimes they commit indicate the need to develop such measures of punishment, in which the emphasis is shifted from punitive to educational and preventive aspects [6]. All in all, the opinion of scholars who propose to supplement the provisions of the Penal Code of Ukraine with new types of punishment, which would be designed only for juvenile offenders, should be seconded. Using the positive experience of foreign countries, it would be profitable to form a separate system of punishment leaning on more sophisticated and new educational measures, which would affect the internal attitude of minors to their crimes.

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Conclusions

According to the study, some provisions of the Penal Code of Ukraine concerning the sentencing of minors do not correspond to the world practice of humanizing the punishment for minors. In order to improve the institution of sentencing minors, the best idea could be to add new articles that would regulate the sentencing.

Educational process may be the main purpose of criminal punishment for juveniles, so it may be necessary that this purpose should be reflected in the current Penal Code.

The opinion of those scholars who state that there is a dire need to revise the sanctions of the articles of the Special Part of the Penal Code for their compliance with the requirements for punishments that can be applied to minors is seconded.

Also, there is a need to add new punishments into the Penal Code, which would be applied only for juvenile offenders. It would be better to make up a separate system of punishments, leaning onto more sophisticated and modern measures of an educational nature, which, firstly, will affect the internal attitude of minors to their criminal offenses and define them in a special law on criminal liability and punishment of minors.

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До питання призначення покарання неповнолітнім

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Анотація

Стаття присвячена дослідженню інституту кримінальної відповідальності та призначення покарання неповнолітнім за законодавством України. Досліджено теоретичні та практичні особливості призначення покарання неповнолітнім за вчинення кримінальних правопорушень та визначено основні тенденції призначення покарання. Встановлено, що окремі положення Кримінального кодексу України, з питань призначення покарання неповнолітнім, не відповідають світовій практиці гуманізації покарання неповнолітніх. Визначено, що метою кримінального покарання неповнолітніх є процес виховання, доведено, що ця мета має дістати своє законодавче закріплення в чинному ККУ. Зосереджено увагу, що основою державної стратегії кримінально-правової протидії правопорушенням неповнолітніх повинна стати дружня дітям система ювенальної юстиції. Встановлена необхідність доповнення КК України новими видами покарання, які були б розраховані тільки на неповнолітніх злочинців, доведена доцільність формування нової системи покарань для неповнолітніх, яка врахувала б більш модернізовані та новітні заходи виховного характеру. З'ясовано особливості призначення кримінального покарання неповнолітнім за законодавством окремих зарубіжних країн. Обґрунтовано, що спеціальні покарання для неповнолітніх, які не пов'язані з ізоляцією, передбачаються кримінальним законодавством більшості європейських держав

Ключові слова: неповнолітній, призначення покарання, кримінальна відповідальність, осудність, покарання, злочинність, кримінально-правова політика, гуманізм, осуд, психологічні властивості



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Regulatory and legal support for combating and preventing domestic violence against women

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The article analyzes the regulatory and legal support for combating and preventing domestic violence against women. It is provided statistical data that in 2020, the authorities and institutions (that are obliged to implement measures in the field of preventing and combating domestic violence) have received 211,362 appeals regarding the domestic violence; 2,756 – from children, 180,921 – from women, 27,676 – from men. It has been concluded that the ratification of the Istanbul Convention is still open, which helps all the signatory states to effectively counter a wide array of phenomena, including psychological violence, physical violence, sexual violence, forceful rape, forced marriage, forced abortion, forced sterilization, mutilation of female reproductive organs, crimes committed in the name of “honor”, persecution, sexual harassment, etc. In addition, the world community has repeatedly insisted and continues to insist on the need to ratify the Istanbul Convention, because after signing this Convention, Ukraine has committed itself to ratify it in the future. It has been established that the regulatory and legal support for combating

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and preventing domestic violence against women consists of a set of international pacts, declarations and conventions, the legislative and subordinate normative-legal acts. It has been found that the number of notifications of violent acts committed against women is increasing every year, and therefore, the legislator should work towards preventing any manifestations of domestic violence by amending the legislation that regulates preventive measures

Keywords: violence, women, gender equality, the Istanbul Convention, domestic violence, combating violence, domestic abuse

Introduction

The number of women who are exposed to domestic violence is constantly growing. According to the latest official data for 2020, the authorities and institutions (that are obliged to implement measures in the field of preventing and combating domestic violence) have received 211,362 appeals regarding the domestic violence; 2,756 – from children, 180,921 – from women, 27,676 – from men. As it can be seen, it is women who are the most vulnerable category subjected to violence.

In many European countries, this problem is actively discussed and researched. Ukraine is also engaged in this process. At the beginning of the 21st century, Ukraine became one of the first countries in the Eastern Europe to recognize domestic violence as an important public problem, by depriving offenders of the opportunity to hide behind a screen of non-interference in private life. The problem of domestic violence (mainly it is the violence against children and women) has often been silenced by both the victims and the law enforcement agencies.

It should be noted that in recent years, there has been a constant need to update the current legislation, which regulates the provision of combating and preventing domestic violence against women, in particular

in terms of increasing the degrees of legal (criminal or administrative and legal) responsibility against those guilty of violent acts against women. At the same time, it is worth paying attention to the problem that legislators have not been able to solve since 2011. Namely, with regard to ratification of the Istanbul Convention, although Ukraine signed such a convention in 2011. These and other factors determine the relevance in conducting this study.

The purpose of the study is to analyze the current regulatory and legal support for combating and preventing domestic violence against women.

Analysis of recent studies and publications emphasizes the relevance of the chosen topic and indicates the need to further analyze certain aspects of domestic violence. Among the works of scientists, it should be noted the works of the following scientists: A.V. Voronova [1], I.I. Zuyeva and V.M. Prystup [2], V.V. Nesterchuk [3] and others.

Results and Discussion

Domestic violence exists in all social groups without exception, people suffer it regardless of the level of income, education and position in society, and it is both physical and

also psychological phenomenon. Even more cases remain unknown because the victims do not report them to the police.

Given the global nature of the problem of domestic violence, the United Nations has developed appropriate recommendations in the form of Model Legislation, and states should follow them when developing and adopting the own laws on solving the problem of domestic violence. In accordance with the UN recommendations, the national laws on combating domestic violence should be simultaneously focused on achieving several goals:

- protection of victims of violence;
- preventing further violence;
- punishment persons, which committed violence [4].

V.V. Prystup [2] has analyzed the UN recommendations, and he notes that they indicate the necessary conditions for achieving these goals, in particular:

- carrying out work in the country to form public opinion and raise the level of awareness of the population of country in this area;
- creation of emergency services for victims of various types of violence and their families;
- enlightenment, consultation and psychological correction for abuser, victim and other family members;
- training and consulting the judges, prosecutors, police officers and social workers on how to deal effectively with situations related to the domestic violence;
- educational awareness of victims of domestic violence, who do not even understand that such an act against them is illegal and punishable, not to mention the notifications

of the agencies of internal affairs about such cases; for the most part, this is due to the economic situation and financial situation of each individual family;

- mental characteristics and peculiarities of education of persons who commit violent acts against members of their family. Unfortunately, domestic violence includes the cases of inflicting severe bodily injuries, forceful rape and murder [2].

The concept “domestic abuse”, “domestic violence” is used in the international legal acts of a binding and recommendatory nature, existing both at the level of the UN, the Council of Europe and the European Union. Among them, it is necessary to note:

The Universal Declaration of Human Rights dated 1948 [5], which is considered the main document in the field of human rights protection. The Declaration proclaimed the principles of legal equality, as well as the prohibition of discrimination on any grounds, including the grounds of gender.

The Declaration on the Elimination of Discrimination against Women dated 1967, which was later replaced (in 1979) by the Convention of the same name. It is noted in this declaration that all appropriate measures must be taken to prepare public opinion in the direction of national aspirations to eradicate prejudices, customs and all other manifestations based on the idea of women inferiority [6].

In addition, the international legislation on combating violence against women includes: the International Covenant on Economic, Social and Cultural Rights; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Maternity Protection Convention, etc.

Thus, the combating domestic violence against women is protected primarily by the norms of international law, which has an advantage over national law in the cases defined by the legislation of Ukraine. It is worth noting that the regulatory and legal support of mechanisms for combating and preventing domestic violence consists of a significant number of legal acts, including the international agreements and pacts, the legislative and subordinate normative-legal acts, etc. Before starting to analyze the regulatory and legal support, it is worth paying attention to the following moments.

The progressive development of society is due to many factors, and the realization of potential of each member, as well as the development of his spiritual and physical capabilities is one of these factors [7].

Certainly, the women are a special category of population, which is definitely vulnerable, and therefore the countering violence against women is one of the most important areas of social development. When violence is committed, the rights and freedoms of a particular person are violated, and this requires the interference from state and society. In particular, the implementation of proper legal means for solving this issue.

In the practice of international organizations, in particular UNFPA, the following concept is used: "Gender-based violence is a violence that affects men and women, but women predominantly become the victims. It arises as a consequence of unequal power relations between women and men. This is a violence that is directed against woman precisely because she is a woman, or it affects women disproportionately. It concerns

(but is not limited to) physical, sexual and psychological harm, including intimidation, suffering, coercion and/or deprivation of liberty in the family or in society in general" [8].

As for the gender-based violence, it should be noted that the Istanbul Convention (adopted on May 11, 2011 by the member states of the Council of Europe) has become the first legally binding document in Europe that applies a comprehensive approach to combating violence against women. Ukraine has signed the Istanbul Convention on November 7, 2011, but has not yet ratified it. The draft Law on ratification of the Convention was introduced to the Ukrainian Parliament in November 2016 and did not receive the required number of votes. People's deputies indefinitely postponed the adoption of the document, since a number of people's deputies saw in the ratification of the Istanbul Convention the following: the "threat to family values" and "propaganda of homosexual marriages". All this due to the presence of the concepts "gender" and "sexual orientation". The All-Ukrainian Council of Churches and Religious Organizations opposed the ratification of the convention. The Council of Churches has stated that the Istanbul Convention does not provide for the possibility of reservations regarding its individual provisions relating to the concept "gender" in its understanding of both male and female, "which carries unacceptable threats to the institution of family and spouses in Ukraine".

According to expert L. Kobelyanskaya [9], a petition to Volodymyr Zelensky calling for the ratification of the Istanbul Convention has recently gained the necessary number of votes for consideration.

Thus, it can be concluded that the issue of ratification of the Istanbul Convention should be resolved in the near future, because this hinders any further actions of the legislative and executive authorities regarding the combating and preventing domestic violence against women.

The Law of Ukraine “On Preventing and Combating Domestic Violence” [10], which is the key one in the implementation of this study, gives the following interpretation of the concept “domestic violence” – this is “deeds (actions or inactions) of physical, sexual, psychological or economic violence that are committed in the family or within the place of residence, or between relatives, or between former or current spouses, or between other persons cohabiting (cohabited) as one family, but not being (were not) in family relations or married to each other, regardless of whether the person who has committed domestic violence lives (lived) in the same place as the person who suffered, as well as threats to commit such acts.

Analyzing the legislation of Ukraine, V.V. Nesterchuk [3] defines the following signs indicating the presence of violent acts against women:

- intentionality;
- physical, sexual, psychological or economic orientation of actions that can be manifested both in a complex and separately;
- violation of constitutional human rights (“inalienable right to life”, “the right to respect for person’s dignity”, “the right to freedom and personal integrity”, the right to privacy, “the right to own, use and manage of the own property”, “the right to labor”, “each spouse has equal rights and obligations in marriage and family”, etc.);

- consequences at the level of causing moral and physical harm, harm to mental health, etc.

The following actions should be considered a positive aspect in this regard: the criminalization of domestic violence, which actually began on January 11, 2019, when the Law of Ukraine “On Amendments to the Criminal and Criminal Procedure Code of Ukraine in order to implement the provisions of the Council of Europe Convention on the Prevention of Violence against Women domestic violence and the fight against these phenomena” came into force [11]. It was this law that made changes to the Criminal Code of Ukraine, in particular, its amendments with the Article 126-1 “Domestic Violence”.

However, it is worth paying attention to the fact that there is an increase in crimes in the category of domestic violence as a result of unlawful acts of a psychological nature. This crime is very difficult to prove later. In 2019, there were 760 such cases, and in 2020 – already 1798. During 3 months of 2021, almost the same number of people suffered from the unlawful acts of sexual nature during the domestic violence, as it is during the previous three years.

O.V. Voronova [1] notes that national practice has received special measures to counter domestic violence, including measures to counter against women violence:

- urgent restraining order against the offender;
- restraining order against the offender;
- taking the offender for preventive registration;
- carrying out preventive work with him and sending the offender to passing the program for the abuser.

The measures indicated by scientists are more preventive in nature and are aimed at re-educating the subjects who commit violence against women.

However, only after a balanced and targeted policy of the state regarding the improvement or updating the legislation in the field of health care, it is possible to reduce the criminal actions of individuals to a minimum [12]. Therefore, it is necessary to apply a comprehensive approach to the regulatory and legal support for combating and preventing domestic violence against women.

Conclusions

In the process of analyzing the regulatory and legal support for combating and preventing domestic violence against women, it is worth noting the important issues that still remain open to the ratification of the Istanbul Convention, which now helps all signatory states to effectively counter a wide range of phenomena: psychological violence,

physical violence, sexual violence, forceful rape, forced marriage, forced abortion, forced sterilization, mutilation of female reproductive organs, crimes committed in the name of "honor", persecution, sexual harassment, etc. In addition, the world community has repeatedly insisted and continues to insist on ratification of the Istanbul Convention, because after signing this Convention, Ukraine has committed itself to ratify it in the future.

It has been established that the regulatory and legal support for combating and preventing domestic violence against women consists of a set of international pacts, declarations and conventions, the legislative and subordinate normative-legal acts.

It has been found that the number of reports of violent acts committed against women is increasing every year, and therefore, the legislator should work towards preventing any manifestations of domestic violence by amending the legislation that regulates the preventive measures.

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Нормативно-правове забезпечення протидії та запобігання домашньому насильству над жінками

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Анотація

У статті здійснено аналіз нормативно-правового забезпечення протидії та запобігання домашньому насильству над жінками. Наведено статистичні дані що за 2020 рік до органів та установ, на які покладаються функції із здійснення заходів у сфері запобігання та протидії домашньому насильству, надійшло 211 362 звернення щодо насильства в сім'ї, з них – 2756 від дітей, 180 921 – від жінок, 27 676 – від чоловіків. Зроблено висновок, що і досі залишається відкритим ратифікації Стамбульської конвенції, яка допомагає наразі усім державам-підписантам ефективно протистояти широкому спектру явищ, серед яких психологічне насильство, фізичне насильство, сексуальне насильство, передусім зґвалтування, примусовий шлюб, примусовий аборт, примусова стерилізація, каліцтво жіночих статевих органів, злочини в ім'я так званої «честі», переслідування, сексуальні домагання тощо. До того ж, на необхідності ратифікації Стамбульської конвенції неодноразово наполягала і продовжує наполягати світова спільнота, адже підписавши цю Конвенцію, Україна взяла на себе зобов'язання ратифікувати її в майбутньому. Визначено, що нормативно-правове забезпечення запобігання та протидії домашньому насильству проти жінок складається із сукупності міжнародних пактів, декларацій та конвенцій, нормативно-правових та підзаконних нормативно-правових актів. З'ясовано, що з кожним роком збільшується кількість повідомлень щодо вчинених насильницьких дій по відношенню до жінок у зв'язку з чим, законодавцю варто працювати у напрямку недопущення будь-яких проявів домашнього насильства шляхом внесення змін до законодавства що регулює превентивні заходи

Ключові слова: насильство, жінки, гендерна рівність, Стамбульська конвенція, домашнє насильство, протидія насильству, насильство в сім'ї, гендерна рівність

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