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ЗМІСТ

О.В. Гафурова, І.С. Сюйва	
Правові аспекти розвитку гастрономічного туризму в Україні	6
Н.С. Гавриш, К.В. Слепньова	
Правове регулювання інформаційного забезпечення про ґрунти	13
М.А. Дейнега	
Правове забезпечення запобігання і боротьби з підтопленням земель в Україні	19
М.А. Дейнега, В.К. Марініч	
Кліматичні ресурси як об'єкти природоресурсних правовідносин	28
Ю.А. Краснова	
Правові проблеми цифровізації даних екологічного обліку	36
С.І. Марченко, Т.С. Новак	
Проблеми організаційно-правових форм господарювання в аграрній сфері	45
Т.С. Новак	
Оцінка придатності земель для органічного сільськогосподарського виробництва: окремі аспекти правового забезпечення	54
А.Ю. Буцмак	
Міжнародно-правові гарантії реалізації права людини і громадянина на екологічну інформацію	62
С.М. Голуб, Н.В. Шинкарук	
Принципи правового регулювання використання біоенергетики в Європейському Союзі	72
О.П. Світличний, В.В. Сулім	
Спрощене позовне провадження: законодавча регламентація ГПК України	78
О.П. Світличний	
Національна стратегія розвитку та охорони сфери інтелектуальної власності	85
І.В. Горіславська	
Деякі питання правового регулювання страхування тварин як обов'язкового виду страхування	92
І.В. Горіславська, О.Ю. Піддубний	
Селекційне досягнення у тваринництві як об'єкт права інтелектуальної власності та міжнародний досвід його захисту	99
Л.В. Гбур, О.В. Артеменко	
Адміністративна відповідальність за правопорушення, пов'язані зі сферою експертної діяльності в Україні	108
А.І. Саадулаєв	
Іноземці та особи без громадянства як суб'єкти адміністративного судочинства	117
О.С. Яра, Н.А. Стасюк	
Проблемні питання запобігання та протидії домашньому насильству органами прокуратури	125
С.С. Ковальова	
Проект кримінального кодексу України: новели	134
К.О. Клименко	
Питання обґрунтованості застосування принципу самовизначення народів сепаратистськими утвореннями в Україні	141

CONTENTS

O. Hafurova, I. Siuiva	
Aspects of gastronomic tourism development in Ukraine.....	6
N. Havrysh, K. Slepnova	
Legal regulation of information on soils.....	15
M. Deineha	
Legal support for preventing and combating land flooding in Ukraine	19
M. Deineha, V. Marinich	
Climatic resources as objects of natural resource legal relations	28
Yu. Krasnova	
Legal problems of digitalization of ecological accounting data.....	36
T. Novak, S. Marchenko	
Problems of organizational and legal forms of management in the agricultural sector	45
T. Novak	
Land suitability assessment for organic agricultural production: Certain aspects of legal provision.....	54
A. Butsmak	
International legal guarantees for the realization of human and citizen rights to environmental information.....	62
S. Holub, N. Shynkaruk	
Legal aspects of the use of bioenergy in the European Union.....	72
O. Svitlychnyy, V. Sulim	
Simplified claim proceedings: legislative regulations of the code of civil procedure of Ukraine	78
O. Svitlychnyy	
National strategy for development and protection of the sphere intellectual property.....	85
I. Horislavska	
Certain issues of legal regulation of animal insurance as a compulsory form of insurance.....	92
I. Horislavska, O. Piddubnyi	
Selection achievement in animal husbandry as an object of intellectual property rights and international experience in its protection	99
L. Hbur, O. Artemenko	
Administrative liability for violation of the order of organization and conduct of examinations in Ukraine	108
A. Saadulaev	
Foreigners and persons without citizenship as subjects of administrative judiciary.....	117
O. Yara, N. Stasiuk	
Problematic issues of prevention and counteraction to domestic violence by the prosecutor's office	125
S. Kovalova	
Draft criminal code of ukraine: News	134
K. Klymenko	
The issue of justification of application of the principle of self-determination of peoples by separatist formations in Ukraine.....	141



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Legal aspects of the development of gastronomic tourism in Ukraine

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The paper covers certain legal aspects of the development of gastronomic tourism in Ukraine. The study analyses the state and prospects of legislative support for the development of gastronomic tourism in Ukraine. The authors investigated the specific features of providing services in the field of gastronomic tourism by private rural farms. This paper raises the issue of legal regulation of registration of capacities for the production and/or circulation of food products by persons providing food supply to tourists. It was concluded that the provisions of the Law of Ukraine "On Fundamental Principles and Requirements for Food Safety and Quality" regarding the registration of such capacities do not apply to owners of private farms

Keywords: gastronomic tourism, rural green tourism, private farming, service provision, foods, market operator

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Introduction

In 2003, the Law of Ukraine “On Private Rural Farming” factually legalized the concept of rural green tourism (hereinafter referred to as – RGT) as a type of agricultural activity that does not relate to entrepreneurial activity, and its implementation does not require the creation of a legal entity. At the same time, the lack of proper legal regulation of relations in this area considerably complicates the provision of RGT services by persons who run private rural farms (PRF). The Ministry of Agrarian Policy and Food of Ukraine (the MAPFU) was supposed to provide organizational and methodological support to the subjects of the RGT in organizing activities in this area (item 7 of the “Action Plan of the Ministry of Agrarian Policy and Food of Ukraine for the development of rural green tourism for the period up to 2015”). However, these measures were never implemented. Accordingly, the study of the procedure for rendering PRF services in the field of RGT and highlighting the features of certain types of RGT becomes particularly relevant.

Analysis of recent studies and publications. The theoretical framework of this paper included the works of the following Ukrainian specialists in agrarian, land, and environmental law: M.Ya. Vashchyshyn, V.M. Yermolenko, T.O. Kovalenko, V.I. Lebed, S.I. Marchenko, V.V. Nosik, O.O. Pohribnyi, O.S. Semenets, V.I. Semchyk, A.M. Stativka, N.I. Tytova, V.Yu. Urkevych, O.M. Shmygova, M.V. Shulha, V.Z. Yanchuk, and others.

The purpose of this study is to investigate the legal aspects of the development of rural green tourism and its variety – gastronomic tourism, to identify current trends in the legal regulation of gastronomic tourism in

Ukraine, analyse the legislative support for the development of gastronomic tourism in Ukraine, identify its shortcomings and substantiate proposals for improving legislation on rural green tourism.

Results and Discussion

Since Ukraine gained independence, rural green tourism has been widely developed in this country, and every year new types and areas of it appear. One of the world trends is gastronomic tourism, a relatively young area of RGT, which, according to experts, can become one of the most promising areas of tourism in Ukraine. The World Food Travel Association defines gastronomic tourism as travel to obtain an authentic experience based on the culture of food or drink consumption; discovering unique places and their culture through national cuisine [1, p. 17]. Its essence is to get acquainted with local culinary traditions and features of national or regional cuisine, tasting unique products and dishes unique to the given area.

Historically, gastronomic tourism was considered as a service area of the RGT, as a related area to the main task and content of tourist activities. The first types of gastronomic tourism are the use of mineral waters as the main product and resource of wellness tours, wine tourism, and travel to places of production of certain types of food products, which were the main object of discovery in such tours. At the beginning of the 20th century, gastronomic and entertainment tourism of the cultural and educational direction was also spread, which was timed to coincide with local holidays, calendar and ritual events, and ethnic and religious traditions

(fasts, Twelve Great Feasts, etc.) and other events related to the traditions of cooking and consuming local food and harvesting certain agricultural crops and cooking traditional dishes from them [2].

In Ukraine, diverse types of gastronomic tourism have become widespread, which can take the form of annual festivals, gastronomic tours, etc. Thus, the annual festivals of varenyky and halushky (in Poltava; Sorochyntsi, Poltava region), varenyky in Lutsk and Ternopil, the International Festival of Potato Pancakes in Korosten, Zhytomyr region, the National Festival of borscht "Borshchiv" in the city of Borshchiv, Ternopil region, gastronomic festivals "Red Wine" in the city of Mukachevo, Zakarpattia region, the wine and honey festival "Sunny Drink" in the city of Uzhhorod [2], gastronomic tours that include a visit to the oyster farm "Scythian Oysters" near Koblevo, a snail farm in the village of Halytsynove, Zakarpattia cheese-making factory (Baranovo PRF, Carpathian buffalo farm, Turianskyi Dvir private estate, etc.), Babyny Kozy goat farm, etc.

Legislative support of gastronomic tourism in Ukraine is merely at the initial stage of development, despite the prevalence and prospects of development of this direction of RGT in Ukraine and popularity in the world, its important socio-cultural, practical-cognitive and socio-economic significance, considering the original historical and cultural heritage of Ukraine, the specific features of the national agricultural sphere, the state and prospects of rural development.

The Law of Ukraine "On Tourism" recognizes the development of rural, ecological (green) tourism as one of the main priorities of the national policy in the field of tourism

(Article 6), but the Law of Ukraine "On Private Rural Farms" establishes the possibility of rendering services in the field of RGT on principles other than the legislation on tourism. Such activities are non-entrepreneurial, they are not subject to state registration, have a different purpose, etc. In 2015, the Draft Law on Amendments to the Law of Ukraine "On Private Rural Farms" was submitted to the Verkhovna Rada of Ukraine, which addressed the development of rural green tourism. This Draft Law is awaiting a second reading since 2017.

Legislative support of gastronomic tourism as one of the areas of the RGT is currently reduced to declarative norms and the absence of mechanisms for their implementation. Many programmatic sub-legislative acts have been adopted, with measures aimed at the development of RGT, ethnic gastronomic tourism, including the involvement of the private sector, especially in rural areas, in recreational and tourist entrepreneurship and ancillary activities in the field of tourism have been established (item 3 of the "Main vectors of tourism development in Ukraine until 2010"); support to owners of PRFs and farms rendering services in the field of RGT or ethnic gastronomic tourism and recreational services taking part in All-Ukrainian and regional tourist exhibitions and fairs (Order of the Ministry of Agrarian Policy and Food of Ukraine "On approval of the plan of measures of the Ministry of Agrarian Policy and Food of Ukraine regarding the development of rural green and ethnic gastronomic tourism in rural areas for the period until 2020"); involvement of rural households in rendering services in the field of rural tourism (Concept of development

of rural areas), etc. However, due to the lack of proper funding and the reorganization of the Ministry of Agrarian Policy and Food of Ukraine in 2019, these measures have not yet been implemented.

The recommendations of the parliamentary hearings “Development of the tourism industry as a tool of economic development and investment attractiveness of Ukraine” made provision for the development and approval of the Plan of measures for the development of priority types of tourism (historical and cultural, business, congress, medical, sports, wine, gastronomic etc). This initiative was never implemented.

Depending on the particular types of services rendered in the field of gastronomic tourism, the legislation establishes several requirements. Activities in the field of gastronomic tourism make provision for the rendering of services for temporary accommodation, catering for tourists, etc. (Article 5.7 of the Law of Ukraine “On Tourism”). In addition, according to DSTU 4527:2006 “Tourist services. Accommodation facilities. Terms and definitions”, on the basis of PRF, catering services are rendered, or conditions are created for unassisted preparation of food mainly from the products of such farms.

The rendering of catering services within the framework of the RGT (gastronomic tourism) involves many responsibilities. PRF members, farmsteads, and other persons rendering services in the field of gastronomic tourism are required to comply with the current standards for the quality and safety of food products, sanitary, environmental, and other requirements pursuant to the legislation (specifically, veterinary and sanitary rules for keeping poultry, yard

slaughter of animals, veterinary and sanitary requirements for producers of raw commercial milk, state sanitary standards for drinking water intended for human consumption, etc.).

Within the framework of this study, the authors propose to focus on the problems of registering capacities for the production and/or turnover of foods, which is prescribed by the Law of Ukraine “On Fundamental Principles and Requirements for Food Safety and Quality”, which are faced by PRF owners who are not business entities and render tourist catering services. Thus, capacities that do not require an operational permit are subject to state registration (Article 25.1). At such facilities, the following types of activities can be carried out: primary production of animal-based foods (ABF), as well as related activities; transportation and storage of ABF; production and/or storage of foods, the ingredients of which are exclusively plant-based products and/or processed animal-based products; operation of public catering establishments (Article 23.2).

To determine whether these legal requirements apply to PRF owners who feed tourists, the study analysed the legal features of such a farm. Firstly, the Law of Ukraine “On Private Rural Farming” prescribes that these farms operate only to meet the personal needs of their members through the production, processing, and consumption of agricultural products, the sale of its surpluses and the rendering of services using the property of such a farm, including in the field of RGT (Article 1). And the Law of Ukraine “On Fundamental Principles and Requirements for Food Safety and Quality” does not apply to foods intended

(produced) for personal consumption (Article 3.2). Secondly, the specified law establishes that the operators of the foods market include a business entity that operates with or without the purpose of profiting and which manages the capacities at which the primary production, production, sale and/or turnover of foods and/or other objects of sanitary measures is carried out (Article 1.1). However, the Economic Code of Ukraine does not consider either PRFs or its members as business entities (Article 55).

Thirdly, for the production and/or turnover of foods using unregistered capacity, if the mandatory state registration of it is prescribed by law, legal liability is imposed only on legal entities (a fine of 20 minimum wages, and on individual entrepreneurs (11 minimum wages (Article 65.1 of the Law of Ukraine "On State Control Over Compliance with Legislation on Foods, Feed, Animal By-products, Animal Health and Welfare"). In other words, individual members of PRFs that render catering services for tourists without state registration of capacities cannot be held legally liable. Considering the above, as well as the fact that PRF members do not engage in business activities, tourist food provision refers to services related to temporary accommodation (Article 20 of the Law of Ukraine "On Tourism") and they are rendered in the kitchens of residential buildings where the owners themselves eat, the authors of this paper believe that the requirement of the Law of Ukraine "On Fundamental Principles and Requirements for Food Safety and Quality" regarding the registration of capacities for the production and/or circulation of foods does not apply to PRF owners.

If one turns to the EU legislation in the field of safety of industrial equipment (based on which, by the way, Ukrainian legislation on the specified issues was developed), then it is necessary to indicate that it applies exclusively to subjects of economic activity (items 2, 3 of Article 3 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [3]; Article 1.1 of Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs [4]; Article 1.1 of Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin) [5], etc. Furthermore, the last two documents specify that their norms do not apply to the direct supply of small quantities of primary products by the manufacturer to the end user (Article 1.2; Article 1.3). Regulation (EC) No. 853/2004 [5] additionally states that it does not apply to the direct supply of small amounts of poultry meat and hares slaughtered on the farm by the producer to the end user (Article 1.3). Thus, the EU legislator makes exceptions for those producers who directly supply a small amount of foods to consumers. The authors of this study believe that to simplify the conduct of activities in the field of RGT based on PRF property, as well as considering the provisions of EU legislation, it is necessary to consolidate such norms in the Ukrainian legislation on food safety.

Conclusions

Thus, a promising area for the development of RGT is gastronomic tourism, which performs not only socio-cultural, socio-educational, but also socio-economic functions. Legislative support for gastronomic tourism is at the initial stage of development, its priority has been determined, and an action plan to promote the development of RGT and its types were consolidated, but in the vast majority they stay not implemented.

PRF members engaged in gastronomic tourism do not engage in entrepreneurial

activities, and the food provision for tourists refers to services related to temporary accommodation (Article 20 of the Law of Ukraine "On Tourism"), which are rendered in the kitchens of residential buildings, where the owners themselves eat. Taking this into account, the authors of this paper believe that the requirement of the Law of Ukraine "On Fundamental Principles and Requirements for Food Safety and Quality" regarding the registration of capacities for the production and/or turnover of foods does not apply to PRF owners.

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Правові аспекти розвитку гастрономічного туризму в Україні

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Анотація

Стаття присвячена окремим правовим аспектам розвитку гастрономічного туризму в Україні. Аналізуються стан та перспективи законодавчого забезпечення розвитку гастрономічного туризму в Україні. Досліджуються особливості надання послуг в сфері гастрономічного туризму особистими селянськими господарствами. Піднімається проблема правового регулювання реєстрації потужностей з виробництва та/або обігу харчових продуктів особами, які здійснюють харчування туристів. Зроблено висновок, що норми Закону України «Про основні принципи та вимоги до безпечності та якості харчових продуктів» щодо реєстрації таких потужностей не розповсюджується на власників особистих селянських господарств

Ключові слова: гастрономічний туризм, сільський зелений туризм, особисте селянське господарство, надання послуг, харчові продукти, оператор ринку



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Legal regulation of soil information support

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This paper considered the issues of legal regulation of information support on soils. The article describes large-scale soil studies in Ukraine that were conducted during 1957-1961. The reasons for the inconsistency of the available information on the structure and condition of the soil cover were found. It was proved that environmental impact assessment data from environmental monitoring, soil surveys, cadastral documentation, etc., can be sources of environmental Information. The conducted legal analysis suggested that the Draft Law of Ukraine "On Conservation of Soil and Protection of Their Fertility" should prescribe that documented information on the state of soils and implemented measures for soil protection should be open, publicly available, since it is of public interest, except for information that is classified as restricted access

Keywords: land, soil, soil cover, land use, soil protection, soil information, soil survey, monitoring, cadastral documentation

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Introduction

The new method of production in the 21st century is informational. This is understandable, since Article 50 of the Constitution of Ukraine [1] enshrined the right to access to environmental information, which is an essential component of citizens' environmental rights, the protection of which is guaranteed. However, the country still lacks a full-fledged information system on the state of the natural environment and its main component of the soil cover. In this context, the study of the legal regulation of information support on soils is of interest.

The purpose of this paper is to find out the essence of information support about soils and solve the currently urgent issues concerning the reliability of information about soil resources in terms of environmental indicators and agronomic qualities of soils.

Over a lengthy period of research, a considerable amount of information about the soils of Ukraine has been accumulated. In recent decades, increasingly more attention has been paid to the problems of legal support of information on the country's soil cover and soils. Issues of legal support of soil information are discussed in the papers of V.I. Andreitsev, V.M. Yermolenko, I.I. Karakash, M.V. Krasnova, P.F. Kulnich, T.V. Lisova, V.L. Muntian, V.V. Nosik, N.I. Tytova, M.V. Shulha, and others.

Results and Discussion

There are many sources of information about soils in Ukraine. Large-scale soil studies in Ukraine were conducted during 1957-1961 on an area of more than 45 million hectares. The work was organized and coordinated by specialists of the Ministry of Agriculture of

the Ukrainian SSR, and then, after the completion of expedition works on their generalization, by the soil research departments of Ukrzemproekt. The soil survey of Ukraine was conducted on a scale of 1:10000 and 1:25000. Based on the conducted soil studies, a map of the soils of Ukraine (1:750000), as well as soil maps of administrative regions (1:200000) and soil plans of agricultural enterprises were compiled [2, p. 10].

Currently, information on the qualitative state of the soil cover of Ukraine and its condition is based on the materials of a large-scale survey of 1957-1961 and their correction during the 1960-1980s. At one time, they were a world-class achievement and provided a powerful impetus to develop agrarian science and agriculture. On their basis, the agro-soil (1969), natural-agricultural (1985) zoning of Ukraine, and soil grading were developed. Although these materials are outdated, they are still widely used. However, it is impossible to solve general agricultural issues of rational use of soil resources, since they do not reflect their real state.

As for the structure and state of the soil cover, the available information does not correspond to reality for the following reasons: the structure of the soil cover according to the genetic status of a large-scale survey is only 35-50% reliable; a large area of zonal saline soils on loess rocks (typical, ordinary, southern chernozems), determined by morphological indicators, is not related to saline, they did not pertain to the group of particularly valuable ones. Their genetic nature is not related to salinity and reclamation measures are ineffective, which requires a different strategy for their rational

use; environmental parameters of soils do not have a proper reflection in soils of different genetic nature, which complicates the assessment of their agricultural production potential; the diagnosis of soil cover erosion development has not been determined; microrelief formations on slopes have not been considered upon developing and implementing modern flow control measures; there are difficulties in developing a scientific justification for the technology of providing plants with nutrients; transparent real agro-economic and agricultural production status of irrigated and de-irrigated lands has not been determined; no large-scale research of drained land soils has been conducted; the area of acidic and salinized soils requiring chemical reclamation has not been determined; there is no complete information on technogenic contamination of the soil cover; studies of contaminated territories regarding the influence of radionuclides in soils by ecological and genetic status have not been conducted; studies of soils of the territory of settlements, namely household plots, woodlands, and numerous special-purpose objects, primarily military landfills, have not been fully covered [3, p. 7-8].

Examples of the discrepancy between the materials of a large-scale study of the soil cover of 1957-1961 on information about its qualitative composition, transformation under various anthropogenic loads to the real state of soil resources of Ukraine reduce the effectiveness of measures for their protection, improvement and rational use are given. This creates an urgent need for a new large-scale survey of the soil cover.

Reliable information about soil resources on environmental indicators and agronomic

qualities of soils will allow solving the currently urgent tasks: to ensure proper soil protection, reproduction of their productive and ecological functions, to solve socio-economic problems of food security of the state, to improve the investment attractiveness of the territory of Ukraine, to scientifically substantiate strategies for balanced use of land resources based on farming systems through optimization of the range of crops matching their soil and environmental conditions; to develop targeted measures to eliminate particular types of soil degradation and increase their fertility; real ecological and agro-industrial status of soil resources is the basis for development measures of land protection and implementation of agricultural land reclamation; creation of erosion-safe land use on sloping territories; provision of scientifically sound systems and technologies for the use of fertilizers and chemical meliorants. It is necessary to review the available differentiation of soils into particularly valuable ones, to establish their diagnostic criteria legislatively to eliminate speculation regarding the allocation of lands for non-agricultural use and their value; to justify the regulatory monetary estimation of agricultural land and the tax on it according to productivity; to improve the doctrine of land optimization, which is related to determining the ratio of arable land and natural, coral, and forest land to reduce the degree of ploughing, to limit the intensity of use of ecologically dangerous sloping land, and conserve degraded and unproductive soils; to use the materials of large-scale soil research of soil cover by management structures of different levels to manage the development of agricultural production

through long-term planning, specialization, concentration, preferential tax policy, etc. The results of soil research constitute the basis for organizing conservation, recreation, monitoring the state of soils and the environment, drafting soil maps of various scales, developing and improving zoning of agroeconomic and environmental areas, developing technologies towards creating reference and information and expert assessment systems to meet the needs concerning various issues of land use, agriculture, and soil resource protection [3, p. 8-9].

According to the National Research Centre "Sokolovskiy Institute of Soil Science and agrochemistry", the estimated cost of a large-scale study of the soil cover of Ukraine is 6 billion UAH. Funding should come from three sources: one third – from the state budget, the second – from the local budget, and the rest to be compensated by the landowner. This approach is justified by the need for triple control of the quality of works by the state and immediate land users, who will be interested in obtaining modern agricultural information about soils for the implementation of measures to preserve and increase fertility of said lands, depending on their state, to compensate for costs. The effectiveness of the results of large-scale studies depends not only on the reliability, but also on the duration of their implementation. The experience of their successful implementation indicates the optimal intermediate time of 5-7 years. The extension of this period is unjustified either in economic or research-to-practice aspects [3, p. 13].

Thus environmental impact assessment data of environmental monitoring, soil survey, cadastral documentation, etc.

can be sources of environmental information (Article 25 of the Law of Ukraine "On Environmental Protection" [4]). The main sources of information about the state of the natural environment are also data from registers, automated databases, archives, as well as certificates issued by authorized state authorities, local self-government bodies, public organizations, and individual officials [4]. The bodies of state power, local self-government, enterprises, institutions, organizations, their officials, and employees must provide environmental information in the manner prescribed by current legislation (Article 25.1 of the Law of Ukraine "On Environmental Protection" [4]). The main form of environmental information is the annual National Report on the State of the Natural Environment in Ukraine. Information about the state of soil fertility in Ukraine is formed through soil monitoring, the main component of which is the survey of agricultural land, conducted by the state institution "Institute of soil protection of Ukraine" (SI "Derzhgruntokhorona"), authorized by the Ministry of Agrarian Policy. Surveys are conducted cyclically every 5 years. Thus, in 2014, the 4th year of the 10th round of agrochemical survey was completed. The research materials obtained for the corresponding year are processed, stored, and used for further generalization of the qualitative state of the soil cover during the full round of surveys. In 2014, 4.0 million hectares of agricultural land were surveyed, which corresponds to the tasks defined by the budget classification program 2801050 "Research, applied scientific and technological developments, implementation of works under state target programs and state orders in the field

of development of the agro-industrial complex, preparation of scientific personnel, scientific developments in the field of standardization and certification of agricultural products, research and experimental developments in the field of agro-industrial complex". On the surveyed lands, more than 373.7 thousand samples were taken, and 2 million analytical studies of the soil were conducted to establish the content of hazardous substances in it [5, p. 137].

As V.V. Medvediev notes, Ukraine has created artificial barriers to the exchange of information and, consequently, its use. In recent years, the closure of departments and institutions has even increased. Thus, it has become extremely difficult to use hydrometeorological information and materials of agrochemical certification of fields. Furthermore, in both cases, it was also obtained with budget funds. Notably, there is no culture of information exchange due to possible violation of its sovereignty, there is no mutual trust between co-executors. Such a situation,

admittedly, is harmful, limits the final value of the obtained data both in theoretical and especially in applied aspects [6, p. 98-99].

Conclusions

Thus, the proposed Draft Law of Ukraine "On Conservation of Soils and Protection of Their Fertility" should prescribe that documented information on the state of soils and implemented measures for soil protection should be open, publicly available, since it is of public interest, except for information that is classified as restricted access. Documented information about the condition of soils located on lands and land plots, information about which is classified or may be classified as a state secret, constitutes documented information with limited access. The procedure for providing information on the state of soils is established by the legislation of Ukraine. This provision refers to the norms of the Constitution of Ukraine (Article 50.2) and the Law of Ukraine "On Information" (Article 5).

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Правове регулювання інформаційного забезпечення про ґрунти

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Анотація

Розглянуто питання правового регулювання інформаційного забезпечення про ґрунти. Надається характеристика великомасштабним дослідженням ґрунтів в Україні, які були проведені впродовж 1957–1961 рр. Встановлено причини невідповідності наявної інформації щодо структури і стану ґрунтового покриття. Обґрунтовано, що дані оцінки впливу на довкілля екологічного моніторингу, обстеження ґрунтів, кадастрової документації, інших можуть бути джерелами екологічної інформації. На основі проведеного правового аналізу зроблено висновок, що в проекті закону України «Про збереження ґрунтів та охорону їх родючості» необхідно закріпити, що документована інформація про стан ґрунтів та здійснювані заходи щодо охорони ґрунтів має бути відкритою, загальнодоступною, оскільки є такою, що становить суспільний інтерес, за винятком інформації, яку зачислено до категорії інформації з обмеженим доступом

Ключові слова: земля, ґрунт, ґрунтовий покрив, землекористування, охорона ґрунтів, інформація про ґрунти, обстеження ґрунтів, моніторинг, кадастрова документація



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Legal provision of prevention and combating land flooding in Ukraine

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Due to global warming, overregulation of water bodies, disruption of water runoff, unsatisfactory functioning or complete absence of drainage systems, reduction of forest areas, Ukraine will not avoid the problems related to land flooding. The harmful effects of water are caused by both global factors, such as warming and melting of glaciers, and regional features, namely the system of water exchange between water bodies, changes in precipitation and river flow. Land flooding is a phenomenon that cannot be completely prevented. However, human activity increases its probability and impact. The risk of flooding and the extent of damage caused, as well as the impact on the health and socio-economic situation of those affected, will continue to increase because of climate change. Inadequate river management, construction in freshet-prone areas, and the growing population living in these areas further exacerbate the effects of land flooding. Ukraine has already taken appropriate steps to implement the provisions of international acts in the field of preventing and combating land flooding in national legislation. However, the quality

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of implementation of national programs in the defined area leaves much to be desired, as most of the measures, unfortunately, are not implemented. Failure to comply with measures in certain amounts creates high risks of land flooding, as a result of which the population and the national economy suffer multimillion-dollar losses

Keywords: land flooding, harmful effects of water, threats and risks of flooding, management of water resources according to the basin principle, climate change, global warming

Introduction

Over the past decade, the area of land with constant manifestations of flooding has doubled. According to expert estimates, up to 16 million people suffer from land flooding to one degree or another. Adverse consequences of floods and freshets are manifested in 27% of the territory of Ukraine, where almost a third of the population lives. 541 settlements are flooded, and in 97 the flooded area exceeds 50% of the territory. Socio-economic losses amount to 300 to 500 UAH in rural areas, and up to 10-12 thousand UAH per 1 hectare of flooded territories in cities and towns [1]. At the same time, the population suffers direct losses from loss or damage to housing, farm buildings, crop destruction on homesteads.

The area of flooded agricultural land is about 118 thousand hectares. The total area of agricultural land with constant manifestations of flooding amounts to 12% of the territory of Ukraine. According to expert estimates, the economic losses caused by the harmful effects of water on agricultural lands, which are estimated as losses from a decrease in the production of plant and animal products, costs for the repair of premises, equipment, and inventory, replanting of agricultural crops, etc., amount to about 205 million UAH every year [2]. However,

the greatest losses await society when catastrophic floods and freshets result in fatalities.

The intensity of land flooding in Ukraine, its catastrophic consequences, and the imperfection of statutory regulation require an urgent solution to this issue.

The purpose of this paper is to analyse the legal support for preventing and combating land flooding in Ukraine, identify legal issues in the outlined area and outline their solutions.

Results and Discussion

Land flooding occurs under natural and anthropogenic factors due to rising water levels, which leads to a violation of the normal living conditions of the population and land use. Flooding in terms of distribution and development dynamics prevails among exogenous geological processes and causes a decrease in soil strength, activation of landslide phenomena, an increase in groundwater aggressiveness, and contamination of surface and underground water bodies [1].

The main causes of land flooding are climate change; the overregulation of rivers by reservoirs and ponds, which causes the groundwater level to rise and the natural drainage of the territory to decrease; violation of natural runoff in built-up areas;

unsatisfactory functioning or complete absence of corresponding ameliorative systems; irrigation of arable land without adequate drainage; reduction of areas of forest stands, etc. [2].

Separately, one should focus on the global issue of rising sea levels caused by climate change, which poses a threat of flooding primarily to the coastal territories of many countries around the world. Ukraine is no exception. Ukraine has one of the longest coastlines in Europe, and therefore the adverse consequences of rising sea levels will also be reflected on Ukrainian coast.

According to Ukraine's Fifth National Communication on Climate Change [3], the risks and losses from sea level rise by 2100 will differ depending on the rise scenarios. According to various climate change modelling scenarios, the rise in the level of the Black and Azov Seas may range from 22 to 115 cm by 2100. The following scenarios of rising levels of the Black and Azov seas by 2100 are also mentioned: a minor increase to 0.66 m and a large increase to 7.15 m. In a pessimistic scenario, it will be necessary to introduce active measures to protect coastal resources. The processes of coastal erosion, flooding, inundation, and salinization of soils in the Black Sea and Azov regions will intensify; sea level rise will also cause substantial changes in the ecosystems of the estuarine regions of the Danube, Dnieper, and Dniester, will lead to the transformation of the lowland landscapes of the sea coast, and the erosion processes will become more active. Considerable areas of the land fund will be under threat of destruction, and many settlements will be partially or completely flooded [4].

Protection of land from the harmful effects of water and flooding is one of the most pressing issues today. Therewith, the system of such protection should be comprehensive, be a mandatory component of the formation and implementation of the national policy of Ukraine on its way towards sustainable development. Practice shows that it is impossible to solve the issue of flood protection exclusively by engineering measures. Insufficient consideration of natural factors, saving on preventive measures that ensure the sustainability of ecosystems, leads to a considerable increase in the cost of eliminating the consequences of harmful effects of water and land flooding.

According to Article 107 of the Water Code of Ukraine [5], the harmful effects of water are as follows: the consequences of flooding, which led to flooding and inundation of lands and settlements; destruction of banks, protective dams, and other structures; waterlogging, inundation, and salinization of lands caused by the rise in the level of groundwater due to irregular water supply during irrigation, leakage of water from water supply and sewage systems and blocking of groundwater flows when large industrial and other structures are placed; land drainage caused by the withdrawal of groundwater in an amount that exceeds the permissible limit; pollution (salinization) of land in areas of mineral extraction, as well as after the end of exploitation of deposits and their conservation; soil erosion, formation of ravines, landslides, and mudslides.

The Land Code of Ukraine [6] and the Law of Ukraine "On Land Protection" [7] define that land protection is ensured based on the implementation of a set of measures to

preserve the productivity of lands, improvement of their ecological stability and soil fertility. According to Article 36 of the Law of Ukraine "On Land Protection", land protection from flooding is carried out based on the implementation of measures prescribed by national and regional programs, according to land management schemes and feasibility studies for the use and protection of land of administrative-territorial units, work projects of land management [7].

Furthermore, according to Articles 38, 42 of the Law of Ukraine "On Land Protection" during land reclamation, placement, design, construction, reconstruction, and operation of water management facilities, measures aimed at preventing flooding and waterlogging of land, deterioration of soil quality are provided [7]. Thus, during the design of water management and other objects, the possible harmful effect of water should be considered, and during the operation of these objects, measures should be taken to prevent it, namely planting and creating forest stands on coastal protective strips, slopes, arroyo, and ravines; construction of anti-erosion hydrotechnical structures, earthen shafts, spillways, protective dams, reservoirs-regulators; construction of drainage; shore fortification, etc. (Article 107 of the Water Code of Ukraine [5]).

In 2016, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of Integrated Approaches in the Management of Water Resources Based on the Basin Principle" [8] amended the Water Code of Ukraine [5] with Article 107-1, which defines the mechanism for developing a flood risk management plan to reduce the potential adverse impact of

flooding on human life and the surrounding natural environment. Flood risk management plans are being developed for individual areas within the river basin area that have a high risk of flooding.

In compliance with the requirements of the said Article in 2018, the Resolution of the Cabinet of Ministers of Ukraine approved the procedure for developing a flood risk management plan [9], the Order of the Ministry of Internal Affairs of Ukraine approved the methodology for developing maps of threats and risks of flooding [10], and the Order of the Ministry of Internal Affairs of Ukraine approved the Methodology for preliminary assessment of flood risks [11]. The management plan is developed by the State Emergency Service of Ukraine together with the Ministry of Environmental Protection and Natural Resources of Ukraine, the State Water Resources Agency of Ukraine, other interested central bodies of executive power and is agreed with local executive bodies and local self-government bodies in whose territory there is a high risk of flooding, and is approved by the Cabinet of Ministers of Ukraine. The State Service of Ukraine for Emergencies provides a strategic environmental assessment of the management plan project according to the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, ratified by the Law of Ukraine dated July 1, 2015 [12].

To prevent and eliminate the consequences of land flooding, to restore the role of reclaimed land in the food and resource supply of the state, as well as to introduce a system of integrated water resources management based on the basin principle in

2012. The Verkhovna Rada of Ukraine adopted the Law of Ukraine “On the Approval of the Nationwide Target Program for the Development of Water Management and Ecological Improvement of the Dnipro River Basin for the period until 2021” [13]. In land protection from the harmful effects of water and comprehensive anti-flood protection, the tasks of the Program are defined as: construction, reconstruction and capital repair of hydrotechnical structures, protective anti-flood dams, shore fortification structures, clearing, and regulation of river channels and reservoirs; application of modern flood monitoring and forecasting methods, timely, reliable informing of the population and enterprises about the possibility of an emergency flood situation, as well as its consequences; construction and reconstruction of anti-slide and anti-mudflow structures; implementation of local programs for the revival of small rivers and reservoirs; reducing the intensity of surface runoff.

However, according to the results of the Accounting Chamber [14], the Program [13] is not implemented in the planned volumes and terms. Measures taken during 2013-2020 by its state customers, namely the Ministry of Ecology and Natural Resources of Ukraine (and its legal successors) and the State Water Management Agency of Ukraine, both at the first stage of the implementation of the National Program (2013-2016), and in the second (2017-2020), turned out to be insufficient for its implementation.

Of the performance indicators planned by the Program in terms of “Protection of rural settlements and agricultural lands from the harmful effects of water”, 1 has been completed, 11 have been partially completed,

and 1 has not been completed. In terms of “Complex Anti-flood Protection in the Basins of the Dniester, Prut, and Siret rivers”, out of 31 planned measures, work was financed under 12 measures, of which not a single measure was financed in the planned volumes. This led to the failure to achieve the planned performance indicators (completed – 3, partially completed – 7, not completed – 21). Therewith, according to such indicators as the number of anti-flood tanks built in mountainous and plain parts of rivers; the number of polders and anti-flood storages constructed; the area of land on which coastal protective strips are afforded and limed; the area of land on which anti-slide measures have been implemented; the number of built anti-flood structures; the number of people who need to be resettled from risk zones of land use within the territory of possible flooding; the number of designed storage tanks in the complex with hydroelectric power stations; the number of projects developed, and scientific research conducted, no work was carried out at all. As a result, the risks of failure to provide adequate protection against floods in the basins of the Dniester, Prut, and Siret rivers with anti-flood structures (dams and shore fortifications) are increasing. Since the implementation of the National Program in terms of “Complex flood protection in the basin of the Tysa River in Zakarpattia Oblast”, of the planned performance indicators, 1 indicator has been fully implemented, 6 have been partially implemented, and 12 have not been implemented. As a result, the risks of flooding of rural settlements and agricultural land located in the Tisa River Basin increase.

Failure to comply with the measures prescribed in the Program in certain amounts creates high risks of land flooding, as a result of which the population and the national economy suffer multimillion-dollar losses.

The Cabinet of Ministers of Ukraine approved the Strategy of Irrigation and Drainage in Ukraine for the period until 2030 [15], the purpose of which is to determine the strategic vectors of the national policy on irrigation and drainage, to ensure the sustainable and ecologically balanced development of agriculture in Ukraine. The implementation of the Strategy is aimed at restoring the potential of irrigation and drainage systems to further increase the area of irrigation and water regulation as the basis for achieving the maximum level of agricultural production efficiency and environmental safety. To fulfil the purpose and objectives of the Strategy, the Cabinet of Ministers of Ukraine adopted an order [16] approving the Action Plan for the Implementation of the Irrigation and Drainage Strategy in Ukraine for the period up to 2030. The implementation of the adopted Action Plan should ensure the development of agriculture in Ukraine, increase the yield of agricultural crops, increase the area of land with drainage systems and expand the agricultural potential of Ukraine.

Conclusions

Unfortunately, Ukraine will not avoid problems related to flooding of lands caused by global warming, regulation of water bodies, disruption of water flow, unsatisfactory functioning or complete absence of drainage systems, reduction of the area of forest plantations, etc. The harmful effects of water in Ukraine are caused by both global factors,

such as warming and melting of glaciers, and regional features, specifically the system of water exchange between water bodies, changes in precipitation and river flow.

Land flooding is a phenomenon that cannot be completely prevented. However, human activity increases its probability and impact. The risk of flooding and the extent of damage caused, as well as the impact on the health and socio-economic situation of those affected, will continue to increase as a result of climate change. Inadequate river management, construction in freshet-prone areas, and the growing population living in these areas further exacerbate the effects of land flooding.

Ukraine has already taken appropriate steps to implement the provisions of international acts in the field of land flood prevention and control, namely the provisions of Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks [17]. The main tasks of the Directive are preliminary flood risk assessment, creation of flood hazard maps and flood risk maps, as well as creation of flood risk management plans. Ukraine has developed and adopted the relevant regulatory framework defined by the provisions of the Directive. However, the quality of implementation of national programs in this area leaves much to be desired, which is confirmed by the conclusions of the Accounts Chamber of Ukraine, according to which most of the measures are not implemented. Failure to comply with measures in certain amounts creates high risks of land flooding, as a result of which the population and the national economy suffer multimillion-dollar losses.

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Правове забезпечення запобігання і боротьби з підтопленням земель в Україні

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Анотація

Через глобальне потепління, зарегульованість водних об'єктів, порушення водного стоку, незадовільне функціонування або повну відсутність дренажних систем, скорочення площ лісових насаджень наша держава не уникне проблем, пов'язаних із підтопленням земель. Шкідлива дія вод обумовлюється як глобальними чинниками, такими як потепління та танення льодовиків, так і регіональними особливостями, зокрема, системою водообміну між водними об'єктами, змінами у кількості опадів і річкового стоку. Підтоплення земель – це явище, якого не можна повністю запобігти. Однак людська діяльність сприяє збільшенню його вірогідності та впливу. Ризик затоплення та ступінь заподіяної шкоди, а також вплив на здоров'я та соціально-економічну ситуацію тих, хто постраждав, продовжуватиме зростати у майбутньому внаслідок зміни клімату. Невідповідне управління річками, будівництво в районах, що піддаються ризику паводку і зростаюча кількість населення, що приживає у цих районах, ще більше посилюють наслідки підтоплення земель. Україною зроблені вже відповідні кроки щодо впровадження положень міжнародних актів у сфері запобігання і боротьби з підтопленням земель у національне законодавство. Однак якість виконання загальнодержавних програм в окресленій сфері вимагає кращого, оскільки більшість заходів, на жаль, не виконується. Невиконання заходів у визначених обсягах створює високі ризики підтоплення земель, внаслідок чого населення та економіка держави зазнає багатомільйонних збитків

Ключові слова: підтоплення земель, шкідлива дія вод, загрози і ризики затоплення, управління водними ресурсами за басейновим принципом, зміна клімату, глобальне потепління



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Climate resources as objects of natural resources legal relations

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This paper examines scientific approaches to the characterization of objects of natural resources legal relations. The paper covered the theoretical provisions of legal scientists regarding the definition of natural resources as objects of natural resource legal relations, distinguished their legal features. The authors of the study analysed the scientific approaches to the legal nature of climate resources and their place in the modern system of natural resource legal relations. Natural resources relations consist of the use and reproduction of natural resources or their properties (e.g., the potential energy of water, which is transformed into electrical energy, the surface of water for the needs of water transport, the properties of atmospheric air to contain and dissolve pollutants (reduce concentration), the property of the subsoil to contain own underground gas storage facilities, etc.). Climate resources are inexhaustible natural resources that include solar energy, moisture, wind energy, etc. and are determined by climate

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characteristics. The use of certain properties of climatic resources as primarily alternative sources of energy is extremely relevant. Climatic resources in most of the territory of Ukraine are favourable for the development of alternative energy. However, the current state of legal regulation of activities aimed at ensuring the rational and efficient use of climate resources requires improvement

Keywords: natural resources law, natural resources legal relations, natural resources, climatic resources, climate

Introduction

Natural resources relations can be defined as a set of complex social relations concerning the use and reproduction of individual natural resources in their inextricable connection with other elements of the environment. Currently, in legal doctrine, apart from the subject of legal regulation of natural resources law, the definition of the object of natural resources legal relations and, specifically, the definition of the legal nature of climate resources and their place in the modern system of natural resources legal relations, causes a lot of discussion. This is explained by the lack of a comprehensive study of the theoretical foundations of natural resources legal relations, the complexity of the subject of legal regulation, and the variety of scientific approaches to understanding the objects of natural resources law.

In the presence of numerous scientific opinions on this phenomenon, the problem of forming a unified approach to understanding the object of natural resources legal relations stays relevant. Since, as fairly noted by V.M. Yermolenko, an object in the structure of legal relations forms

internal functional connections that are better amenable to legal regulation, and this undoubtedly contributes to the establishment of legal relations as a separate system [1, p. 11].

In this regard, Yu.O. Vovk once pointed out that the subject of natural resources law is united through the unity and inextricable connection of all natural resources that are objects of legal regulation. At the same time, it is quite multifaceted, as it is expressed in the diversity of the specified relations, caused by different types of natural objects, regarding which social relations exist [2, p. 10].

Scientific articles of such prominent representatives of domestic and foreign legal science as H.V. Anisimova, Yu.O. Vovk, V.M. Yermolenko, B.V. Yerofeiev, M.D. Kazantsev, I.B. Kalinin, I.I. Karakash, O.S. Kolbasov, M.V. Krasnova, V.V. Petrov, Yu.S. Shemshuchenko, and other scientists investigate the objects of natural resources and environmental legal relations, including the legal nature of climate resources. However, many aspects of the raised issues are not fully addressed, which determines the relevance of the specified subject under study.

The purpose of this paper was to investigate the scientific approaches to the characterization of objects of natural resources legal relations, to establish the legal nature of climate resources, and their place in the modern system of natural resources legal relations.

Results and Discussion

It is generally known that the object of legal relations is a material or immaterial good, to receive, transfer, or use which the subjects enter into legal relations. It is the need for an object that causes the emergence of a legal connection between subjects, causes the establishment and implementation of their rights and obligations. Objects of natural resources legal relations are those benefits for which natural resources legal relations arise, change, or terminate between subjects.

The object of natural resources legal relations is natural resources – a legally defined part of the natural environment that has signs of natural origin and is in an ecological relationship with natural objects, is used or can be used as a source of satisfaction of human needs.

The main legal features of natural resources are as follows:

- a) natural origin;
- b) ecological relationship with the surrounding natural environment and with each other;
- c) quantitative and qualitative limitations in the natural environment;
- d) limited possibility or impossibility of reproducing certain types of natural resources;

e) the main natural resources are physically immovable and cannot be moved in natural space;

f) lack of real value and in the economic sense, natural resources are not a commodity;

g) special legal regime for their use, containing a considerable number of mandatory requirements;

h) the purpose of use is to meet various human needs, etc.

Considering the provisions of special branch literature [3; 4; 5], natural resources as objects of natural resources legal relations can be divided into exhaustive and inexhaustible. Exhaustive natural resources are divided into non-renewable and renewable. Non-renewable resources include those that do not recover at all or recover much more slowly than they are used (e.g., subsoil, minerals). Renewable natural resources include land resources, forest resources, flora and fauna, etc. These resources are renewed as they are used.

Renewable natural resources are resources that are capable of full or partial self-renewal through reproduction or other natural recovery cycles. Such resources can be renewed in natural processes or reproduced under anthropogenic activity [3, p. 7]. Renewal generalizes not new processes of creating natural resources, but the return of their previous qualitative and quantitative characteristics [6, p. 23]. Renewal of natural resources is considered as a specific area of activity of social production, aimed at preserving the quality and quantity of renewable natural resources based on purposeful

management of natural processes; artificial maintenance of natural resources at a certain level through proper resource-renewal measures to achieve their productive state [7, p. 16]. For instance, forest resources are renewed both naturally and through afforestation. Possible areas of reproduction of natural resources can also be reclamation, agroforestry, artificial breeding of hunting animals and birds, etc.

Certain natural conditions are required to preserve the ability of natural resources to self-renew. Violation of these conditions delays or stops the self-renewal process altogether, which should be considered when using them. The rate of use of natural resources should correspond to the rate of their self-renewal. Violation of this conformity inevitably leads to the depletion of natural resources and the need to take measures to reproduce them. Otherwise, renewable natural resources may become non-renewable.

Inexhaustible natural resources include water, climate, and space resources. Water resources are massive. Water exists in all possible states for it. Its total resources stay unaltered and inexhaustible. However, with a variety of human activities, water reserves can change dramatically and lose their consumer properties. Fresh water supplies are depleted and have declined considerably in many places. Its deficiency in meeting the various needs of humanity and society began to be felt.

Specialists in the problems of applied climatology define climate resources as

inexhaustible natural resources in the climate system (primarily in the atmosphere), which determine the functioning, development, productivity of various branches of the national economy [8], and can be used to solve a particular issue in industry, agriculture, forestry, fisheries, social sphere,

According to other scientists, the issue of using climate resources is generally excluded from the sphere of environmental and legal regulation. According to T.H. Puchinina, the climate in itself cannot be considered as a component of the natural environment, and climatic resources stay outside the scope of legal regulation due to their undefined nature [13, p. 9, 46]. Kuznetsova N. V. points out that the use of solar energy or climatic resources is not sufficiently controlled and regulated by humans [14, p. 4].

Therewith, some scientists in the field of environmental and legal science have repeatedly drawn attention to the fact that along with the so-called classical objects of environmental law, new ones are also included in the sphere of legal regulation – climate, ozone layer, airspace, etc. [15]. M.V. Krasnova notes that the number of objects of environmental law are currently expanding by attributing (including acts of international environmental law) to their number and climate, which reflects certain characteristics of nature itself (or the environment) [16].

In the branch scientific literature, climatic resources are distinguished as follows: energy (solar radiation, wind energy); thermal (air and soil temperature); moisture

resources in the atmosphere and soil (cloud cover, precipitation, snow cover, moisture in the soil); light (illumination); gas (ozone and gases in the atmosphere) [8, p. 103].

In this regard, the term “climate resource” should be used to refer primarily to the quantitative and qualitative effect of using the properties of climate components: solar radiation, wind energy, air temperature, atmospheric humidity, soil, etc., which are withdrawn from the environment to meet environmental, economic, social, and other human needs.

According to this approach, the concept of climate resources partially falls under the definition of renewable (alternative) energy sources prescribed by the Laws of Ukraine “On Energy Efficiency” [17] and “On Alternative Energy Sources” [18]. According to these regulations, renewable energy sources are sources that constantly exist or periodically appear in the natural environment. In this regard, L.O. Bondar notes that alternative energy sources (solar radiation, wind energy, sea waves, tides, heat of geothermal waters, land, river flow strength, biomass energy, earthquakes, and other non-conventional energy sources) are special natural resources, and the legal norms governing their use are a legal institution as part of natural resources law [19, p. 340]. Therewith, V.M. Komarnitskyi draws attention to the fact that a considerable part of renewable (alternative) energy sources is a manifestation of certain properties of certain natural resources [20, p. 142], namely climatic natural resources.

Renewable energy sources (solar, wind, hydropower, etc.) are indeed subject to legal regulation of natural resources law, but they cannot be considered natural resources, they are properties of natural resources that are used for energy supply. And it is the properties of natural resources (manifestation of the resource’s inherent quality, distinctive feature, inherent feature) that determine the limits of their use [21, p. 140] and determine the specific features of legal regulation.

Conclusions

Thus, natural resources relations consist of the use and reproduction of natural resources or their properties (e.g., the potential energy of water, which is transformed into electrical energy, the surface of water for the needs of water transport, the properties of atmospheric air to contain and dissolve pollutants (reduce concentration), the property of the subsoil to contain own underground gas storage facilities, etc.).

Climate resources are inexhaustible natural resources that include solar energy, moisture, wind energy, etc. and are determined by climate characteristics. The use of certain properties of climatic resources as primarily alternative sources of energy is extremely relevant. Climatic resources in most of the territory of Ukraine are favourable for the development of alternative energy. However, the current state of legal regulation of activities aimed at ensuring the rational and efficient use of climate resources requires improvement.

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Кліматичні ресурси як об'єкти природоресурсних правовідносин

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Анотація

Стаття присвячена дослідженню наукових підходів до характеристики об'єктів природоресурсних правовідносин. Розкрито теоретичні положення представників юридичної науки щодо визначення поняття природних ресурсів як об'єктів природоресурсних правовідносин, виокремлення їх юридичних ознак. Проаналізовано наукові підходи до правової природи кліматичних ресурсів та їх місця у сучасній системі природоресурсних правовідносин. Природоресурсні відносини складаються з приводу використання та відтворення природних ресурсів або їх властивостей (наприклад, потенційна енергія вод, яка перетворюється на електричну енергію, поверхня води для потреб водного транспорту, властивості атмосферного повітря вміщувати та розчиняти (зменшувати концентрацію) забруднюючі речовини, властивість надр містити в собі підземні сховища газу тощо). Кліматичними ресурсами називають невичерпні природні ресурси, що включають в себе сонячну енергію, вологу, енергію вітру тощо і визначаються особливостями клімату. Використання визначених властивостей кліматичних ресурсів в якості, насамперед, альтернативних джерел енергії є вкрай актуальним. Кліматичні ресурси на більшій частині території України сприятливі для розвитку альтернативної енергетики. Однак, сучасний стан правового регулювання діяльності, спрямованої на забезпечення раціонального й ефективного використання саме кліматичних ресурсів, потребує удосконалення

Ключові слова: природоресурсне право, природоресурсні правовідносини, природні ресурси, кліматичні ресурси, клімат



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Legal issues of digitalization of environmental accounting data

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This paper raises the issue of the need to introduce the term “environmental accounting” into legal circulation, which has existed in economic sciences since the 1970s, and in environmental and legal science – as “state accounting in the field of the natural environment”. As for Ukrainian legislation, it does not contain a name that unites many types of cadastres, registers, registers, reports, and other environmental information. It was established that in the system of Ukrainian legislation, cadastres of natural resources, accounting for objects harmful to the environment, accounting for substances harmful to the environment, as well as factors of harmful impact on the environment (chemical, physical, biological) are subject to legal regulation, within the framework of the outlined topic. Unfortunately, many of these accounting data are closed, incomplete, or not present at all. At the same time, at the international and European level, these processes are rapidly developing, and today there is already a need to expand such data, by including in the relevant accounting resources information on issued permits for the use of natural

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resources, payment of environmental payments, fines, production of environmentally safe products, etc. Based on this, a proposal is put forward on the need to systematize Ukrainian legislation on environmental accounting by developing and adopting a special regulation that would meet international and European requirements in this area. A proposal is also made on the need to transform the provisions of Articles 23 and 24 of the Law of Ukraine "On Environmental Protection" by combining them and expanding their content, including all types of environmental accounting. It was established that Ukraine has already commenced the adaptation of legislation on this issue, specifically by establishing requirements for digitalization of all environmental data, i.e., the creation of a single ecological electronic platform, which currently is only at the beginning of its development

Keywords: environmental accounting, cadastres, registers, digitalization, systematization of legislation

Introduction

The growing level of pollution of the natural environment, the growth of natural and anthropogenic disasters, and the depletion of natural resources necessitate the solution of the environmental protection issues, preservation and rational use of natural resources, ensuring environmental safety by various means. This process is characterized by considering the principles of sustainable development, the modern general concept of the need to establish a balance between meeting the modern economic needs of humanity and protecting the interests of future generations, including their need for a safe and healthy environment. Such development is known to meet the needs of the current generation without compromising the ability of future generations to meet their needs. That is why the state and protection of nature are becoming increasingly relevant for human development. Topical environmental and social issues caused by

both nature itself and human activities are increasingly coming to the fore, and the latter factor is most pronounced.

Under such conditions, the vital need to solve the issues of perfecting nature management, improving and preserving the environment by measures of effective national policy in this area becomes evident. In this regard, there is a growing need for a substantial restructuring of environmental accounting, which is designed to form, analyse, and publish information on the existing availability of natural resources, their qualitative characteristics, information on forecasts of their possible long-term use, as well as information on the volume of influence of physical, chemical, and biological factors of economic activity on the state of the environment. Such data serve as an important basis for preparing and making scientifically based environmental decisions. Therefore, environmental accounting is an

important and effective modern method of environmental management in the context of the transition towards sustainable socio-economic development.

State interest in improving the legal basis of environmental accounting is manifested in the provisions of the Law of Ukraine "On Environmental Protection" [1], in the Laws of Ukraine "On Fundamental Principles (Strategy) of the National Environmental Policy of Ukraine for the Period Until 2020" [2], "On Fundamental Principles (Strategy) of the National Environmental Policy of Ukraine for the Period Until 2030" [3], "On National Infrastructure of Geospatial Data" [4], in the Decree of the Cabinet of Ministers of Ukraine "On Approval of the State Statistics Development Program Until 2023" [5], in other documents.

The specific feature of this study is conditioned upon the lack of comprehensive research on the digitalization of environmental accounting in Ukrainian legal science. Presently, certain legal aspects of such a function of state management in the field of ecology are investigated mainly at the level of educational and methodological literature (V.I. Andreitsev, A.P. Hetman, N.R. Malysheva, V.I. Fedorovych, M.V. Shulha, etc.) or in theses on the analysis of individual components of such accounting (A.H. Borovytska, S.L. Hoshytar, N.O. Hrabovets, K.A. Prokhorenko, Ye.O. Shchychlov, Z.V. Yaremak).

The purpose of this study was to analyse the specific features of legal regulation of digitalization of environmental accounting data.

Results and Discussion

The term "environmental accounting" is not new for Ukrainian science. Experts in economic sciences are actively engaged in its research. However, for legal science, including environmental law, this term is factually not used, although its components are used fairly regularly – the need to keep inventories of natural resources, accounting for objects, substances, and factors that currently have a harmful effect on the state of the natural environment, Articles 23 and 24 of the Law of Ukraine "On Protection of the Natural Environment" [1] and a number of resource-related and sub-legislative regulations.

On the other hand, at the international level, this term has been used since 1991 in connection with the development of the Guide (recommendations) for accountants on the reflection of the environmental impact of the economic activity of the enterprise in financial reports by the Intergovernmental Working Group of Experts on International Accounting and Reporting Standards [6, p. 5], although the need to collect statistical data on environmental issues was discussed at the Stockholm Conference in 1972 [7, p. 5–7].

However, the Aarhus Convention [8] and the Protocol on the Registers of Emissions and Transfer of Pollutants [9] establish the requirement that information on the state of the environment and sources of emissions must be communicated to society.

As a result of the long-term work of various international and regional institutions, in 2012, the UN Statistical Commission

adopted the “Central Basis of the System of Natural and Economic Accounting” at the international level, which became an international standard in the field of environmental accounting [10]. Its counterpart was introduced on the territory of the European Union in 2011, through the adoption of Regulation (EU) No. 691/2011 of the European Parliament and of the Council of 6 July 2011 on European environmental economic accounts [11].

According to the above-mentioned documents, environmental accounting should include information about natural resources and their state, environmentally harmful activities, emissions of greenhouse gases and pollutants into the atmosphere; environmental taxes; environmental protection costs; the sector of environmental goods and services; waste; chemicals; biodiversity; ecological state of regions, etc.

Notably, most of these types of accounting are currently required by Ukrainian legislation as well, which is confirmed by the requirements for maintaining a vast number of different registers, cadastres, reports, etc. in the environmental sphere, but the Law of Ukraine “On Environmental Protection” [1] does not fully reflect this requirement. The system of openness and accessibility to environmental accounting data, their factual availability and managerial compliance is also underdeveloped today.

To solve this issue, modern legislation requires the need for digitalization of such accounting (“On Approval of the Development Strategy...” [12]; “On Approval of the Development Concept...” [13]; “Digital

Agenda of Ukraine” [14]), specifically, by creating an analytical system integrated into the European Shared Ecology Infrastructure System (SEIS) for analysing environmental pollution, weather conditions and ecosystem evolution, as well as for planning measures to prevent harmful changes.

In turn, several Ukrainian regulations (“On Fundamental Principles (Strategy)...” [2]; “On Approval of the Program for the Development of State Statistics...” [5]) refer to the creation of a network of a nationwide automated information and analytical system to ensure access to environmental information to the main tasks of such a strategic goal of the state’s development as raising the level of public environmental awareness, where such accounting is also one of the main tools for implementing the national environmental policy of Ukraine.

Today, such a nationwide automated information and analytical system for ensuring access to environmental information is proposed to be called “open environment” (“On Approval of the Concept of Creating...” [15]).

The nationwide automated system “Open Environment” has a challenging purpose to achieve, in dialogue with the public and stakeholders, such a level of modernization of national environmental management as to not only provide the public with comprehensive and guaranteed access to environmental information, data on environmental risks for safe life, potential environmental perspective of the state of the environment, but also comprehensively experience and see a real improvement in the state of the environment [16, p. 9; 17].

NAS "Open Environment" acts as:

- 1) a tool of electronic governance;
- 2) a key channel of communication with the international community, citizens, and business;
- 3) electronic service [16, p. 9].

Implementation of the nationwide "Open Environment" system includes:

- a) modernization of the procedure for collecting and analysing primary environmental information;
- b) implementation of comprehensive monitoring of the state of the environment;
- c) effective and prompt decision-making on environmental safety and environmental risk management on the territory of Ukraine and in the cross-border context;
- d) electronic format of the procedure for providing administrative environmental services on the Portal of administrative services and state environmental registers;
- e) open environmental data within the framework of Ukraine's performance of the obligations of the International Open Data Charter;
- f) a platform for transparent dialogue between the authorities and the public;
- g) incentives for participation, initiative, and involvement of citizens, civil society institutions, business entities;
- h) mechanisms of prevention of corruption and ensuring the minimization of corruption risks;
- i) ecological and digital image of Ukraine and the Ministry of Natural Resources in international negotiations on environmental protection [17].

According to the data of the Unified web portal of the executive authorities of

Ukraine, in 2019, the geo-information system "Open environment" with pilot maps "Water resources", "Atmospheric air" and "EcoFinance" was launched in Ukraine [18]. However, the official nationwide use of this system and its structure are not yet available.

These issues could be resolved with the Law of Ukraine "On the National Geospatial Data Infrastructure" [4], but it regulates only the formation of a single database of State Cadastres of Natural Resources, the legal regulation of which is prescribed in Article 23 of the Law of Ukraine "On Environmental Protection" [1], as well as resource-based regulations.

However, it is based on the above-mentioned law that the website of the Ministry of Environmental Protection and Natural Resources of Ukraine has developed a national online platform containing up-to-date information on the state of the environment – "EcoSystem" [19]. The specified platform, in addition to direct data on natural resources, hosts such electronic services as e-Vidkhody; e-OVD; e-Kontrol; e-CEO; e-Pestycydy; e-Dovkillia, etc. Therewith, the e-Dovkillia electronic service contains only atmospheric air monitoring data and does not include information that should be considered in the nationwide system "Open Environment", namely the characteristics of the impact of each enterprise on natural resources (chemical, physical, biological factors, and their features), obtaining environmental permits and paying environmental payments, etc.

Thus, it turns out that the information contained in the "EcoSystem" database, albeit

broadier than the information on the cadastral resources, still does not include the necessary information about the specifics of environmental pollution by various industries, transport, and agriculture.

Conclusions

Based on the above, it can be argued that Ukraine needs to create a single national environmental accounting information database that will prevent duplication of environmental information, promote its reliability, fast round-the-clock access to it, and reduce the costs of creating, storing, and protecting data. Furthermore, it will improve the state regulation and management in all areas of activity. Social benefits are also evident, which will improve the types of environmental monitoring, as well as contribute to more effective prevention and elimination of the consequences of emergencies.

To create a single national ecological and accounting information database, it is necessary to bring the information databases "Open Environment" and "EcoSystem" into compliance, specifically by expanding the provisions of the Law of Ukraine "On National Infrastructure of Geospatial Data" or by properly finalizing the requirements established in the Order of the Cabinet of Ministers of Ukraine No. 825 dated 7 November 2018, considering the obligations defined in the Regulation (EU) No. 691/2011 of the European Parliament and of the Council of 6

July 2011 on European environmental economic accounts and other documents of the international and European levels.

The openness and completeness of the environmental accounting system is also required, which will contribute, firstly, to the possibility of obtaining environmental information for every citizen, secondly, to the effective protection of the rights and legitimate interests of the owners of natural resources and nature users, and thirdly, to the determination of the effectiveness of management activities in the field of rational nature management, environmental protection, and ensuring environmental safety locally and nationally.

The introduction of a unified national ecological accounting information database also requires the accumulation of issues of its functioning in a special regulation through the definition of types, forms, and methods of environmental accounting, powers of state executive authorities and local self-government, rights and obligations of economic entities in this area, a single methodological approach to keeping environmental records by all subjects, legal responsibility in the defined area and other issues.

The provisions of Articles 23 and 24 of the Law of Ukraine "On Environmental Protection" are also subject to transformation by combining them and expanding their content, including all types of environmental accounting.

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Правові проблеми цифровізації даних екологічного обліку

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Анотація

У статті піднято питання про потребу введення в юридичний обіг терміну «екологічний облік», який в економічних науках існує з 70-х років ХХ століття, а в еколого-правовій науці – під назвою «державний облік в галузі навколишнього природного середовища». Що стосується вітчизняного законодавства, то в ньому відсутня об'єднуюча для багатьох видів кадастрів, реєстрів, реєстрів, звітів та ін. відомостей екологічного характеру назва. Встановлено, що в системі вітчизняного законодавства правовому регулюванню, в рамках окресленої тематики, підлягають кадастри природних ресурсів, облік шкідливих для навколишнього природного середовища об'єктів, облік шкідливих для навколишнього природного середовища речовин, а також фактори шкідливого впливу на навколишнє природне середовище (хімічні, фізичні, біологічні). Нажаль, багато з таких облікових даних є закритими, неповними або взагалі відсутні. В той-же час, на міжнародному та європейському рівні ці процеси стрімко розвиваються і сьогодні вже відзначається потреба у розширенні таких даних, шляхом включення у відповідні облікові ресурси інформації і про видані дозволи на використання природних ресурсів, сплату екологічних платежів, штрафів, виготовлення екологічно безпечної продукції і т. ін. На підставі цього висувається пропозиція про потребу систематизації вітчизняного законодавства про екологічний облік, шляхом розробки і прийняття спеціального нормативно-правового акту, який би відповідав міжнародним та європейським вимогам у цій сфері. Виноситься також пропозиція щодо потреби у трансформації положень статей 23 та 24 Закону України «Про охорону навколишнього природного середовища» шляхом їх об'єднання та розширення змісту, включенням усіх видів екологічного обліку. З'ясовано, що Україна вже розпочала процеси адаптації законодавства з цього питання, зокрема, шляхом встановлення вимог цифровізації усіх екологічних даних, тобто створення єдиної екологічної електронної платформи, яка сьогодні знаходиться лише на початку свого формування

Ключові слова: екологічний облік, кадастри, реєстри, реєстри, цифровізація, систематизація законодавства



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Problems of legal forms of management in the agricultural sector

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The subject of this paper was the analysis of individual issues of legal forms of management in the agricultural sector. The purpose of this study was to identify and characterize the main trends in the development of legal forms, analyse the problems of legal forms of agricultural production and formulate proposals for their solution. During the study, the main trends in the development of legal forms of Ukraine in the aspect of business deregulation and the opening of the agricultural land market were identified. The role and significance, types, legislative, and doctrinal approaches to determining the legal form of agricultural production were also covered. Based on the analysis of legal literature, national legislation and the practice of its application, the problems of certain legal forms of agricultural production (farms, collective agricultural enterprises, etc.) were analysed. According to the results of this paper, it was found that the principle of equal forms of ownership and management in agriculture

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is violated in Ukraine. Priority of practical importance is the definition and legislative approval of legal forms of land production because this will contribute to the choice of the form of conducting business in the agricultural sector from categories. The materials of this paper can be of practical value for further researchers, as well as act as an essential resource as a solution to a relevant issue that was presented in the subject of this paper

Keywords: legal forms, business entities, agricultural production, agricultural sector, farms, collective agricultural enterprise

Introduction

Natural resources relations can be defined as a set of complex social relations concerning the use and reproduction of individual natural resources in their inextricable connection with other elements of the environment. Currently, in legal doctrine, apart from the subject of legal regulation of natural resources law, the definition of the object of natural resources legal relations and, specifically, the definition of the legal nature of climate resources and their place in the modern system of natural resources legal relations, causes a lot of discussion. This is explained by the lack of a comprehensive study of the theoretical foundations of natural resources legal relations, the complexity of the subject of legal regulation, and the variety of scientific approaches to understanding the objects of natural resources law.

In the presence of numerous scientific opinions on this phenomenon, the problem of forming a unified approach to understanding the object of natural resources legal relations stays relevant. Since, as fairly noted by V.M. Yermolenko, an object in the structure of legal relations forms internal functional connections that are better amenable to legal regulation, and this undoubtedly contributes to the establishment of legal relations as a separate system [1, p. 11].

In this regard, Yu.O. Vovk once pointed out that the subject of natural resources law is united through the unity and inextricable connection of all natural resources that are objects of legal regulation. At the same time, it is quite multifaceted, as it is expressed in the diversity of the specified relations, caused by different types of natural objects, regarding which social relations exist [2, p. 10].

Scientific articles of such prominent representatives of domestic and foreign legal science as H.V. Anisimova, Yu.O. Vovk, V.M. Yermolenko, B.V. Yerofeiev, M.D. Kazantsev, I.B. Kalinin, I.I. Karakash, O.S. Kolbasov, M.V. Krasnova, V.V. Petrov, Yu.S. Shemshuchenko, and other scientists investigate the objects of natural resources and environmental legal relations, including the legal nature of climate resources. However, many aspects of the raised issues are not fully addressed, which determines the relevance of the specified subject under study.

The purpose of this paper was to investigate the scientific approaches to the characterization of objects of natural resources legal relations, to establish the legal nature of climate resources, and their place in the modern system of natural resources legal relations.

Materials and methods

The experimental theoretical framework of this study included the papers of leading researchers in the field of agrarian economic, civil, and other branches of law, such as M. Ya. Vashchyshyn, O. V. Hafurova, V. M. Yermolenko, T. O. Kovalenko, I. M. Kucherenko, V. V. Nosik, O. O. Pohribnyi, V. I. Semchyk, I. V. Spasybo-Fatieieva, A. M. Stativka, N. I. Tytova, V. Yu. Urkevych, V. I. Fedorovych, M. V. Shulha, V. S. Shcherbyna, V. Z. Yanchuk, and others. Notably, the theory of agrarian law has numerous studies covering the legal analysis of individual legal forms of agricultural production, while there is no complex study of all modern forms of agricultural production. There are practically no studies of the legal status of collective agricultural enterprises, private-leased agricultural enterprises, state-owned agricultural enterprises, associations in agriculture, etc.

During the study, the following methods were used: theoretical (analysis; synthesis; concretization; generalization) and empirical (investigating the practices of educational organizations, researchers, and authors, regulatory and educational and methodological documentation).

The study of the problem was conducted in the following stages:

1. Firstly, there was an introduction to the possibilities of the subject to start development in the agrarian sphere and an introduction to organizational rights as an entrepreneur. The laws of Ukraine and what they prescribe regarding the legal form of agricultural activity were also analysed.

2. Secondly, the legislative definition and doctrinal approaches to the legal form of an entrepreneur were developed, which would allow determining and establishing

the factors of activity of the future form of management.

3. Thirdly, the experimental theoretical work was completed, the obtained theoretical and practical conclusions were clarified, and the results were summarized and systematized.

Results and Discussion

The choice of a particular legal form implies the possibility of freely choosing the form of entrepreneurial activity in the field of agriculture because the legislative lack of a clearly outlined legal form of a business entity creates issues with its state registration or necessitates the adaptation of the status to another legal form, which does not correspond to the valid will of the founders and violates their rights or the rights of the legal entity itself.

The current legislation establishes the determining role of the legal form in the legal status of a business entity. Thus, according to the requirements of Article 90 of the Civil Code of Ukraine (CCU), information about the legal form of a legal entity must contain its name, the corresponding name must be indicated in the constituent documents (Articles 87, 88 of the CCU), i.e., the legal form is part of the name of the legal entity. Similar requirements are prescribed in item 16 of the Law of Ukraine No. 755-IV "On State Registration of Legal Entities, Individual Entrepreneurs, and Public Organizations" dated May 15, 2003 (the Law of Ukraine "On State Registration..."). Upon the state registration of a legal entity, a registration card is filled out, the first column of which must describe the legal form, which is one of the main pieces of information about the legal entity to be entered in the Unified State Register of Legal Entities,

Individual Entrepreneurs, and Public Organizations based on the corresponding law.

A change in the legal form of a legal entity is the termination of a legal entity by transformation (Article 108 of the Civil Code of Ukraine).

In the legislation of Ukraine, there is no unified approach to legal forms of management (production). Along with the term "legal form of business", various regulations, namely the Economic Code of Ukraine, the Civil Code of Ukraine, the Law of Ukraine No. 755-IV "On State Registration of Legal Entities, Individual Entrepreneurs, and Public Organizations" dated May 15, 2003 use such synonymous terms as: "organizational and legal form of a legal entity", "legal form of an enterprise", "organizational forms of entrepreneurship", "organizational forms of non-commercial economic activity", "organizational form of a business entity", "legal form of a business entity", etc.

The definition of the term "legal form of business" is contained in the State Classifier of Ukraine "Classification of Legal Forms of Business" DK 002:2004, approved by the Order of the State Committee of Ukraine on Technical Regulation and Consumer Cooperation No. 97 of May 28, 2004 (State Classifier), according to which, this is a form of economic (specifically, entrepreneurial) activity with a corresponding legal basis that determines the nature of relations between the founders (participants), the regime of property responsibility according to the obligations of the enterprise (organization), the procedure for creation, reorganization, liquidation, management, distribution of received profits, possible sources of financing activities, etc. The object of classification is

the legal forms of legal entities and their separate subdivisions (branches, representative offices), as well as individuals-entrepreneurs who do not have the status of a legal entity.

In the legal literature, there are different approaches to the term "legal form of management". As a rule, the legal form is considered as "a set of interconnected elements (characteristics)", "a set of requirements for a certain type of organization" [3], "a way of internal organization of corporate relations, as well as to a certain extent the external manifestation of connections" [4], "a set of organizational elements established by the legislative norms" [5], "the order of organization and activity of a legal entity" [6], "a certain model based on which its activities will be conducted in the future" [7]. V.M. Yermolenko, researching the specific features of legal forms of private agricultural production, emphasized the combination of two constituent elements: "organizational form" and "legal form" and proposed to define "the organizational and legal form of a private agricultural enterprise as an optimal combination of structural subdivisions formed by unification means of production and human labour within enterprises of a certain type for the production, processing, and sale of self-produced agricultural products (organizational form), established and regulated by the corresponding law and local legal norms (legal form)" [8]. Summarizing the available approaches to the legal form of business, M.R. Avetyisian substantiated that the legal form of management constitutes a legal model of economic activity, the content of which consists of interrelated organizational and property elements [9].

Analysis of the legislative definition and doctrinal approaches to the legal form of a

legal entity suggests that its choice is determined by such factors as the purpose and subject of the future form of business; composition and number of participants, their influence on the activity of the business entity; legal status of the participants, scope of property rights and obligations of the participants; specific features of the legal regime of property (requirements for the minimum size of the authorized capital and the formation of other economic funds, the presence, or absence of restrictions on the alienation of a share in the capital); specific features of land legal relations; system of management bodies; features of taxation, etc.

According to Article 45 of the Economic Code of Ukraine, entrepreneurship in Ukraine is conducted in any legislatively prescribed organizational forms, at the choice of the entrepreneur. According to the Law of Ukraine "On State Registration..." (Part 2, Article 16), the legal form of a legal entity is determined per the classification of legal forms of business, approved by the central body of executive power, which ensures the formation and implementation of national policy in the field of technical regulation.

Among the legal forms of management that are provided for by the state classifier, the following can operate in the agricultural sector: a farm, a private enterprise, a collective enterprise, a state enterprise, business companies, a holding company, an agricultural production cooperative, an agricultural service cooperative, an individual-entrepreneur. Agrarian legislation consolidates in separate laws the special legal status of farms, collective agricultural enterprises and agricultural cooperatives. Other forms of management operate based on general

legislation, which does not consider the specific features of the agricultural sector. Thus, the development of market relations and the country's agricultural potential gave an impetus to the creation of new agricultural formations, which were integrated into holding-type associations in the process of functioning. Modern agricultural holdings operate according to the principles of specialization, concentration, automation, diversification with a closed production cycle [10], but there is no special legislative regulation of their activities. The legal and economic literature proves the need to develop and adopt a special law of Ukraine "On Agricultural Holding Companies (Agricultural Holdings) in Ukraine" [10; 11].

The Law of Ukraine "On Collective Agricultural Enterprise" stipulates the legal status of collective agricultural enterprises, while the State Classifier contains a clause that "the current legislation does not prescribe the creation and state registration of new enterprises and organizations with such legal forms". This contradicts both the norms of the Law of Ukraine "On Collective Agricultural Enterprise" and the norms of the Economic Code of Ukraine and indicates that the principle of equality of ownership and management in agriculture is violated in Ukraine. According to the Preamble of the Law of Ukraine "On Collective Agricultural Enterprise", which was amended in 2012, – the law guarantees the inadmissibility of state interference in the implementation of the economic functions of a collective agricultural enterprise, restriction of its rights and interests by state authorities. The law ensures equal rights of collective agricultural enterprises with state-owned enterprises, farms,

and other business entities. According to Article 31 of the Economic Code of Ukraine, the prohibition of the creation of new enterprises or other organizational forms of business in any sphere of economic activity, as well as the establishment of restrictions on the implementation of certain types of economic activity or the production of certain types of goods to limit competition is recognized as discrimination of economic entities by authorities. Guarantees of the rights of the collective agricultural enterprises (CAE) are consolidated in Articles 47 and 62 of the Economic Code of Ukraine, according to which the state guarantees everyone, regardless of their chosen legal form of entrepreneurial activity, equal rights and equal opportunities for attracting and using material, technical, financial, labour, information, natural, and other resources, and equal responsibilities. Furthermore, Article 63 "Types and organizational forms of enterprises" stipulates that enterprises operating based on collective ownership (collectively owned enterprise) may operate in Ukraine. Although there is no legal ban on the creation of a CAE, the registration and functioning of a legal entity in such a legal form has not been carried out in practice recently. This is explained by a number of conflicts and gaps contained in the Law of Ukraine "On Collective Agricultural Enterprise" (regarding the legal regime of the property of the CAE, the legal regime of land, issues of membership, internal management, etc.)

According to the Law of Ukraine "On Farming" dated June 19, 2003, farming is defined as a form of entrepreneurial activity of citizens who have expressed a desire to produce marketable agricultural products, to carry out their processing and sale

for obtaining profit on land plots provided to them as ownership and/or use, including for rent, for farming, commodity agricultural production, private rural farming, in accordance with the law. The Preamble of the Law emphasizes that this is a progressive form of entrepreneurial activity of citizens in the field of agriculture of Ukraine. As of October 1, 2021, the number of farms in Ukraine was 48,609 (excluding the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol). This is evidenced by the data of the State Statistics Service. It is reported that in 2021, 806 farms were created in Ukraine [12].

In the early 1990s, when the farming movement in Ukraine was being restored, the progressiveness of such a legal form was ensured by providing rural farms with land plots with an area of more than 50 hectares. After the allocation of agricultural lands and the opening of the land market, land relations in farms acquired a new meaning. Therewith, the family nature of farms allows asserting that this legal form stays a priority not only in Ukraine, but also in the world. Ukraine has prepared a draft law on recognizing farms as the basis of the agricultural structure of Ukraine. On November 23, 2018, the Constitutional Court of Ukraine recognized the Draft Law in the case concerning the agrarian system of Ukraine (Opinion No. 4-v/2018) on November 23, 2018 as constitutional, and issued an Opinion in the case based on the constitutional appeal of the Verkhovna Rada of Ukraine regarding the compliance of the draft law on amendments to Article 41 of the Constitution of Ukraine concerning the implementation rights of Ukrainian citizens to

land, preservation of ownership of agricultural land in the hands of Ukrainian citizens and sustainable development of villages based on farms (reg. No. 6236) according to the requirements of Articles 157 and 158 of the Constitution of Ukraine. The declaration on the rights of farmers and other people working in rural areas was approved on December 17, 2018. The UN General Assembly has declared the next ten years the decade of family farming in the world. The right to land is recognized as the main right of the peasants as a fundamental human right that provides means of livelihood and serves as the basis for the exercise of all other rights of the peasants, and its observance is guaranteed by the state. Ukraine voted at the UN General Assembly for this declaration but has not yet ratified it [13].

The presence of numerous court cases, including the legal opinions of the Supreme Court regarding farming as a separate legal form, indicates the need to improve the legislation on farms. Thus, by the Resolution of the Cassation Commercial Court of the Supreme Court of August 8, 2018 in case No. 911/3215/17 [14], it was determined that a farm according to its legal form is neither a business partnership nor an institution nor a production cooperative, but created as a legal entity in the form of a farm as prescribed by the Law of Ukraine "On Farming". Since the Law of Ukraine "On Farming" contains numerous gaps regarding the legal basis of membership, internal management, property and land relations, termination of farming, etc., the Supreme Court formulated legal opinions on the specified issues in the following resolutions: Resolution of the Cassation Commercial Court of

the Supreme Court of Ukraine dated March 7, 2018 in case No. 911/436/17 [15]; Resolution of the Grand Chamber of the Supreme Court of Ukraine dated February 18, 2020 in case No. 918/335/17 [16]; Resolution of the Grand Chamber of the Supreme Court of Ukraine dated June 23, 2020 in case No. 922/989/ [17]; Resolution of the Grand Chamber of the Supreme Court of Ukraine dated November 20, 2019 in case No. 368/54/17 [18]; Resolution of the Cassation Civil Court of the Supreme Court dated March 18, 2020 in case No. 390/43/18-ц [19] etc.

Conclusions

Thus, based on the conducted study, the following conclusions can be drawn. A clear definition and legislative consolidation of legal forms of agricultural production is of great practical importance, since it will contribute to the free choice of the form of implementation of entrepreneurial activity in the agricultural sector. The development of agricultural legal relations in the sphere of legal forms indicates the multitude of business entities in the agricultural sector and the discrepancy between the legislation on legal forms of agricultural production and modern realities. The legal literature and legislation do not have a unified approach to the concept of the legal form of management. Types of legal forms are consolidated in the sub-legislative act of the regulation, which contradicts the norms of agricultural legislation. The imperfection of agricultural legislation on legal forms leads to an increase in the role of acts of judicial authorities in regulating agricultural legal relations concerning legal forms of agricultural production.

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Проблеми організаційно-правових форм господарювання в аграрній сфері

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Анотація

Тематика дослідження полягала в аналізах окремих проблем організаційно-правових форм господарювання в аграрній сфері. Метою дослідження є виокремлення та характеристика основних тенденцій розвитку організаційно-правових форм, аналіз проблем організаційно-правових форм ведення аграрного виробництва та формулювання пропозицій щодо їх вирішення. В ході проведення дослідження було визначено основні тенденції розвитку організаційно-правових форм України в аспекті дерегуляції підприємницької діяльності та відкриття ринку земель сільськогосподарського призначення. Також було розкрито роль та значення, види, законодавчі та доктринальні підходи до визначення організаційно-правової форми аграрного виробництва. На підставі аналізу юридичної літератури, національного законодавства та практики його застосування проаналізовано проблеми окремих організаційно-правових форм ведення аграрного виробництва (фермерських господарств, колективних сільськогосподарських підприємств та ін.). Згідно з результатами статті, було виявлено, що в Україні порушується принцип рівності форм власності та господарювання у сільському господарстві. Пріоритетне практичне значення має визначення та затвердження на законодавчому рівні організаційно-правових форм справи земельного виробництва, адже це посприє вибору з категорій форми проведення підприємницької діяльності у аграрній сфері. Матеріали статті можуть становити практичну цінність для подальших дослідників, а також виступати важливим ресурсом в якості вирішення актуальної проблеми, яка була представлена в тематиці статті

Ключові слова: природоресурсне право, природоресурсні правовідносини, природні ресурси, кліматичні ресурси, клімат



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Estimation of the suitability of land for organic agricultural production: Certain aspects of legal support

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The idea of organic production (agriculture) is to completely abandon the use of genetically modified organisms (GMOs), antibiotics, pesticides, and mineral fertilizers. This increases the natural biological activity in the soil, restoring the balance of nutrients, enhancing the regenerative properties, normalizing the work of living organisms, humus growth, and results in an increase in crop yields. The result of organic production is environmentally friendly products that are free of GMOs and chemical elements that are not inherent in food products. The idea of organic farming is popular in many countries around the world, including Europe. In this regard, this article is aimed at investigating the suitability of land for organic agricultural production. This paper also has to justify the already constructed scientific provisions and provide recommendations for modernizing legislation in this area. The leading method for researching this problem addresses the gaps in the laws "On the Production and Circulation of Organic Agricultural Products and Raw Materials", "On the Protection of Lands", in the draft "Procedure

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for estimating the suitability of land (soils) and establishing zones for the production of organic products and raw materials”, and issues related to legal editing and supplementing requirements regarding land for organic production. This paper analyses the current state of legal support for estimating the suitability of land for organic agricultural production. It was found that in contrast to the previous legislation in the field of organic production, circulation, and labelling of organic products, the current Law of Ukraine No. 2496-VIII “On Fundamental Principles and Requirements for Organic Production, Circulation, and Labelling of Organic Products” dated 10.07.2018 does not prescribe an estimation of the suitability of agricultural land plots to produce organic goods. There are no requirements for such an estimation in the sub-legislation governing this sphere of public relations. As a result, the first step to regulating the estimation of agricultural land for organic production is to conduct agrochemical certification of land to be used for organic production. This element is a fundamental way to figure out the soil quality indicators. It is proposed to amend Part 5 of Art. 37 of the Law of Ukraine “On Land Protection”; Clause 3 of the Procedure for Certification of Organic Production and/or Circulation of Organic Products, approved by Resolution No. 1032 of the Cabinet of Ministers of Ukraine dated October 21, 2020; clauses 1.5 and 1.6 of the Procedure for maintaining the agrochemical passport of the field, land plot, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 536 dated 11.10.2011. The introduced innovations will allow objectively estimating the qualitative state of such lands and will serve as a guarantee for organic crop production

Keywords: soil, land plot, agricultural land, organic products, organic agricultural production, legal support, agriculture, soil quality

Introduction

Organic production in Ukraine is becoming increasingly popular as a fairly promising and profitable area of agricultural activity. Currently, there is a steady trend towards increasing the area of land used in this sector. According to the latest published data (as of 2019), this is 467,980 hectares, which is 1.1% of the total area of agricultural land in Ukraine [1]. For objective reasons, the use of land as the main means of organic crop production and the spatial base in organic animal husbandry is an integral condition for organic production. Moreover, to

obtain organic products that would meet their quality and safety requirements, such lands must have certain qualitative characteristics. However, despite the presence in Ukraine of a large body of legislation that governs production relations, circulation, and labelling of organic products (and this legislation generally meets international standards, which researchers substantiated in their studies [2]), there are a number of yet unresolved issues that concern legal consolidation of requirements concerning land for organic production, the

procedure for determining their quality characteristics, etc. This gap can be filled through the improvement of regulatory prescriptions, the basis of which should be the results of scientific research, which determines the relevance of this paper.

The issue of statutory regulation of confirming the qualitative characteristics of land for organic agricultural production has repeatedly attracted the attention of lawyers and has been INVESTIGATED by such scientists as V.I. Andreitsev, O.V. Hafurova, T.H.Kovalchuk, P.F. Kulynych, V.Yu. Urkevych, R.A. Tsyliuryk, M.V. Shulha, and others.

The purpose of this paper was to investigate the current state of legal support for estimating the suitability of land for organic agricultural production, analyse the current scientific opinions, and develop proposals for improving legislation in this area.

Results and Discussion

The current Law of Ukraine No. 2496-VIII "On the Fundamental Principles and Requirements for Organic Production, Circulation, and Labelling of Organic Products" dated 10.07.2018 does not prescribe the estimation of the suitability of agricultural land to produce the organic products, being limited only to establishing the duration of the transition period in relation to land plots for organic crop production (Article 25). There is also no regulation of this issue in the Procedure (detailed guidelines) for organic production and turnover of organic products, approved by Resolution of the Cabinet of Ministers of Ukraine No. 970 of 23.10.2019. As the required information

about the lands designated for activities to be specified by the business entity that intends to switch to organic production and/or engage in the circulation of organic products, the Procedure for Certification of Organic Production and/or Circulation of Organic Products, approved by the Resolution No. 1032 of the Cabinet of Ministers of Ukraine dated October 21, 2020 includes only the land area and location.

Instead, Art. 23 of the currently invalid Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" prescribed the obligatory estimation of the suitability of land (soil) for organic products and raw materials, which should be performed by the central body of the executive power, which implements the national policy on the state supervision (control) concerning environmental and land protection [3].

The Procedure for Estimating the Suitability of Land (Soils) for Organic Products was to be approved by the Cabinet of Ministers of Ukraine. However, as V.Y. Urkevych correctly noted, despite the urgent need to develop and approve such a document as the basis for recognizing the corresponding agricultural production as organic, it was never adopted, staying at the draft level [4]. Additionally, back in 2014, together with the above-mentioned Procedure, "Criteria for the quality of lands (soils), their suitability for organic products and raw materials, suitability for specific crops" [5] were drafted, which were also not adopted.

According to T.H. Kovalchuk [6], and the author of the present paper agrees with this

opinion, the factual absence of legal regulation concerning the estimation of suitability of agricultural land plots for organic products of plant origin, which in its essence should act as a proper guarantee for the production of such goods, negates the guarantee itself.

In the scientific literature, various proposals have been put forward to solve this issue: the provision of a corresponding article in Chapter 5 of the Land Code of Ukraine, which defines the legal regime of agricultural land [7]; the inclusion of a separate section called “Organic lands” in the Land Code of Ukraine [8]; the implementation of mandatory certification of such lands through a system of certificate organizations to ensure that the state of organic land meets the criteria to produce organic and environmentally safe products, etc. [9].

Within the framework of the study of the legal regime of land used for organic farming, in addition to indicators of soil and plant quality, M.V. Shulha offered to base the estimation of the suitability of land for organic agricultural production on the remoteness of land plots from sources of pollution, i.e., industrial enterprises, objects that can pollute the environment with any dangerous substances, highways, etc.; the content of pollutants in the soil [10]. All these criteria were considered in the mentioned draft Procedure for estimating the suitability of land (soils) and establishing zones to produce organic products and raw materials (item 4 of the draft) [5]. Furthermore, M.V. Shulha noted that the basis for estimating the suitability of land for this purpose should be the “data of agrochemical

certification of agricultural land, since its task is precisely to determine the indicators of the quality condition of the soil, its changes over the economic activity, as well as conditions for the rational use of organic fertilizers, conditions for protection from pollution and restoration of soil fertility” [10]. Again, item 5 of the draft Procedure [5] prescribed the use of data from the last round of agrochemical certification of land and other soil cover surveys conducted over the past two years to estimate the suitability of land. And the list of documents that applicants had to submit for an opinion on the suitability of land for organic products and raw materials included an agrochemical passport of the field, land plot (paragraph item of the draft Procedure [5]). This aspect should be covered in more detail.

Currently, agrochemical certification of land according to Article 1 of the Law of Ukraine No. 963-IV “On State Control Over the Use and Protection of Land” dated 19.06.2003 involves “mandatory agrochemical survey of soils with the issuance of an agrochemical passport of the field, land plot, which records the initial and current levels of providing nutrients to soils, the levels of their contamination with toxic substances and radionuclides”. According to the Law of Ukraine No. 962-IV “On Land Protection” dated June 19, 2003, the data of the agrochemical passport of the land plot are considered for economic stimulation of the implementation of measures regarding the use and protection of land and increasing soil fertility (Art. 27); establishing indicators of the intensity of agricultural

land use (Art. 34); transfer of ownership or provision for use, including for rent, of a plot of land, change of the owner of a plot of land or land user, a monetary assessment of land, determining the amount of payment for land, control over the state of soil fertility (Art. 37); soil monitoring on agricultural lands (Art. 54). According to the latest legal norm, as well as item 1.5. of the Procedure for Maintaining an Agrochemical Passport of a Field, Land Plot, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 536 dated 11.10.2011, agrochemical certification of arable land is conducted every 5 years, hayfields, pastures and perennial plantings – every 5-10 years.

Evidently, the current legislation does not contain special instructions on the mandatory agrochemical certification as a condition for recognizing land as suitable for use in organic agricultural production. Furthermore, the author of this paper agrees with O.V. Hafurova that “currently we can observe quite negative trends in the Ukrainian land legislation, which are aimed at abolishing agrochemical certification of land”. Hafurova points out potential changes in land legislation concerning the abolition of the obligation to develop an agrochemical passport when transferring a land plot to ownership and use [11]. The changes did take place – the Law of Ukraine No. 1423-IX “On Amendments to Certain Legislative Acts of Ukraine on Improving the Management System and Deregulation in the Field of Land Relations” dated 28.04.2021 amended the Article 37 of the Law of Ukraine “On Land Protection” with part seven of the corresponding content.

Conclusions

The author of this paper, fully sharing the above positions of scientists regarding the need for agrochemical certification of agricultural land as one of the basic measures for determining the qualitative composition of soils, proposes as one of the steps to regulate the estimation of agricultural land for organic production, to establish the obligation to conduct agrochemical certification of land on which organic crop production activities are planned. Therewith, to operate with relevant data, the author proposes to determine the terms of agrochemical certification of such lands no later than one year before the submission of an application for certification of organic production. For this, it proposed to amend Part 5 of Art. 37 of the Law of Ukraine “On Land Protection”; Clause 3 of the Procedure for Certification of Organic Production and/or Circulation of Organic Products, approved by Resolution No. 1032 of the Cabinet of Ministers of Ukraine dated October 21, 2020; clauses 1.5 and 1.6 of the Procedure for maintaining the agrochemical passport of the field, land plot, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 536 dated 11.10.2011. This allows objectively estimating the quality of such lands and will serve as a guarantee of the production of organic plant-based goods.

Further scientific research in the field under study should focus on the development and regulatory consolidation of criteria for the quality of land (soils) suitable for growing individual agricultural crops in organic production of plant-based goods.

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Оцінка придатності земель для органічного сільськогосподарського виробництва: окремі аспекти правового забезпечення

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Анотація

Ідея органічного виробництва (землеробства) полягає у повній відмові від застосування генетично модифікованих організмів (ГМО), антибіотиків, отрутохімікатів та мінеральних добрив. Це призводить до підвищення природної біологічної активності у ґрунті, відновлення балансу поживних речовин, підсилюються відновлювальні властивості, нормалізується робота живих організмів, відбувається приріст гумусу, і як результат – збільшення урожайності сільськогосподарських культур. Результатом органічного виробництва є екологічна безпечна продукція, вільна від ГМО та невластивих продуктам харчування хімічних елементів. Ідея органічного землеробства є популярною у багатьох країнах світу, в тому числі у Європі. У зв'язку з цим дана стаття спрямована дослідження придатності земель для проведення органічного сільськогосподарського виробництва. А також тема потребує розкриття обґрунтування вже побудованих наукових положень та створення рекомендацій щодо модернізування законодавства у даній галузі. Провідним методом для дослідження цієї проблеми є підхід у піднятті до уваги прогалин у законів «Про виробництво та обіг органічної сільськогосподарської продукції та сировини», «Про охорону земель», в проєкті «Порядку оцінки придатності земель (ґрунтів) та встановлення зон виробництва органічної продукції та сировини» та питань, які стосуються правового редагування та доповнення вимог щодо земель для органічного виробництва. У статті проведено аналіз сучасного стану правового забезпечення оцінки придатності земель для ведення органічного сільськогосподарського виробництва. Визначено, що на відміну від попереднього законодавства у сфері органічного виробництва, обігу та маркування органічної продукції, чинний Закон України «Про основні принципи та вимоги до органічного виробництва, обігу та маркування органічної продукції» від 10.07.2018 р. № 2496-VIII не передбачає оцінки придатності земельних ділянок сільськогосподарського призначення для виробництва органічної продукції. Відсутні вимоги до такої оцінки й у підзаконних нормативних актах, що регулюють цю сферу суспільних відносин. У результаті, першим кроком до врегулювання процесу оцінки земель сільськогосподарського призначення для органічного

виробництва необхідно обов'язково проводити агрохімічну паспортизацію земель, які будуть використовуватись для діяльності органічного виробництва. Даний елемент є фундаментальним способом для з'ясування показників добірності ґрунтів. Запропоновано внести доповнення до: ч. 5 ст. 37 Закону України «Про охорону земель»; п. 3 Порядку сертифікації органічного виробництва та/або обігу органічної продукції, затвердженого постановою Кабінету Міністрів України від 21.10.2020 р. № 1032; п.п. 1.5 та 1.6 Порядку ведення агрохімічного паспорта поля, земельної ділянки, затвердженого наказом Міністерства аграрної політики та продовольства України від 11.10.2011 р. № 536. Винесені нововведення дозволять об'єктивно оцінювати якісний стан таких земель та слугуватимуть гарантією виробництва органічної продукції рослинництва

Ключові слова: ґрунт, земельна ділянка, землі сільськогосподарського призначення, органічна продукція, органічне сільськогосподарське виробництво, правове забезпечення, сільське господарство, якість ґрунтів



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International legal guarantees for the exercise of the human and civil right to environmental information

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This paper raises an urgent issue of securing guarantees for the exercise of the right to access information on the state of the environment in international legal documents. Accordingly, the purpose of this paper is aimed at coverage and analysis of international legal norms that establish guarantees for the exercise of human and civil rights to environmental information, as well as access to information about the activities of state authorities. The method for investigating this issue is to analyse the current national legislation, which suggests that international legal norms meet their conditions in national regulations. The presentation of the general material includes the normative content of international legal documents that directly or indirectly relate to the implementation of the right of human and citizen to information and establish guarantees for the exercise of the right to environmental information, as well as the importance of media in covering the activities of state authorities. This paper analyses the state of exercise of such international norms in national legislation. Certain legal guarantees for the exercise of the right to

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receive environmental information are investigated. Examples of protection of the violated right of access to environmental information are given. To exercise the right to information, it is important not only to have the norms consolidated in the legislation, but also to have a system of guarantees and opportunities for their implementation, which should be provided by public authorities. International legal instruments establish only general approaches to the protection of rights, and their further development and consolidation is undoubtedly the responsibility of national bodies. However, over time, approaches to understanding environmental information, expanding its list, and subjects who have the right to receive it change, and therefore work in this area should continue for a wider opportunity to exercise the right of access to such information. The materials of this paper are of practical value for persons who were denied or made difficult in any form to obtain the desired information, having the right to do so per Article 50 of the Constitution of Ukraine, which stipulates that every person is guaranteed the right to free access to information about the state of the environment

Keywords: environmental law, right of access to environmental information, guarantees of the right of access to environmental information, international legal guarantees of the right of access to environmental information

Introduction

With the development of public relations since the mid-20th century, a special role has been given to environmental human rights in the international arena, which include the right to access information about the state of the environment. Numerous international documents stipulate that information about the state of the natural environment, events, and phenomena related to it is open and not subject to restrictions. However, in practice, there is sometimes resistance to providing such information to the interested public. To protect the interests of each individual, current and future generations who want to live in a safe environment, international legal documents provide numerous guarantees that allow them to effectively protect their rights at the stage of collecting information about the state of the environment,

since access to information is not an end in itself, but the latter is a necessary condition for high-quality public involvement in environmental decision-making and protection of violated rights.

The purpose of this study is to analyse the system of guarantees in the implementation of the right to access environmental information, which are consolidated in international documents, and the state of implementation of these norms in Ukrainian legislation.

Results and Discussion

Everyone has inalienable rights that are prescribed in international and national legislation. Thus, on December 10, 1948, the General Assembly of the United Nations adopted the first international legal document that

proclaimed basic human rights and freedoms – the Universal Declaration of Human Rights.

The provisions of the Declaration received their further development in many international documents: the Convention on the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on Access to Information, Public Participation in the Decision-Making Process and Access to Justice on Issues Related to the Environment, etc. These documents are mandatory for the countries that have ratified them, including Ukraine, and are part of the national legislation.

The norms prescribed in them have found their further consolidation in Ukrainian legislation, specifically in the Constitution of Ukraine, the provisions of which are rules of direct action. This means that a person whose rights or interests are violated can file a claim with the court, referring only to the relevant provisions of the Constitution of Ukraine, while the absence of special legislation that would govern legal relations between the parties in detail is not an obstacle to the protection of violated rights.

At the same time, the consolidation of personal rights and freedoms in legislation is an important, but not the only sign of legal order in society.

To guarantee the opportunity to enjoy all human and civil rights and freedoms, the state must ensure the implementation of constitutional rights and freedoms, create a suitable mechanism for guaranteeing them [1]. The main element of this system is guarantees, which constitute numerous

particular means by which citizens can effectively exercise their rights and freedoms, protect them and secure them from offences. Their main purpose is to provide everyone with equal legal opportunities to acquire, exercise, secure, and protect subjective rights and freedoms.

The role and significance of guarantees of individual rights and freedoms is determined by the fact that they are essential factors in the economic, political, legal, cultural, and other spheres of society, create conditions for the real possibility of exercising individual rights and freedoms [2].

Based on the interpretation of this word, to guarantee means to give an assurance in something, to protect [3].

From a legal standpoint, scientists P.M. Rabinovych and M.I. Khavroniuk define guarantees of human and civil rights and freedoms as conditions and means, principles and norms that ensure the exercise, security, and protection of these rights, are the key to fulfilment of duties assigned to the state and other subjects of legal relations to exercise the constitutional rights and freedoms of human and citizen [4].

A.M. Kolodii and A.Yu. Oliinyk indicate that the guarantees of fundamental rights and freedoms can be characterized as a system of norms-principles, conditions and means that collectively ensure the exercise of constitutional rights, freedoms, and legitimate interests of a person and a citizen [5].

Considering the broad concept of this category, there are different approaches to classifying guarantees of human rights and freedoms.

The most common opinion on the classification and content of guarantees is the opinion of M.V. Vitruk, according to which all guarantees of rights and freedoms are divided into general social (general) and legal (special). General guarantees are objective material and spiritual conditions for the exercise of fundamental human rights and legitimate interests. These include economic, political, social, and spiritual guarantees [6].

Similar opinion is shared by P.N. Rabinovych, who divides guarantees of rights and freedoms into general social and special ones. To the general social guarantees, he refers economic, political, spiritual, and ideological ones. Special guarantees are legal norms established by the state that are aimed at ensuring human rights, as well as practical activities on the application of these norms and law enforcement acts of the corresponding authorities [7].

This position is also defended by V.F. Pohorilko, who divides guarantees into two main groups: general social and legal. In turn, among the general social guarantees, the scientist distinguishes between political, economic, social, and spiritual (cultural) guarantees, i.e., according to the social systems – political, economic, social, cultural (spiritual), which have developed and function in society [8].

This study considered only legal guarantees of human rights and freedoms to access environmental information.

As for the general definition of legal guarantees, scientists, namely P.O. Nedbailo, mentions the following – means provided by law, which directly ensure the lawful behaviour of subjects of social relations [9].

A.V. Mitskevych calls legal guarantees of citizens' rights the procedure for the activities of state bodies and institutions, public organizations, aimed at preventing and stopping encroachments on citizens' rights, restoring these rights and bringing those responsible for their violation to justice [10]. M.V. Vitruk understands legal guarantees as a set of conditions and means that ensure the factual implementation and full protection of the rights and freedoms of all workers and every person [6]. V.S. Nersesiants defines legal guarantees as a system of interrelated forms and means (normative, institutional, and procedural) that ensure proper recognition, protection, and implementation of certain rights corresponding to their obligations [11].

Nationally, the right to access environmental information is regulated and guaranteed by constitutional, administrative, environmental, and other information legislation.

Thus, according to Article 34 of the Constitution of Ukraine, everyone is entitled to freely collect, store, use, and disseminate information in spoken, written, or in any other form of their choice.

As for environmental information, Article 50 of the Constitution of Ukraine prescribes that everyone is guaranteed the right of free access to information on the state of the environment, on the quality of food and household items, as well as the right to distribute it. Such information cannot be classified by anyone.

At the same time, in terms of the protection of the violated right to free access to environmental information, the norms of the Constitution of Ukraine do not contain

a special procedure for their protection. In this case, Article 50 of the Constitution of Ukraine makes provision for general ways to protect violated and disputed rights, such as judicial protection, an appeal to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, a constitutional complaint, an appeal to the corresponding international judicial institutions or to the corresponding bodies of international organizations of which Ukraine is a member or participant, and the use of other means of protecting rights that are not prohibited by law.

Therewith, it should be considered that international treaties, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine (Article 9 of the Constitution of Ukraine), and therefore the norms and guarantees prescribed in them provide an opportunity to enrich the content of the national legislation of Ukraine with norms and principles that are unified and consolidated in international acts and reflect the achievements of world civilization in international law.

The main international legal acts that concern the implementation of the right of a person and a citizen to environmental information, guarantees of its provision should include the following: Universal Declaration of Human Rights; Convention on the Protection of Human Rights and Fundamental Freedoms; International Covenant on Civil and Political Rights; Okinawa Charter of the Global Information Society; World Charter of Nature [12]; Stockholm Declaration; Declaration of Rio de Janeiro [13] on environment and development; Aarhus Convention

on access to information, public involvement, and decision-making or access to justice in environmental matters [14].

Freedom of expression was given the highest status in the Universal Declaration of Human Rights by consolidating it in the preamble as one of the four inalienable freedoms: "People shall have freedom of speech and belief and shall be free from fear and deprivation" [15]. Freedom of expression is consolidated in the International Covenant on Civil and Political Rights as one of the fundamental democratic values necessary for the peaceful coexistence of nations. Everyone is entitled to freedom of belief and expression, which includes the freedom to hold one's personal beliefs without hindrance and the freedom to seek, receive, and impart information and ideas by any means and regardless of national boundaries.

The preamble of the central international regulatory document in the field of protection of environmental human rights – the Aarhus Convention, establishes that to ensure the opportunity to defend the right to live in an environment favourable for one's health and well-being, to fulfil this duty, citizens must have access to information, the right to take part in the decision-making process and access to justice on issues related to the environment.

According to the Aarhus Convention, the system of guarantees for access to environmental information covers the guarantee of the right to information; ensuring that state bodies have up-to-date environmental information at their disposal; its openness and accessibility; freedom of information

exchange; protection of a person from prosecution, oppression, responsibility for the exercise of the rights prescribed by the Convention; recognition of associations, organizations, or groups that contribute to environmental protection, guaranteeing free and open discussion of socially important issue in the field of ecology; access to justice in the event of non-receipt, wrongful partial or complete rejection, inadequate satisfaction of the request for information; determination of alternative ways of complying with the provisions of this Convention.

As for legal guarantees for the protection of the violated right of access to environmental information, Article 9 of the Convention makes provision for the obligation of member states to prescribe in national legislation such procedures that would allow independent and impartial review of the decision to refuse (full or partial) to provide information, inadequate satisfaction of such an application. Therewith, proceeding from a systematic interpretation of the Convention, a state can make provision for both one and several ways of protection in its national legislation. At the same time, the Convention stipulates that the bodies to review such decisions will have a sufficient level of independence and impartiality to objectively resolve disputes.

Understanding the value of information in its relevance, the Convention prescribes that member states should ensure prompt review of decisions, and access to justice should be free of charge or subject to a minimum fee.

In addition, a separate way to protect the right to information is prescribed by the Convention to appeal decisions in an

administrative procedure, which can be used as a means of pre-trial settlement of a dispute. The possibility of applying other remedies that would be adequate and effective is not excluded.

At the same time, the Convention does not make provision for a special international mechanism to protect violated public rights in the field of environmental rights. The only body that monitors compliance with the provisions of this Convention is the council of the parties, but it does not consider individual disputes.

In this regard, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the legislation of the European Court of Human Rights, the main international controller on these issues, are of immense importance for the development of both freedom of expression and freedom of information. It is the power of judicial coercion that is crucial in the development of both the rule of law and public relations in the field of access to information.

Although the ECHR does not directly make provision for the rights to a safe environment, issues of its protection are increasingly being considered by the European Court of Human Rights.

The decisions of the European Court of Human Rights form a precedent, according to which it is recognized that environmental pollution is the cause of violations of fundamental rights of citizens, such as the right to life, respect for private and family life. The most typical issues of ensuring citizens' access to justice in matters of environmental protection are the non-compliance with the

terms of consideration of cases; considerable legal costs (duty in property lawsuits, payment of expertise and expert services, payment of legal aid); lack of opportunity to obtain qualified legal and expert support; insufficient awareness of judges about legislation on environmental protection (especially international agreements) and on the rights of citizens and non-governmental organizations in this area; “narrow” procedural legal capacity of the public (especially in the context of opportunities for the public to challenge violations of environmental legislation in court and file lawsuits to protect the interests of an unlimited number of persons) [16].

To understand the nature of a democratic society in the field of freedom of information, one of the most important pieces is Article 10 of the ECHR, which holds a guarantee of the protection of freedom of expression and establishes that the right to freedom of expression includes the freedom to hold one’s opinions, receive and disseminate information and ideas without state interference and regardless of borders.

Notably, in the practice of the European Court of Human Rights has no cases that would relate exclusively to the violation of the right to access environmental information by the state because access to information is not an end in itself, but the latter is a necessary condition for high-quality public involvement in decision-making related to the environment and protecting violated rights.

Thus, when considering cases in the field of environmental protection, the court, along with violating Article 10 of the Convention, establishes that states do not comply with

Articles 2 (right to life), 6 (right to a fair trial), 8 (right to respect for private and family life), 13 (right to an effective remedy) and other articles of the ECHR.

Applying Article 10 of the Convention in the context of access to environmental information in the case of *Guerra and Others v. Italy* for the first time, [17] the European Court of Human Rights has indicated that freedom of information essentially prohibits the Government from preventing a person from obtaining information that others wished or could have communicated to the subject concerned. However, this article does not impose a positive obligation on the Government to collect and disseminate information on its own initiative. Considering this, the court concluded that Article 10 was not violated in this case. However, the lack of measures to reduce the level of pollution and the risk of accidents at the factory violated the applicants’ rights to respect for life and physical integrity.

To date, the European Court of Human Rights has also considered several cases against Ukraine related to environmental protection. There are few such decisions – these are the cases *Dubetska and others v. Ukraine* [18], *Hrymkovska v. Ukraine* [19] and *Dzemiuk v. Ukraine* [20]. In the specified cases, violations of Article 8 of the ECHR (rights to respect for private and family life) were established.

Conclusions

Thus, it can be concluded that to exercise the right to information, it is important not only to have the norms consolidated in the

legislation, but also to have a system of guarantees and opportunities for their implementation, which should be provided by public authorities. International legal instruments establish only general approaches to the protection of rights, and their further development and consolidation is undoubtedly the responsibility of national bodies. The analysis of the current national

legislation suggests that in general, international legal norms are reflected in national regulations. However, over time, approaches to understanding environmental information, expanding its list, and subjects who have the right to receive it change, and therefore work in this area should continue for a wider opportunity to exercise the right of access to such information.

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Міжнародно-правові гарантії реалізації права людини і громадянина на екологічну інформацію

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Анотація

У статті піднімається актуальне питання закріплення у міжнародних правових документах гарантій реалізації права на доступ до інформації про стан довкілля. Відповідно до цього, мета даної статті спрямована на розкриття та аналіз міжнародно-правових норм, які встановлюють гарантії реалізації права людини і громадянина на екологічну інформацію, а також на доступ до інформації про діяльність органів державної влади. Методом для дослідження цієї проблеми є аналіз чинного національного законодавства, що дає змогу констатувати, що міжнародно-правові норми відповідають своїм умовам у національних нормативно-правових актах. Виклад загального матеріалу включає до себе нормативний зміст міжнародно-правових документів, що прямо чи опосередковано стосуються реалізації права людини і громадянина на інформацію та які встановлюють гарантії реалізації права на екологічну інформацію, також значення ЗМІ у висвітленні діяльності органів державної влади. Проаналізовано стан імплементації таких міжнародних норм у національне законодавство. Здійснено дослідження окремих правових гарантій реалізації права на отримання екологічної інформації. Наведено приклади захисту порушеного права на доступ до екологічної інформації. Для реалізації права на інформацію важливим є не лише наявність закріплених у законодавстві норм, а й система гарантій і можливостей їх реалізації, яка має забезпечуватися органами публічної влади. Міжнародно-правові документи встановлюють лише загальні підходи до захисту прав, а їх подальший розвиток і закріплення безперечно покладається на національні органи. Однак, з плином часу змінюються підходи до розуміння екологічної інформації, розширення її переліку, суб'єктів, які мають право її отримати, тому робота на даному напрямку має продовжуватися задля ширшої можливості реалізації права доступу до такої інформації. Матеріали статті становлять практичну цінність для осіб, яким було відмовлено, або ускладнено у будь-якій формі отримати бажану інформацію, маючи на це право згідно зі ст. 50 Конституції України де передбачено, що кожній людині гарантується право вільного доступу до інформації про стан навколишнього середовища

Ключові слова: екологічне право, право на доступ до екологічної інформації, гарантії права на доступ до екологічної інформації, міжнародно-правові гарантії права на доступ до екологічної інформації



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Principles of legal regulation of bioenergy use in the European Union

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The relevance of the study is determined by raising and solving the issue of regulation of such a field of energy as bioenergy in the legal field of the European Union. The main purpose of this paper was to investigate the specific features of legal norms for the use of bioenergy in the European Union, to identify the available problems and prospects, possible ways to improve EU legal norms in this area, which are also subject to application in the Ukrainian legal system. The author paid attention to the new provisions that were implemented in connection with the adoption of Directive 2018/2001. The leading methods for studying this problem were the following: functional approach, logical analysis method, synthesis method, deduction method, etc. The impact of these provisions on the energy sector of the European Union and on the environment of its member states in general has also been investigated in sufficient detail. Special attention is paid to the positions of scientists and the recent lawsuit regarding the adoption of Directive

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2018/2001. The paper examines the specific features of the legal regulation of bioenergy in the European Union, analyses the concept of bioenergy and biofuels in Ukrainian and European legislation, and highlights the main provisions of the European Union directives concerning the promotion of the use of energy produced from renewable sources, including biomass. It was found that in the EU, bioenergy is the leading source of renewable energy for heating and cooling (88% of all renewable energy sources), which is 16% of the total European final energy consumption in this sector. Therefore, considering the demand and need for the use of such a resource, the EU legislative framework contains a number of principles and visions for regulating relations in the field of production, circulation, and disposal of waste from biofuels as the main raw material for bioenergy. The fundamental principles in the EU legislation on the use of bioenergy include, firstly, the principle of sustainable production and consumption of biomass, secondly, prevention regarding the reduction of adverse consequences when using this resource, and thirdly, increasing the share of use of alternative energy sources to 75% of final energy consumption by 2050. The materials of this paper are of practical value for scientists and researchers who could conduct their research solving the problem of using bioenergy and give preference to other energy sources

Keywords: bioenergy, sustainability, alternative energy sources, biofuels

Introduction

Today, the issue of reducing the use of conventional energy sources, which include minerals – oil, gas, coal, etc., occupies a major place on the agenda of leading countries around the world. The results of human activity over millennia of thoughtless use of natural resources have led to catastrophic problems and caused extreme damage to the planet, from global warming to damage to the health and lives of people themselves. Consequently, over the past decade, the vector of changing priorities, namely, increasing the share of using alternative energy sources, has been actively discussed. Given that Ukraine is an agrarian state, it is truly relevant to investigate the practices of the European Union regarding the legal regulation of the production and circulation of biofuels as an alternative energy source.

The problems of legal regulation of the use of alternative energy sources and, specifically, bioenergy in the European Union

and in Ukraine were dealt with by such scientists as Ye.V. Shulha, Yu.M. Rud, S.A. Obolenska, T.S. Novak, T.F. Plakhtii, H.F. Koshlak, M.M. Kuzmina, and others.

The purpose of this paper was to investigate the principles of legal regulation of bioenergy in the European Union.

Results and Discussion

The authors of this paper believe that human is the most dangerous creature on the planet. The results of a person's actions leave their mark on everything, and often quite negatively. The famous American neuroendocrinologist, professor of biology, neurology, and neurosurgery at Stanford University, Robert Sapolsky, in his book "Behave: The Biology of Humans at Our Best and Worst", wrote "we act according to a certain strategy. Human behaviour can be different: reprehensible or, on the contrary, amazing, or ambiguous – somewhere in between these two poles. What

happened in the second leading up to this, and what triggered this behaviour? This is the parish of the nervous system" [1]. The scientist once even proposed to abolish the criminal justice system altogether, based on his research and the development of neuroscience in general, or to a lesser extent to reduce the weight of "pseudoscience" in the courtroom and increase that of the real one (this refers to neurobiology).

On the one hand, one can agree with the scientist. However, even neuroscientists are not immune from mistakes. Therewith, it will be quite appropriate to use the results obtained more often in research on the biology of human behaviour in legal science.

Thus, human is still the bearer of both destruction and prosperity, or the balance between these two processes. This is clearly expressed in relation to the use of natural resources, primarily energy. After all, this is almost the only resource on which the further comfortable life of each of us depends. This subject is currently the top one both in Ukraine and in the European Union. Alternative energy sources, renewable energy, green energy, or bioenergy are increasingly being heard in the media. This paper will dwell on the characteristics of the legal basis for the use of the latter in more detail. What is bioenergy? There is no concept of "bioenergy"

in Ukrainian legislation. In the scientific doctrine, this concept is interpreted as the use of biomass energy (organic matter that is formed due to photosynthesis) [2]. Notably, only the concept of biomass is consolidated in the legislation of Ukraine – it is a non-fossil biologically renewable substance of organic origin, capable of biodegradation, in the form of products, waste, and residues of forestry and agriculture (crop and animal husbandry), fisheries and technologically

related industries, as well as a component of industrial or household waste, capable of biodegradation (Article 1 of the law of Ukraine of 14.01.2000 "On Alternative Fuels").

It would seem that the use of biomass energy is a suitable alternative for many agricultural enterprises. However, as of 2021, this practice is not common in Ukraine. Perhaps the secret lies in the state's own interest in supporting such an alternative energy source.

As for the EU, according to statistics, bioenergy is the leading source of renewable energy for heating and cooling (88% of all RES), accounting for 16% of the total European final energy consumption in this sector. For instance, the leaders in the energy use of biomass in Europe are Lithuania (33.6%), Finland (33.5%), Sweden (31.9%), Estonia (26%), Latvia (22.9 %). The largest share of biomass in the total contribution of all renewable energy sources occurs in Estonia (93.1 %), Latvia (87.6 %), Poland (87.3 %), Finland (86.3 %), Hungary (85.7 %) [3].

Today, legal regulation in the specified area is carried out based on Directive (EU) 2018/2001 of the European Parliament and the Council of December 11, 2018 on the promotion of the use of energy produced from renewable sources (EU Directive 2018/2001) and Directive 2009/30/EC of the European Parliament and the Council of April 23, 2009 [4, 5].

Attention should be paid to the fundamental principles of the use of bioenergy, which are prescribed in EU legislation. Firstly, it is the principle of sustainable production and consumption of biomass, secondly, safeguards to reduce adverse consequences when using this resource, thirdly, the goal of increasing the share of use of alternative energy sources to 75% of final energy consumption by 2050 [4]. Therewith, it should

be recalled that biomass is an added alternative source for energy, which on the one hand has its benefits, and on the other it can have adverse consequences if used thoughtlessly.

The authors of this paper would like to pay special attention to the provisions contained in Directive (EU) 2018/2001, according to which biofuel production must be sustainable. First of all, the sustainability criteria do not apply to all types of biofuels, but only to transport biofuels and “bioliquids” that have non-transport energy uses. This principle applies regardless of where the raw materials were grown – inside or outside the EU. This policy aims to create a long-term perspective for investment in sustainable biofuels with a low risk of indirect land-use changes, with the principal purpose of decarbonizing the transport industry. Adherence to the general principle of the share of renewable fuels can provide confidence for investors and contribute to the sustainable development of alternative renewable transport fuels, including advanced ones. Since alternatives from renewable sources may be lacking or economically inefficient for all fuel suppliers, member states should be able to distinguish between fuel suppliers and, if necessary, exempt particular types of suppliers from this obligation. Since trading in transport fuels is not encumbered, fuel suppliers in member states with small amounts of corresponding resources can easily obtain renewable fuels from other sources [4].

In addition, the above-mentioned document sets requirements for reducing greenhouse gas emissions associated with the use of biofuels, restrictions on the cultivation of biomass on certain land categories [4]. For instance, indirect land-use changes occur when the cultivation of crops to produce biofuels, bioliquids, and biomass fuels displaces

conventional crop production for food and feed purposes. The added demand to produce the former increases the pressure on land and can lead to the conversion of agricultural land in areas with high carbon levels, such as forests, wetlands, and peatlands, which will contribute to increased greenhouse gas emissions [4].

The preamble of Directive 2015/1513/EC (no longer valid based on EU Directive 2018/2001) declared that the amount of greenhouse gas emissions associated with indirect land use and the change in land use itself can negate some or all of the savings in greenhouse gas emissions of individual biofuels, bioliquids, or biomass fuels [6]. Although there are risks associated with indirect land-use changes, studies have shown that their scale depends on numerous factors, namely on the types of raw materials used for fuel production, the level and added demand for raw materials caused by the usage of biofuels, bioliquids, and biomass fuels (item 5).

Ukrainian scientists also express their concerns about the volume of biomass use. Among the disadvantages of biomass, H.V. Koshlak and A.M. Pavlenko name large fluctuations in the chemical composition (nitrogen, chlorine, alkalis) and water content, the tendency to form resins and the low melting point of ash [7], which can adversely affect the environment and the quality of human life.

Returning to the provisions of the EU Directive 2018/2001, one should also mention the environmental requirements established for the cultivation of agricultural raw materials processed into biofuels, social obligations (ensuring food security during the production of biofuels, etc.) [4]. Furthermore, the EU Directive 2018/2001 obliges to implement measures aimed at ensuring the provision of reliable information on compliance with

sustainability requirements for biofuels. According to S. Kandula, there are three ways to demonstrate compliance with the criteria: a) recognition of national voluntary schemes that cover one or more sustainability requirements at the EU level; b) bilateral and multilateral agreements with third countries, and c) national confirmation schemes [8].

Conclusions

Thus, based on the conducted study, the following conclusions can be drawn. A clear definition and legislative consolidation of legal forms of agricultural production is of great practical importance, since it will contribute to the free choice of the form of implementation of entrepreneurial activity in

the agricultural sector. The development of agricultural legal relations in the sphere of legal forms indicates the multitude of business entities in the agricultural sector and the discrepancy between the legislation on legal forms of agricultural production and modern realities. The legal literature and legislation do not have a unified approach to the concept of the legal form of management. Types of legal forms are consolidated in the sub-legislative act of the regulation, which contradicts the norms of agricultural legislation. The imperfection of agricultural legislation on legal forms leads to an increase in the role of acts of judicial authorities in regulating agricultural legal relations concerning legal forms of agricultural production.

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Принципи правового регулювання використання біоенергетики в Європейському Союзі

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Анотація

Актуальність дослідження зумовлена підняттям та вирішенням питання регулювання такої галузі енергетики, як біоенергетика, у правовому полі Європейського Союзу. Головною метою даної статті є дослідження особливостей правових норм використання біоенергетики у Європейському Союзі, визначити існуючі проблеми та перспективи, можливі шляхи вдосконалення юридичних норм ЄС у цій галузі, які також підлягатимуть застосуванню і в українській правовій системі. Зокрема, автор приділив увагу новим положенням, які були впроваджені у зв'язку із прийняттям Директиви 2018/2001. Провідними способами для дослідження цієї проблеми є наступні методи: функціональний підхід, метод логічного аналізу, метод синтезу, метод дедукції та ін. Також досить детально було досліджено вплив цих положень на енергетичну галузь Європейського Союзу та в цілому на навколишнє середовище його держав-членів. Особливу увагу приділено позиціям науковців та нещодавньому судовому позову щодо прийняття Директиви 2018/2001. У статті досліджено особливості правового регулювання біоенергетики в Європейському Союзі, проаналізовано поняття біоенергетики та біопалива в українському та європейському законодавстві та виокремлені основні положення Директив Європейського Союзу, що стосуються заохочення до використання енергії, виробленої з відновлюваних джерел, в тому числі, з біомаси. Зокрема, встановлено, що у ЄС біоенергетика виступає провідним джерелом відновлюваної енергії для опалення та охолодження (88 % всіх ВДЕ), що становить 16 % загального європейського кінцевого споживання енергії в цьому секторі. Відтак, враховуючи попит та необхідність у використанні такого ресурсу, законодавче підґрунтя ЄС містить ряд принципів та візії, щодо врегулювання відносин у сфері виготовлення, обігу та знешкодження відходів від біопалива, як основної сировини для біоенергетики. Зокрема, до основоположних засад в законодавстві ЄС щодо використання біоенергетики відносяться по-перше, принцип сталого виробництва та споживання біомаси, по-друге, запобігання щодо скорочення негативних наслідків при використанні цього ресурсу, по-третє, збільшення частки використання альтернативних джерел енергії до 75 % кінцевого споживання енергії до 2050 року. Матеріали статті становлять практичну цінність для вчених та дослідників, які могли б провести власне дослідження вирішуючи проблему використання біоенергії та надати перевагу іншим джерелам енергії

Ключові слова: природоресурсне право, природоресурсні правовідносини, природні ресурси, кліматичні ресурси, клімат



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Simplified claim proceedings: Legislative regulation of the Economic Procedure Code of Ukraine

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Abstract

In building a legal state, one of its key criteria is the creation of an honest, transparent, and effective judiciary. The essential need for radical changes in the judicial system and the reform of its individual institutions is a requirement of time. The main purpose of the judicial and legal reform in Ukraine should be to create legislative and organizational conditions for the establishment of an independent, effective, and responsible judiciary, which will be trusted by society. During the study, the method of analysis and synthesis was used for the methodological basis, thanks to which the main types of simplified procedures, their features, and legal nature were determined. Using the historical method, the emergence and development of simplified judicial procedures was investigated. Based on the dialectical method, the terms "simplified judicial procedures", "writ proceedings" and "simplified claim proceedings" were formulated. The formal logical method was used to identify shortcomings in the legal regulation and procedural regulation of simplified judicial procedures under the new Economic Procedural Code of Ukraine. The theoretical and predictive method was used to develop and outline the main vectors for introducing changes to the legislation of Ukraine within the framework of consideration of cases in simplified proceedings. The qualifying

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features of simplified judicial procedures were formulated as follows: a special procedural form, voluntary application by stakeholders, special admission criteria, a special regime for applying evidence, and a special procedure for reviewing court decisions. Considering the legal nature of simplified judicial procedures, it was justified that the latter should include only writ and simplified claim proceedings. Therewith, writ proceedings are a special form of simplified judicial procedures in the economic process, which lies in persistent protection of undisputed rights, freedoms, and legitimate interests of a person, which occurs based on issuing a suitable court order. Simplified claim proceedings are a special form of simplified court procedures within the framework of economic proceedings, which lies in the rapid protection of the rights, freedoms, and legitimate interests of a person, based on the insignificance of 6 stated requirements, the availability of written documents, without holding full-fledged court sessions and with the issuance of a special court decision. It was proposed to add amendments to the corresponding economic procedural legislation of Ukraine regarding the regulation of the procedure for considering economic disputes in the simplified claim proceedings. Judicial legal reform in Ukraine is complex and involves amendments to the Constitution of Ukraine, legislation on the judicial system and status of judges, reform of related institutions (prosecutor's office, bar, law enforcement agencies), as well as improvement of procedural legislation and legislation governing the procedure for executing court decisions. The article notes that legislative changes have been introduced to the Economic Procedural Code of Ukraine, new forms of economic proceedings have been initiated, one of the forms of economic proceedings is simplified claim proceedings, which are designed to consider minor cases, cases of minor complexity, and other cases for which a quick resolution of the case is a priority. Along with the simplified procedure and procedure for considering an economic case, the introduction of such a form of judicial dispute consideration also revealed certain shortcomings in its regulation. The materials of this paper are of practical value for further research in this area, considering the ability to substantially relieve economic courts and increase the efficiency of economic proceedings, while raising the level of trust in them

Keywords: economic proceedings, minor cases, legislation, shortcomings, procedure

Introduction

On 15.12.2017, with the entry into force of the Law of Ukraine No. 2147-VIII "On Amending the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts" dated 10.03.2017 embodied certain jurisprudential preferences regarding unification, and in some issues – uniformity of all national procedures of courts. However, along with the positive changes in the Economic Procedural Code of Ukraine (EPC of Ukraine), which during the judicial reform was marked by the development and adoption of new economic procedural legislation, some innovations of the code, specifically simplified claim proceedings, should be evaluated critically.

Certain norms governing the procedure for considering such a category of cases reduce the efficiency of courts' activities and, as a result, judicial protection of the rights of participants in economic legal relations, which requires an analysis of the issues present in economic legal proceedings.

The introduction of amendments to the EPC of Ukraine introduced new procedural institutions and substantially changed the procedure of economic legal proceedings, which has been reflected in the studies of Ukrainian researchers. Theoretical and practical issues of the main provisions of the economic procedural legislation were considered by O.A. Belianevych, O.M. Vinnyk, R.A. Dzhabrailova, V.O. Kaverznev, O.M. Korotun, T.D. Suiarko,

V.S. Shcherbina and others, along with this, some problematic issues of economic legal proceedings stayed out of the attention of scientists, which determined the relevance of this study.

The purpose of this paper was to analyse individual provisions and institutions of the economic process to identify shortcomings in legal regulation and develop proposals aimed at improving the economic process, which has theoretical and practical significance.

Results and Discussion

Ambiguous legislative changes introduced to the EPC of Ukraine prompted scientists and practitioners to turn their attention to research the provisions of the new wording of the code. V.O. Koverznev, focusing on the implementation of modern international legal standards for judicial protection of the rights of parties to economic relations in the national legislation, notes the presence in the of certain norms in the EPC of Ukraine that reduce the effectiveness of judicial protection of the rights of parties to economic relations and suggests areas for improving the economic procedural legislation of Ukraine [1].

Currently, because of judicial reform, the updated procedural codes contain many similar norms and institutions on general and procedural issues. Unified changes to the procedural legislation have both positive and negative consequences. The EPC of Ukraine as amended before 03.10.2017 was characterized by simplicity and flexibility of provisions, adaptability to prompt and informal resolution of economic disputes. The new wording of the EPC of Ukraine, according to A.I. Fomin, has become cumbersome and does not fully consider the specifics of the economic procedure within the framework of introducing a generalized model of distinct types of legal proceedings. The developers of

the new wording of the EPC focused on unification, implementation of certain ideal models and theoretical, conditional standards of legal proceedings, but without considering the entire range of legal issues, problems, and situations that the EPC should solve. The authors of the new version of the EPC followed the path of excessive regulation of procedural activities and limiting the independence of the court in determining the procedure for hearing a case, introducing institutions that are not typical of economic proceedings, and excessive formalization of the procedure. As a result, this can create conditions under which there will be a risk of using the legal requirements to abuse procedural rights, delay the process and distort its tasks [2].

Notably, A.A. Belianevich expressed reasonable concerns about trends towards unification, which is manifested in legislation, as evidenced by the analysis of the content of those norms that were introduced into the procedural codes. The researcher noted that this can lead, if not to the merger of individual procedural branches, then to their unity and to the rejection of certain procedural forms that have historically developed (specifically, from the economic procedural form of protecting the rights and legitimate interests of business entities) [3].

Despite the positive changes, the analysis of the provisions of the EPC of Ukraine indicates that along with positive changes in the economic procedural legislation, there are separate norms in the code that should be evaluated critically.

The introduction of simplified claim proceedings has become a crucial step to improve the efficiency of economic proceedings. Article 12 of the EPC of Ukraine introduces simplified claim proceedings, which are intended for consideration of minor

cases, cases of minor complexity and other cases for which a quick resolution of the case is a priority. In their statement of claim, the plaintiff is entitled to state a request for consideration of the case according to the rules of simplified legal proceedings (Article 171.2 of the EPC of Ukraine). Cases specified in the EPC of Ukraine are insignificant due to the properties inherent in such categories of cases, based on the price of the claim and its subject matter, without the need for a separate court decision to assign the specified case to the corresponding category.

According to Article 287.3.2 of the EPC of Ukraine, court decisions in minor cases and in cases with a claim price not exceeding five hundred minimum wages for able-bodied individuals are not subject to cassation appeal, except for cases prescribed by the EPC. Therewith, the procedural law does not contain restrictions on cassation appeals against court decisions taken in other cases that are considered in simplified claim proceedings but are not insignificant.

According to Article 247.2 of the EPC of Ukraine, any other case referred to the jurisdiction of the economic court may be considered per the procedure of simplified legal proceedings, except for the cases specified in Article 247.4 of the EPC. Therefore, cases considered in simplified claim proceedings should not be confused with other cases. That is, according to the procedure of simplified claim proceedings, other cases may also be considered, for which a quick consideration of the case is not a priority, which contradicts the purpose of introducing this form of legal proceedings.

A systematic analysis of the provisions of the EPC of Ukraine indicates that there are three categories of cases that can be considered in simplified proceedings: minor cases;

cases of minor complexity; and other categories of cases. Simplified claim proceedings are intended for consideration of minor cases, cases of minor complexity and other cases for which the priority is to quickly resolve cases (Article 12.3 of the EPC of Ukraine). Due to the provisions of Article 247.3 of the EPC of Ukraine, other categories of cases do not include cases that cannot be considered per the procedure of simplified legal proceedings.

Furthermore, the provisions of Article 12.5.2 of the EPC of Ukraine classify minor cases as low-priority cases: “for the purposes of this Code, low-priority cases are cases of insignificant complexity, recognized by the court as minor, except for cases subject to consideration exclusively per the rules of general legal proceedings, and cases where the cost of the claim exceeds five hundred minimum wages for able-bodied individuals”. But Article 12.5.1 of the EPC of Ukraine defines low-priority cases as those “in which the price of the claim does not exceed one hundred minimum wages for able-bodied individuals”. Thus, in two articles, the legislator created a substantial discrepancy regarding which cases should be considered per the procedure for simplified proceedings, as well as how such cases are differentiated. Both norms require greater certainty and clarification [4].

This legislator’s approach to defining the category of “minor cases” gives the court discretionary power to determine whether a particular case is of considerable complexity or insignificant. Since the judge determines the complexity of the case based on a statement of claim, it may become clear in the future (a response from the defendant, an explanation from a third party that the case is complex). A judge can move from a simplified proceeding to a general one, but they cannot change their mind and recognize a case that

they have already recognized as low priority to be otherwise. In this case, the big problem will not be how the court will consider the case, but the fact that such a case will not be subject to appeal in cassation. As a possible solution to this problem, the EPC of Ukraine should make provision for a clear and exhaustive list of cases that would be considered low-priority without giving the court the opportunity to recognize cases as low-priority.

The conditions that allow the case to be considered in simplified proceedings are the absence of objections from the defendant, the presence of consent of the parties to consider the case in simplified proceedings, i.e., those events that have not yet occurred and the occurrence of which (or non-occurrence) cannot be predicted. It is the presence of a combination of grounds and conditions that allows determining the necessary and sufficient prerequisites for consideration of the case per the procedure of simplified proceedings [5].

Article 252 of the EPC of Ukraine establishes that the court considers the case per the procedure of simplified legal proceedings without notifying the parties to the case based on the materials available in the case, in the absence of a request from any of the parties otherwise. At the request of one of the parties or on the court's own initiative, the case is considered in a court session with notification (summons) of the parties.

According to A.O. Zhama, the procedure of simplified proceedings "does not limit the rights and legal interests of the parties to the economic procedure, at least because the evidence base of the economic procedure is built on written evidence, even explanations of the representatives of the parties and other persons taking part in the legal procedure, upon request judges may be set

forth in writing. The simplified procedure for trying the case will create added leverage on the discipline of the parties to the economic procedure in the context of timely provision of evidence to the court and justification of their own clear position on the case, and will speed up obtaining the final result in the case" [6]. At the same time, there are opposing opinions that the practical application of innovations regarding the introduction of the procedure for trying cases in the simplified claim proceedings under the competence of economic courts does not fulfil its tasks and does not achieve the goals for which they were implemented. On the contrary, it adds to the courts supplementary procedural actions and conflicting opinions on legal innovation, which requires clarification and legal interpretation at the legislative level [7].

While sharing the positive aspects of the optimization of judicial proceedings introduced by the amendment regarding simplified proceedings, it should be emphasized that this imposes certain restrictions on the parties to the proceedings. Specifically, this applies to cassation appeal. Notably, limiting the right to a cassation appeal in the format as it is prescribed in the current procedural codes – specifically, not establishing clear criteria for the impossibility of an appeal, but giving the judges of the Supreme Court the right to decide regarding the impossibility of accepting a cassation appeal for consideration – contradicts the principle of legal certainty, which is a component of the rule of law principle. The basis of the principle of legal certainty is the idea of the predictability of the expectation by the subject of relations of certain legal consequences (legal result) of their behaviour, which corresponds to the normative prescriptions available in society. In its decisions, the Constitutional Court of

Ukraine has repeatedly emphasized that the principle of legal certainty requires the clarity and unequivocalness of the legal norm and ensuring that legal relations stay predictable (Decision No. 5-пп/2005 dated 22.09.2005, No. 17-пп/2010 dated 29.06.2010, No. 23-пп/2010 dated 22.12.2010, No. 10-пп/2011 dated 11.10.2011) [8].

Therefore, the regulatory requirements of the procedural legislation must be precise and understandable. Accuracy is considered one of the key properties of the language of a legislative act. It is no coincidence that F. Bacon associated the accuracy of the law with its justice [9].

Conclusions

Despite the large number and diversity of scientific opinions on the problematic issues of economic litigation, the conducted study of the provisions of the new wording of the Economic Procedural Code of Ukraine allowed identifying certain shortcomings of the legislative regulation of simplified claim proceedings and formulating the author's vision of eliminating the issues existing in current economic litigation, which will contribute to improving the efficiency of commercial courts and protecting the rights of parties to economic legal relations.

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Спрощене позовне провадження: Законодавча регламентація ГПК України

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Анотація

В процесі розбудови правової держави, одним з її найбільш важливих критеріїв є створення чесної, прозорої та ефективної судової влади. Суттєва необхідність докорінних змін судової системи та реформування окремих її інститутів є вимогою часу. Головною метою проведення судово-правової реформи в Україні має стати створення законодавчих та організаційних умов для утвердження незалежної, ефективної та відповідальної судової влади, якій довірятиме суспільство. Під час дослідження для методологічної основи був застосований метод аналізу та синтезу, завдяки якому було визначено основні види спрощених процедур, їх ознаки та правову природу. За допомогою історичного методу було досліджено виникнення та розвиток спрощених судових процедур. На основі діалектичного методу сформульовано поняття «спрощені судові процедури», «наказне провадження» та «спрощене позовне провадження». Формально-логічний метод використовувався для виявлення недоліків правового регулювання та процесуальної регламентації спрощених судових процедур в рамках нового ГПК України. Теоретико-прогностичний метод використовувався для розробки та окреслення основних напрямів внесення змін до законодавства України в рамках розгляду справ у порядку спрощених проваджень. Сформульовано кваліфікуючі ознаки спрощених судових процедур: особлива процесуальна форма, добровільність застосування зацікавленими особами, особливі критерії допуску, спеціальний режим застосування доказів, особливий порядок перегляду судових рішень. Обґрунтовано, враховуючи правову природу спрощених судових процедур, що до останніх слід віднести лише наказне та спрощене позовне провадження. При цьому наказне – це особлива форма спрощених судових процедур у господарському процесі, що полягає у наполегливому захисті безспірних прав, свобод та законних інтересів особи, що відбувається на підставі видачі відповідного судового наказу. Спрощене позовне – це особлива форма спрощених судових процедур в рамках господарського судочинства, що полягає у швидкому захисті прав, свобод та законних інтересів особи, на підставі малозначності 6 заявлених вимог, наявності письмових документів, без проведення повноцінних судових засідань та з винесенням особливого судового рішення. Запропоновано додати зміни до відповідного господарського проц-есуального законодавства України в частині процесуальної регламентації порядку розгляду господарських спорів у порядку спрощеного позовного провадження. Судово-правова реформа в Україні має комплексний характер і передбачає внесення змін до Конституції України, законодавства з питань судоустрою та статусу суддів, реформування суміжних інститутів (прокуратури, адвокатури, правоохоронних органів), а також вдосконалення процесуального законодавства та законодавства, що регулює порядок виконання судових рішень. Зокрема, у статті наголошено, що законодавчі зміни внесені до Господарського процесуального кодексу України, започаткували нові форми господарського судочинства, однією із форм господарського судочинства є спрощене позовне провадження, яке призначене для розгляду малозначних справ, справ незначної складності та інших справ, для яких пріоритетним є швидке вирішення справи. Поряд із спрощеним порядком та процедурою розгляду господарської справи, запровадження такої форми розгляду судового спору виявило і певні недоліки в її регламентації. Матеріали статті становлять практичну цінність для подальших досліджень у цій сфері, враховуючи здатність суттєво розвантажити господарські суди та підвищити ефективність господарського судочинства, водночас піднявши рівень довіри до них

Ключові слова: господарське судочинство, малозначні справи, законодавство, недоліки, процедура



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National strategy for the development and protection of intellectual property

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In recent years, Ukraine has received not only new legislation, a new regulator, but also a new national intellectual property body. On the initiative of the Ministry of Economy of Ukraine, Resolution of the Cabinet of Ministers of Ukraine No. 1267-p dated 13.10.2020, to implement Item 7.1 of Section II "Final and Transitional Provisions" of the Law of Ukraine No. 703-IX "On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Body" dated 16.06.2020 determined that the State Enterprise "Ukrainian Institute of Intellectual Property" performs the functions of the National Intellectual Property Body. Given that the state structures considered six options for the formation of a new national body, the temporary designation of the Ukrainian Institute of Intellectual Property as the National Intellectual Property Body was, on the one hand, the optimal solution, and on the other hand, the system of intellectual property protection with amendments to some laws of Ukraine regarding the creation of a national intellectual property body, underwent substantial changes that could not affect the entire system of intellectual property protection in the country. Based on the relevance of the topic, the purpose of this paper was to figure out and analyse the state of Ukraine's performance of international obligations in the field of intellectual property, as well as the adoption of a national strategy to develop the specified area and find effective methods for its practical implementation. The leading methods for investigating this issue were as follows: functional approach (considers the management system of the enterprise in the form of a set of functions, i.e., actions united by a common content, properties, and nature of activity), the method of logical analysis (which is based on logical

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premises and conclusions), the method of synthesis (the content of which is to combine previously dissected parts of the subject into a single whole), the method of deduction (the method of transition from knowledge of general laws to its separate manifestation), etc. This paper determined that the National Strategy for the Development of Intellectual Property in Ukraine for 2020–2025 is not a panacea for current issues. It was also found out that the basis for the unity and integrated nature of national policy is the adoption of national strategies for the development of intellectual property. Furthermore, the state should implement a plan for the practical implementation of the strategy since practice confirms the ineffectiveness of the implementation of such documents after adoption. Therefore, it is necessary to organize the efforts of all branches of government as much as possible to focus on the performance and implementation of the introduced reform. An essential step in this area is the completion of judicial reform. This strategy should reflect the adaptation of the Institute of Intellectual Property to general global trends and successful European practices, contain the purpose and ways of its practical implementation. The successful adoption of the strategy determines the further development of judicial and legal reform in Ukraine, within the framework of which the Supreme Court on Intellectual Property Issues has already been established, but without the unity of legislation, its strategic coherence, it is impossible to practically implement the initiated reform, and, accordingly, perform international obligations. The materials of this paper are of practical value for further research on the development of judicial and legal reform in Ukraine

Keywords: intellectual property, legislation, reorganization, national body, system, structure

Introduction

According to the provisions of the Constitution of Ukraine, everyone is entitled to own, use, and dispose of their property, the results of their intellectual and creative activities. The state guarantees citizens freedom of literary, artistic, scientific, and technological creativity, protection of intellectual property, their copyright, moral, and material interests arising in connection with diverse types of intellectual activity. Every citizen is entitled to the results of their intellectual and creative activities; no one may use or distribute them without their consent, with exceptions established by law. These constitutional mandatory norms are designed not only to promote the development of intellectual property, but also to ensure the right of a person to the result of intellectual and creative activity – an object of intellectual property rights.

A review of the rating positions of Ukraine regarding the creation of objects of intellectual property rights shows the promising potential of Ukrainian inventors. According to the annual WIPO reports “World Intellectual Property Indicators”, according to the generalized indicator

of activity regarding applications for industrial property, Ukraine is in the group of leading countries (23rd place). Furthermore, according to the indicator “patents”, Ukraine ranks only the 33rd, and in the rating for industrial designs (16th place).

However, with the entry into force of the Law of Ukraine No. 703-IX “On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Authority” dated June 16, 2020, which defines the powers of the National Intellectual Property Authority (NIPA), the system of legal protection and development of intellectual property has undergone substantial changes, which should affect the scientific research on the creation of objects of intellectual property law.

Considering the importance of the problem, the issues of improving the protection of intellectual property, reforming legislation, have always been in the centre of attention of researchers. These include H. Androshchuk, Yu. Boshytskyi, M. Dubynskyi, M. Pushkar, O. Orliuk, O. Korotun, A. Kudin, A. Khridochkin, O. Chomakhashvili, and others. However, against the background of

recent changes in legislation, the issue of intellectual property protection requires further research.

The purpose of this paper was to analyse the current state of intellectual property protection, Ukrainian legislation, as well as issues of legal doctrine in the field of socio-economic growth, providing innovations and systems of intellectual property protection

Results and Discussion

Numerous discussions of practitioners, scientists, and legislators, who in recent years paid attention to the problematic issues of intellectual property protection in the country, found support in the Parliament, which culminated in the parliamentary hearings "Building an effective system of intellectual property protection in Ukraine", which took place on 16.12.2019. At the parliamentary hearings, the main issues were the adoption of the National Strategy for the Development of Intellectual Property in Ukraine for the period 2020-2025; changes in the state management of the intellectual property rights protection system, and the establishment of the NIPA; accelerating the updating of Ukrainian legislation according to the provisions of the Association Agreement between Ukraine and the EU, increasing the level of protection of intellectual property rights.

The state influence on the regulation of social relations in the researched area is exercised according to the norms of law, rights, and obligations. However, modern trends in legal regulation do not always consider the objective regularity of ensuring proper security and protection of the rights of those entitled to objects of intellectual property rights. These rights are related to separate legal regimes of objects of intellectual property law because the legislator does not always consider the practical component, which acts as a guarantor of intellectual property protection [1].

Adoption of the National Strategy for the Development of Intellectual Property in Ukraine has cre-

ated issues in this area of public relations, which is important for the country's economy. Over the past 30 years, there has been a decrease in patent activity and the quality of patentable offers in Ukraine. Ukrainian inventors do not see any prospects for implementing their ideas or do not have the means for patenting because the entire process from invention to patenting costs from 5 to 15 thousand US dollars. In the world, most patents belong to the 5th and 6th technological paradigms, in Ukraine – only to the 3rd and 4th. This situation is not accidental. The percentage of science funding in GDP in recent years is approximately 0.37-0.47%, which is 10 times less than, for instance, in Israel. Highly qualified industry and factory science was destroyed in entirety. While from the submission of foreign advisers, there are always conversations about the need to merge university and academic science, which will lead to the final destruction of academic science as well. The number of researchers has also decreased substantially over the past 30 years. New research equipment is not purchased [2].

Today, Ukraine is still on the list of countries that do not provide protection of intellectual property rights and are monitored by the Office of the US Trade Representative – the country is in the Priority Watch List group of countries. The main problematic issues include 1) unfair, non-transparent administration of the system of collective management organizations responsible for collecting and distributing royalties to copyright holders; 2) widespread use of unlicensed software by Ukrainian state institutions; 3) failure to implement effective means to combat large-scale copyright infringement on the Internet. Due to Ukraine's failure to provide adequate and effective protection of intellectual property rights, in December 2017 the USA announced a partial suspension of benefits for Ukraine (according to the General System of Preferences). In 2019, the United States resumed some temporarily suspended benefits, recognizing the concrete steps

taken to reform Ukrainian intellectual property protection regime. The presence of issues in the field of protection of intellectual property rights is also evidenced by Ukraine's low positions in global rankings: according to the indicator "Protection of intellectual property" in the rankings of the Global Competitiveness Index of 2019, the country ranked 118th among 141 countries; in the International Property Rights Index (IPRI-109) according to the sub-index "Protection of intellectual property rights" among 129 countries – 88th, including according to the indicator "Perception of IP protection" – 105th; according to the indicator "Patent protection" – 43rd; according to the indicator "Copyright piracy" – 93rd [2].

Having ratified the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, by Law No. 1678-VII dated 16.09.2014, Ukraine undertook to simplify the creation and commercial use of innovative products and products of creative activity on the territory of the Parties and achieving an appropriate and effective level of security and protection of intellectual property rights. According to the agreement, intellectual property rights include copyright, specifically the right to computer software and databases, as well as related rights, rights related to patents, namely patents for inventions in the field of biotechnology, trademarks, brand names, if they are protected in the form of an exclusive intellectual property right by the corresponding national legislation, industrial designs, layout (topography) of integrated circuits, geographical indications, namely indication of origin, indication of source of origin, plant varieties, protection of confidential information and protection against unfair competition.

Article 168 of the Agreement also prescribes that the parties may establish their unique regime of exhaustion of intellectual property rights, considering the provisions of the TRIPS

Agreement dated April 15, 1994, according to which the term "intellectual property" encompasses all categories of intellectual property.

The norms of the Agreement between Ukraine and the EU prescribe the introduction of progressive European legal standards and legislation in Ukraine, as well as the dissemination of knowledge about EU practices in legal regulation of intellectual property relations.

According to the Regulation on the Ministry of Economy of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 459 dated 20.08.2014 (as amended by Resolution No. 124 dated 17.02.2021), the Ministry of Economy is the main body in the system of central executive bodies that ensures national policy in the field of intellectual property, coordinates activities and controls National Intellectual Property Authority's compliance with legislation in the field of intellectual property.

According to the Law of Ukraine No. 703-IX "On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Body" dated June 16, 2020, according to which NIPA is a state organization that is part of the state system of legal protection of intellectual property, defined nationally by the Cabinet of Ministers of Ukraine as exercising powers in the field of intellectual property, defined by this Law, other laws on intellectual property, acts of the central executive body that ensures the development and implementation of national policy on intellectual property, and the statute, and is entitled to represent Ukraine in international and regional organizations.

NIPA operates as follows: the Appellate Chamber for consideration of objections against NIPA decisions regarding the acquisition of rights to intellectual property objects, applications for recognition of rights to intellectual property objects as invalid in whole or in part, applications for recognition of a trademark as well-known in

Ukraine and consideration of other issues that fall into its competence according to the legislation; the Attestation Commission is a NIPA collegial body, the main purpose of which is the attestation of individuals, who have expressed their intention to acquire the right to work as an intellectual property representative (patent attorney); the Appeals Commission is a NIPA collegial body, the main purpose of which is to consider complaints of candidates for intellectual property representatives (patent attorneys) against the decisions of the certification commission and review complaints about the actions of intellectual property representatives (patent attorneys).

In the matter of NIPA activity, one should agree with the opinion that the “national” status should make provision for the protection of the rights of intellectual property subjects in relation to all objects of intellectual property law, including the protection of intellectual property rights in relation to breeding achievements in plant breeding (plant varieties) and animal husbandry (animal breed) [3].

According to the norms of the above Law, the SE “Ukrainian Institute of Intellectual Property” (Ukrpatent) is an institutional component of the national system of legal protection of intellectual property and exercises the following powers: accepting applications, conducting their examination, making decisions regarding them (industrial property); reception and consideration of applications for state registration of author’s rights to works of science, literature, and art, as well as for registration of contracts relating to authors’ rights to works, implementation of their registration; implementation of state registration of industrial designs and issuance of a certificate; state registration of geographical indications; implementation of state registration of inventions and utility models, issuance of patents for inventions and utility models; implementation of state registration of trademarks, issuance of a trademark

certificate; implementation of state registration of layouts, issuance of a layout certificate; issuance of a certificate of copyright registration for a work; recognition of industrial design rights as invalid in whole or in part; invalidation of rights to inventions and utility models; publication of official information about industrial designs, trademarks, layouts, geographical indications, inventions, and utility models in the bulletin; maintenance of state registers; training, certification, and registration of intellectual property representatives (patent attorneys); maintaining the State Register of representatives in Intellectual property matters (patent attorneys), etc.

Ukrpatent has the following bodies: Appeals Chamber for consideration of objections against decisions regarding the acquisition of rights to intellectual property objects, applications to declare rights to intellectual property objects invalid in whole or in part, applications to recognize a trademark as well-known in Ukraine; Commission on the approval of questions about adding a designation containing the official name of the state “Ukraine” to the mark for goods and services; the Attestation Commission for the attestation of individuals who expressed the intention to acquire the right to work as an intellectual property representative (patent attorney) and for considering complaints of candidates for intellectual property representatives (patent attorneys) on the decisions of the Attestation Commission and considering complaints against the actions of representatives in intellectual property cases (patent attorneys).

The above indicates that presently the functions of ensuring the protection of intellectual property in Ukraine are entrusted to the National Intellectual Property Authority and the Ukrainian Institute of Intellectual Property.

Notably, to secure and protect copyright and related rights in Ukraine, the State Organization “Ukrainian Agency for Copyright and Related Rights” (UACRR), which was formed to manage

the property rights of copyright subjects on a collective basis, operates in Ukraine and (or) related rights and other right holders, namely such categories of property rights as the use of copyright objects and (or) related rights through public performance, recording, public notification, public demonstration, public display, retransmission, reproduction of works, reprographic reproduction, industrial reproduction of works of fine art, as well as the artist's resale right, support to the specified subjects and other right holders regarding the transfer of rights, for the use of works of science, literature, and art on an individual basis, representation of the legitimate interests of subjects of copyright and (or) related rights and other rights holders in state and public bodies and organizations, performance of certain functions on behalf of the authorized management body.

Apart from the State Organization UACRR, there is also a public organization "Ukrainian Agency for Copyright and Related Rights" – an organization for collective management of the rights of authors of musical, literary, dramatic, and other works of art and science. PO "UACRR" manages the property rights of Ukrainian authors, as well as represents the interests of foreign copyright holders on the territory of Ukraine based on agreements on mutual representation with foreign copyright organizations.

Notably, there are numerous disputes between these organizations regarding the protection of copyright and related rights, which leads to numerous lawsuits between these organizations,

which were considered and are being considered both in the Economic Court of Kyiv and in the Northern Economic Court of Appeal. For instance, Case No. 910/18496/19 dated 14.09.2021, which was considered in the Northern Economic Court of Appeal. Therefore, subjects of copyright and related rights should take a balanced approach to choosing an organization that manages their rights.

Conclusions

Along with the creation of a two-level structure in Ukraine to ensure the protection of intellectual property, the state has issues not only with the creation of new objects of intellectual property rights, but also with the protection of subjective rights of copyright holders and their legal users, the state has not yet created a favourable environment for the commercialization of objects of intellectual property rights, legislative solutions to problematic issues of profit distribution among all participants involved in the commercialization of intellectual property.

The experience of the leading countries of the world, namely, the United States, China, North Korea, Japan, and other countries, shows that it is intellectual property that has become the main driving force of economic development and, as a result, an increase in the standard of living of the population. Solving these and other problematic issues in the field of intellectual property will contribute to the socio-economic growth of the country, ensuring the effectiveness of innovation processes and innovations in Ukraine.

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Національна стратегія розвитку та охорони сфери інтелектуальної власності

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Анотація

За останні роки Україна отримала не тільки нове законодавство, нового регулятора, але й новий Національний орган з інтелектуальної власності. З ініціативи Міністерства економіки України, Кабінет Міністрів України 13.10.2020 р. № 1267-р, на виконання підпункту 1 пункту 7 розділу II «Прикінцеві та перехідні положення» Закону України від 16.06.2020 р. № 703-IX «Про внесення змін до деяких законів України щодо створення національного органу інтелектуальної власності» визначив, що державне підприємство «Український інститут інтелектуальної власності» виконує функції Національного органу інтелектуальної власності. Враховуючи, що державними структурами розглядалося шість варіантів утворення нового національного органу, визначення на тимчасовий період ДП «Український інститут інтелектуальної власності» в ролі Національного органу з інтелектуальної власності, з однієї сторони було оптимальним рішенням, а з іншої, система охорони інтелектуальної власності із внесенням змін до деяких законів України щодо створення національного органу інтелектуальної власності, зазнала суттєвих змін, що не могло позначитися на всій системі охорони інтелектуальної власності в державі. Виходячи з актуальності тематики, метою дослідження являється визначення та аналіз стану виконання Україною міжнародних зобов'язань у сфері інтелектуальної власності, а також процесу прийняття Національної стратегії розвитку визначеної сфери та пошуку ефективних методів її практичної реалізації. Провідними способами для дослідження цієї проблеми є наступні методи: функціональний підхід (розглядає управлінську систему підприємства у вигляді набору функцій, тобто дій, об'єднаних спільним змістом, властивостями та характером діяльності), метод логічного аналізу (який базується на логічних посилках та висновках), метод синтезу (змістом якого є об'єднання раніше розчленованих частин предмета в єдине ціле), метод дедукції (метод переходу від знання загальних закономірностей до окремого його прояву) та ін. У статті визначено, що Національна стратегія розвитку сфери інтелектуальної власності в Україні на 2020-2025 роки не є панацеєю від нинішніх проблем. Також з'ясовано, що основою для єдності і комплексного характеру державної політики необхідним є прийняття Національної стратегії розвитку сфери інтелектуальної власності. Окрім того, держава повинна впровадити план практичної реалізації стратегії, адже практика підтверджує неефективність виконання таких документів після прийняття. Тому потрібно максимально організувати зусилля органів усіх гілок влади для зосередження уваги на виконанні та реалізації запровадженої реформи. Важливим кроком у цьому напрямі є завершення судової реформи. Вказана Стратегія має стати відображенням адаптації інституту інтелектуальної власності до загальних світових тенденцій та успішних європейських практик, містити мету та шляхи її практичної реалізації. Від успішного прийняття Стратегії залежить подальший розвиток судово-правової реформи в Україні, в рамках якої уже створено Вищий суд з питань інтелектуальної власності, однак без єдності законодавства, стратегічної його узгодженості, не можлива практична реалізація започаткованої реформи, а відповідно і виконання міжнародних зобов'язань. Матеріали статті становлять практичну цінність для подальших досліджень розвитку судово-правової реформи в Україні

Ключові слова: інтелектуальна власність, законодавство, реорганізація, національний орган, система, структура



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Some issues of legal regulation of animal insurance as a compulsory type of insurance

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Agrarian insurance is a prerequisite for the existence of agriculture, especially for agrarian countries. The present puts before agricultural production serious climatic, economic, and biological challenges. Insurance should become a tool that will help balance risks between all participants in agrarian insurance relations and reduce the adverse impact on agricultural production and the standard of living in the state. Proceeding from this, the purpose of this study was to investigate the issue of legal regulation of animal insurance as a compulsory type of insurance and outline the prospects for the development of such types of insurance. The method for investigating this issue was the analysis of the current national legislation, which suggested that the legal regulation of animal insurance meets its conditions in national regulations. Based on the analysis of regulations governing the procedure for insurance of farm animals, the study examined the problematic issues and suggested ways to eliminate conflicts in the legal regulation of this type of insurance. The problems of determining the list of animals subject to

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compulsory insurance were investigated and ways to solve them were proposed. The paper analysed the issue of legal expansion of the range of insurance risks for animal insurance contracts within the framework of the Law of Ukraine “On the Specifics of Insurance of Agricultural Products with State Support”. The proposed amendments to the regulations in the field of breeding animal insurance will harmonize the corresponding legislation, as well as improve awareness of breeding animals for regulatory authorities, consumers of relevant products and insurers. The materials of this paper are of practical value for further research of the legal regulation of animal insurance, their improvement, and identification of new issues in national regulations

Keywords: insurance, compulsory animal insurance, breeding animal insurance, insurance risk, insurance of agricultural products with state support

Introduction

According to the Concept of Insurance of Agricultural Products with State Support, developed by the National Bank of Ukraine, in the civilized world, agrarian insurance is a prerequisite for the existence of agriculture, especially for agrarian countries [1]. The first “pet insurance” policy was issued in 1890 in Sweden and “covered” horses and livestock, later in 1947 the first pet insurance policy was issued in the United Kingdom (Great Britain). In these countries, modern pet insurance policies have been developed with the possibility of covering the medical expenses of pets and liability to third parties for the actions of pets [2]. The national system of state support for agricultural product insurance went through various stages. Presently, starting from July 1, 2021, the amount of partial reimbursement of insurance payments (premiums) to agricultural producers is determined at the level of up to 60%, considering the practice of previous periods of analogous support programs [3].

The issues of insurance legal relations became the object of research by many scientists, such as V. Bazylevych, K. Bazylevych, S. Dombrovskiy, R. Sabodash, S. Osadets, N. Patsuriia, and many others. The specifics of animal insurance are determined by many factors, both biological and legal, that cannot but consider their natural properties and state needs in the context of the national and global food crisis. The theoretical framework of this study also included the studies of Ukrainian legal scholars in the field of agrarian law, such as N.A. BaHai, V.M. Yermolenko, V.P. Zhushman, I.I. Karakash, T.H. Kovalchuk, A.M. Stativka, V.Yu. Urkevych, V.Z. Yanchuk, and others.

Results and Discussion

Agriculture is characterized by certain regular partial crop losses, catastrophic losses caused by a range of factors of influence: biological, climatic, etc. Therefore, added stimulation of the market of insurance services of agricultural insurance is being formed, both

from the position of business owners and from the position of the state, for which the stability of the functioning of the socially and export-important agrarian sphere is one of the priorities [4].

According to the Law of Ukraine No. 85/96-BP "On Insurance" dated March 7, 1996, insurance is carried out in a compulsory and voluntary form. According to Article 7 of this Law, a compulsory type of insurance is insurance of animals (except those used for agricultural production) in case of death, destruction, forced slaughter, disease, natural disasters and accidents in cases and per the list of animals established by the Resolution of the Cabinet of Ministers of Ukraine (the Resolution) [5].

According to the Law of Ukraine No. 3691-XII "On Breeding in Livestock Breeding" dated 15.12.1993, breeding is a system of zootechnical, selection, and economic measures aimed at improving the breeding and productive qualities of animals. To ensure all conditions for breeding highly productive animals, breeding is developed, and to reduce the possibility of adverse consequences in breeding, insurance of breeding animals is ensured legislatively. According to the Resolution, the object of this insurance is property interests that do not contradict the law, are related to the death, destruction, forced slaughter of animals that are subject to state insurance, communal or private property rights, as a result of diseases, natural disasters and accidents.

The subjects of this case, on the side of the insurer, include owners of breeding (genetic) resources; enterprises, institutions,

and organizations regardless of the form of ownership and individuals – subjects of entrepreneurial activity that take part in the production, preservation, use, creation, determination of the breeding value of breeding (genetic) resources, trade in breeding (genetic) resources and provide services, related to the breeding business in animal husbandry; owners of non-breeding animals are consumers of breeding (genetic) resources and customers of breeding services in animal husbandry (Article 5 of the Law of Ukraine "On Breeding in Livestock Breeding").

The Ministry of Agrarian Policy and Food of Ukraine determines the procedure for assigning the appropriate status to subjects of breeding in animal husbandry. Accordingly, the requirements apply to breeding subjects in animal husbandry who are owners of breeding (genetic) resources or are economic entities that take part in the production, preservation, use, creation, determination of the breeding value of breeding (genetic) resources, trade in breeding (genetic) resources and provide services related to breeding in animal husbandry [6].

On the side of the insurer in this type of compulsory insurance, according to the Law of Ukraine No. 4391-VI "On Specifics of Insurance of Agricultural Products with State Support" dated February 9, 2012 (the Law), act insurers who have received a licence to insure agricultural products established legislatively and added requirements established by the regulations of the National Bank of Ukraine.

Appendix 1 to the Resolution defines the list of animals subject to compulsory

insurance. These include breeding animals (cattle, pigs, sheep, goats, horses aged from 1 year). However, Appendix 1 of the Resolution does not mention such animals as fish, and in general “aquatic bioresources”. However, according to Article 3 of the Law of Ukraine No. 2894-III “On Animal Life” dated 13.12.2001, animals include fish and invertebrates (arthropods, molluscs, echinoderms, etc.) in all their species and population diversity and at all stages of development (embryos, eggs, pupae, etc.), which are in a state of natural will, kept in semi-free conditions or in captivity.

According to the Law of Ukraine No. 3677-VI “On Fish Farming, Industrial Fishing, and Protection of Aquatic Bioresources” dated 08.07.2011 and the Law of Ukraine No. 486-IV “On Fish, Other Aquatic Living Resources and Derivative Food Products” dated 06.02.2003, aquatic biological resources are defined as a set of aquatic organisms (hydrobionts), the life of which is impossible without being in water. Aquatic biological resources include freshwater, marine, anadromous, and catadromous fish in all stages of development, Cyclostomi, aquatic invertebrates, including molluscs, crustaceans, worms, echinoderms, sponges, gastropods, terrestrial invertebrates in the aquatic stage of development, algae, and other aquatic plants. The reasons for expanding the list of breeding animals subject to compulsory insurance also include the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 414 “On approval of the Procedure for Artificial Breeding (Reproduction), Cultivation of Aquatic Bi-

ological Resources and Their Use” dated 07.07.2012. Evidently, there is a need to harmonize the norms of the above-mentioned sub-legislative acts with the updated wording of the Law, which since July 1, 2021 prescribes the following definition of farm animals: animals, including fish, reptiles, and amphibians, grown and/or kept by humans to produce of foods, by-products of animal origin (wool, skin, fur), as well as for other agricultural needs.

Another sub-legislative regulation allows discussing the expansion of the list of animals subject to compulsory insurance – the Instruction on the organization of service canine in the National Guard of Ukraine No. 772, among service dogs, singles out breeding animals used by service dog kennels for breeding work, and subject to accounting from 05.08.2014.

To insure breeding animals, they are subject to a class indexing procedure, namely a comprehensive assessment of breeding and controlled animals by breeding and productive qualities and types of animals; based on the results of which a certificate of breeding (genetic resources) is obtained (Articles 1, 13 of the Law of Ukraine “On Breeding Business in Animal Husbandry”; Regulations on the certificate of breeding (genetic) resources and sample forms of certificates of breeding (genetic) resources [7]. Class indexing is conducted according to the instructions for class indexing of individual species of animals, for instance, the Instruction on class indexing of poultry, the Instruction on keeping breeding records in poultry farming and sample forms

of breeding records [8]. Corresponding sub-legislative regulations are also adopted for cattle, pigs, breeding horses, and fish.

Attention is drawn to the word “indirect”, through the definition of the subject of the insurance contract, the expansion of the range of insurance risks, namely “damages incurred in connection with animal breeding” (Article 20¹ of the Law). However, Article 8 of the Law does not prescribe this type of risk, and the types of risks listed in it may factually be the basis for “losses incurred in connection with their cultivation”.

Conclusions

Insurance of breeding animals is currently a strategic issue, since breeding animals are the main base and foundation of the entire agriculture, which directly determines its development. The author of this paper suggests including information about the insurance contract in the Certificate form

of breeding (genetic) resources and coordinate special legislation on the list of animals subject to compulsory insurance. Appendix 1 of the Resolutions should be read as follows: “Breeding animals: cattle of dairy, milk-meat and meat breeds; pigs; sheep; striped sheep; goats; a horse; fur animals, rabbits; poultry farming; beekeeping; fishery resources and aquatic biological resources; sericulture resources; breeding dogs (pure-bred or animals obtained under an approved breed improvement program that have breeding (genetic) value and can be used in the selection process) aged 1 year or older. Zoo animals aged from 1 year. Circus animals aged from 1 year”. The formulation of the norms of the Law regarding the definition of agricultural risks may lead to an ambiguous interpretation and become an obstacle to the effective application of insurance payment compensation mechanisms to agricultural producers.

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Деякі питання правового регулювання страхування тварин як обов'язкового виду страхування

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Анотація

Аграрне страхування – обов'язкова умова існування сільського господарства, особливо для аграрних країн. Сьогодення ставить перед сільськогосподарським виробництвом серйозні кліматичні, економічні, біологічні виклики. Страхування має стати тим інструментом, що допоможе збалансувати ризики між усіма учасниками аграрних страхових відносин, та знизить негативний вплив на аграрне виробництво, та рівень життя у державі. Виходячи з цього, метою даного дослідження є дослідження питання правового регулювання страхування тварин як обов'язкового виду страхування та окреслення перспектив розвитку такого виду страхування. Методом для дослідження цієї проблеми є аналіз чинного національного законодавства, що дає змогу констатувати, що правове регулювання страхування тварин відповідає своїм умовам у національних нормативно-правових актах. У статті на основі аналізу нормативно-правових актів, що регулюють порядок проведення страхування сільськогосподарських тварин, досліджуються проблемні питання та пропонуються способи усунення колізій у правовому регулюванні даного виду страхування. Досліджуються проблеми визначення переліку тварин, що підлягають обов'язковому страхуванню та пропонуються шляхи їх вирішення. Аналізується питання правового розширення кола страхових ризиків для договорів страхування тварин у межах Закону України «Про особливості страхування сільськогосподарської продукції з державною підтримкою». Запропоновані доповнення до нормативно-правових актів у сфері страхування племінних тварин приведе до гармонізації відповідного законодавства, а також покращить поінформованість про племінну тварину для контролюючих органів, споживачів відповідної продукції та страховиків. Матеріали статті становлять практичну цінність для подальших досліджень правового регулювання страхування тварин, їх вдосконалення та виявлення нових питань у національних нормативно-правових актах

Ключові слова: страхування, обов'язкове страхування тварин, страхування племінних тварин, страхових ризик, страхування сільськогосподарської продукції з державною підтримкою



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Breeding achievement in animal breeding as an object of intellectual property law and international experience of its protection

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Intellectual property rights are prescribed in the Universal Declaration of Human Rights. A patent for an animal breed is the exclusive right of the inventor to its breeding achievement, it is a legal monopoly ensured by the state, and patent protection makes it impossible to use it commercially without the consent of its owner. The modern-day challenges are directly related to ensuring food security. The practical application of breeding achievements in animal husbandry lies in the genetic improvement of animals in the "economic aspect", which directly affects the level of investment and remuneration for breeders, and from this the need for effective legal protection of intellectual property rights increases. In this regard, the purpose of this paper was to investigate the legal regulation of intellectual property rights for breeding achievements in animal husbandry, proposals for its improvement through the study of

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international practices. During this study, philosophical, general scientific and special legal methods of scientific cognition were used, which were chosen considering the purpose and objectives of this study. Based on the analysis of regulations governing the procedure for obtaining legal protection of breeding achievements in animal husbandry, the paper examines problematic positions and suggests ways to eliminate conflicts in the legal regulation of these issues. The international practices regarding the execution of law enforcement documents for breeders and the possibility of protecting their rights was also analysed. The materials of this paper are of practical value for further investments, improvements, and identification of new issues in research of breeding achievements in animal husbandry

Keywords: object of intellectual property rights, breeding achievement, breeding achievement in animal husbandry, protection of intellectual property rights

Introduction

From the depths of the Middle Ages, there were societies of early breeds for animal husbandry, which controlled the pedigree to protect the intellectual property rights of master breeders. The first specialized patent law applied to living organisms was the Plant Protection Act of 1930 in the United States. It prescribed what are commonly called the rights of plant breeders to propagate new varieties by asexual methods [1]. In the modern conditions of development and the state of crisis in the supply of food on a global scale, one of the rather weighty objects of intellectual property are breeding achievements as the results of activity in the form of animal breeds with given characteristics. According to the Concept of the State target program to develop the agricultural sector of the economy for the period until 2022 (the Concept) [2], the expected results include the creation and

effective management of the state register of breeding agricultural animals, by providing Ukrainian agricultural producers with modern selective breeding (genetic) resources and the growth of their export potential. However, according to the data of the National Academy of Agrarian Sciences, in Ukraine there is factually no breeding system in animal husbandry, and the state position, albeit ensuring the preservation of agricultural breeds of animals, domestic genotypes, which still retain the unique qualities of parental forms and steadily transmit them to their descendants.

The legal foundations of intellectual property rights for breeding achievements in animal husbandry were investigated by scientists as an economic direction, namely V.I. Antotenko, V.P. Borodai, M.A. Vitvytskyi, S.A. Voinalovych, H.I. Demydas, V.P. Kopan, V.I. Ladyka, O.V. Pichkur, and others, in

whose studies partial attention was paid to breeding achievements, as a result of the activities of zooengineers, veterinarians, and other specialists in agricultural sciences; and legal: N.O. Bahai, O.B. Butnik-Siverskyi, V.M. Yermolenko, V.S. Drobyazko, Yu.M. Kapitsa, T.H. Kovalchuk, O.V. Kokhanovska, O.O. Kulinich, V.I. Kurylo, O.M. Melnyk, O.P. Orliuk, M.V. Palladii, O.P. Svitlichnyi, O.O. Stefan, and others.

Results and Discussion

The development of patent legislation can change the existing legal conditions for competition and investment in the field of animal breeding, and therefore requires a higher level of awareness on the part of politicians, animal breeders, lawyers, and patent attorneys. In 2020, Ukraine adopted a law on the creation of the National Intellectual Property Authority (NIPA), which replaced the State Intellectual Property Service. According to the Concept, the agrarian sector of the economy, the basic component of which is agriculture, forms food, within certain limits, economic, ecological, and energy security, ensures the development of technologically related branches of the national economy and the creation of socio-economic conditions for rural development. However, according to the data of the State Statistics Service of Ukraine, in the structure of agricultural products in 2020, the cultivation of agricultural animals accounted for 12%, the index of agricultural products was 97.5% compared to the previous year, and the decrease in the number of

agricultural animals at the end of the year was: minus 7.1% for cattle, 5.4% for sheep and goats and minus 9% for poultry; only the number of pigs increased by 2.5% [3].

Among the ways to overcome existing problems in the field of animal husbandry is the implementation of measures to preserve and restore the diversity of breeds of agricultural animals according to the provisions of the Convention on the Protection of Biological Diversity. The most acute problems are still the lack of motivation for most business entities to increase the number of farm animals and increase the volume of livestock production. Along with this, industrial animal husbandry uses specialized, highly productive genotypes of imported breeding, which leads to the loss of genotypes of Ukrainian breeding and the emergence of the problem of a substantial decrease in genetic diversity, a decrease in the resistance of animals and a substantial dependence on the import of breeding (genetic) resources. Obviously, the preservation of agricultural breeds of animals is a complex and urgent problem not only for Ukraine, but also for other countries of the world. First of all, in terms of the choice of forms and methods and the minimum number of animals for conservation. The basis of the UN concept is the reproduction of the active part of the population using pure-bred breeding methods and the involvement of the rest for intensive use in the crossbreeding system. Therewith, the minimum number of sows for preservation is at least 100, and the main boars –

10 heads or the corresponding amount of sperm [4]. Although the Concept prescribes providing Ukrainian agricultural producers with modern breeding, breeding (genetic) resources and increasing the potential of their exports, improving and ensuring the effective maintenance of the state register of farm animals, introducing a system for assessing and determining the breeding value of animals, maintaining breeding records through the creation of automated information databases on breeding (genetic) resources, and the draft Concept of the State target program for the development of the cattle industry until 2030 presented to the Ministry of Economy offers only support for the cattle industry with a focus on reducing the cost of attracting investment.

However, the implementation of any program is associated with financing, which in modern conditions is carried out improperly. The mechanism for the use of funds was provided for in the state budget under the program "Selection in livestock and poultry breeding at enterprises of the agro-industrial complex" and was carried out according to the Resolution of the Cabinet of Ministers of Ukraine No. 515 "On Approval of the Procedure for the Use of Funds Provided for in the State Budget for the Implementation of the Program of Selection in Livestock and Poultry Breeding at Enterprises of the Agro-Industrial Complex" dated May 18, 2011, which provided funds for works of national significance for the development and implementation of programs, namely selection by breeds

and preservation, maintenance of the gene pool in sperm banks, embryo banks and the gene pool bank of silkworms of existing, local, and endangered breeds. But over time, the funds began to be allocated only for reimbursement of the cost of purchased breeding animals, bees, sperm, and embryos, which is provided to legal entities and individual entrepreneurs, regardless of the legal form and form of ownership, for Ukrainian or imported breeding animals, bees, sperm purchased by them and embryos in size (up to 80% of the cost).

The analysis of regulations in the field of development of breeding work in animal husbandry suggests the need to support own breeding works and introduce appropriate legal protection of intellectual property rights for breeding achievements in the field of animal husbandry.

Since currently a breeding achievement in the field of animal husbandry is a group of breeding animals (breed, breed type, line, family, etc.) created as a result of purposeful creative activity, which has new genetic characteristics that are persistently transmitted to offspring, and in terms of productivity exceeds previous types of animals, equated to inventions (Articles 1 and 25 of the Law of Ukraine No. 3691-XII "On Breeding Matters in Livestock Breeding" dated 12.15.1993 (the Law).

Moreover, the achievements of national breeding in various livestock industries have extensive experience, namely: dairy cattle breeding: Ukrainian black-spotted dairy, Ukrainian red-spotted dairy, Ukrainian

red dairy breeds and intrabreed and zonal types; meat cattle breeding: Ukrainian meat, Volyn meat, Polish meat, southern meat; pig farming: Poltava factory type of meat pigs, Poltava meat breed, red-belt specialized meat line of pigs, UVB-1, UVB-2; sheep breeding: types of Ascanian thin-fleece sheep, meat-wool intensive types of sheep; poultry farming: synthetic lines of laying hens, crosses of laying hens, autosex lines of poultry; horse breeding: Ukrainian riding breed of horses; fishery: breeds of carp; carp-crucians [5].

According to Article 1 of the Law, a breeding animal is a pure-bred animal or an animal obtained under an approved breed improvement program, registered in the state books of breeding animals, has a breeding (genetic) value and can be used in the breeding process according to breeding programs; the objects of breeding business in animal husbandry are cattle, pigs, sheep, goats, horses, poultry, fish, bees, silkworms, fur animals, and rabbits, which are bred to obtain certain products from them (hereinafter – animals), and subjects of breeding business in animal husbandry are as follows: owners of breeding genetic resources; enterprises, institutions, and organizations regardless of the form of ownership and individuals-entrepreneurs taking part in the production, preservation, use, creation, determination of the breeding value of breeding (genetic) resources, trade in breeding (genetic) resources and provide services, related to the breeding business in animal husbandry; owners of non-breeding

animals are consumers of breeding (genetic) resources and customers of breeding services in animal husbandry.

To obtain legal protection and recognition of a certain breed of animal as a breeding achievement, a joint order of the Ministry of Agrarian Policy and Food of Ukraine and the Ukrainian Academy of Agrarian Sciences had to be issued [6].

In Ukraine, the Special Information System of the National Intellectual Property Authority (NIPA) has been created, and intellectual property centres are functioning, these are business entities that ensure the implementation of educational and scientific programs, as well as improving the qualifications of employees in the field of intellectual property; which could take on the functions of providing legal support in the exercise and protection of intellectual rights ensuring biological and food safety.

Currently, according to Article 6.2 of the Law of Ukraine No. 3687-XII “On Protection of Rights to Inventions and Utility Models” dated 15.12.1993, the object of the invention may be a breed of animals, but the legal protection of this law does not extend to such an object. According to Article 11 of the Law, state registration of breeding achievements is carried out by entering relevant data based on orders of the Ministry of Agrarian Policy and Food of Ukraine in the State Register of breeding achievements in animal husbandry. According to the data of which, as of the end of 2021, the following number was registered: in poultry farming, 5 breeding achievements;

in beekeeping – 2; in cattle breeding – 11; in pig breeding – 8; in horse breeding – 2 (the validity period of exclusive property rights for one foal is in 2021 – a new Ukrainian breed of riding horses); in fish farming – 3 [7]. For comparison, according to the World Intellectual Property Organization (WIPO) there were 26 cattle patents in the United States of America from 1997 to 2012 [8].

The Law, in contrast to Article 487 of the Civil Code of Ukraine, does not make provision for the possibility of issuing a patent for breeding achievements in animal husbandry and granting the corresponding rights. Owners of breeding (genetic) resources are entitled to receive certificates of breeding (genetic) resources, which are documentary evidence of the quality and breeding value of breeding (genetic) resources during their acquisition, sale, and trade (Articles 1 and 13 of the Law).

The only document containing information about the breed of the animal, the results of the genetic examination and the owner of the breeding animal is the Certificate of breeding (genetic) resources.

Evidently, the absence of a common “denominator” in the legal regulation of the issue of establishing a law enforcement document for a breed of animals plays a negative role. However, considering world practices, specifically, the main principles of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), it is necessary to discuss the possibility for the

inventor to ensure the protection of intellectual property rights in several ways. The factors affecting the possibility of choosing a method of protecting intellectual property rights are as follows: the level of ensuring the implementation of private property rights; the effectiveness of the judicial system in proceedings related to intellectual property; the ability of law enforcement agencies to investigate such cases; the possibility of the inventors themselves to take preventive measures. An analysis of the Unified Agrarian Policy of the EU, which defines the structure of breeding activities, shows that breeding activities in the European Union are carried out not by state bodies, but by licensed breeding farms, which are controlled by scientific research or educational institutions [9]. An exception is the legislation of Bulgaria and Romania, where innovation, distinctiveness, uniformity, and stability are among the criteria for the patentability of animal breeds. Such provisions are contained in the Romanian Patent Law No. 64/1991 of October 11, 1991, and the Law of the Republic of Bulgaria of September 19, 1996 “On the Protection of New Plant Varieties and Animal Breeds” [10].

The authors of this paper support the position of the Ukrainian scientific community on the need to implement Corrigendum to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights in the procedural codes of Ukraine [11].

Conclusions

The legal regulation of intellectual property rights for breeding achievements in animal husbandry requires the coordination and adoption of a regulation that would allow effectively protecting intellectual property rights in this area, similar to the Law of Ukraine "On the Protection of Rights to Plant Varieties", especially since the draft law on the legal protection of breeding achievements in animal husbandry has been in the Verkhovna Rada of

Ukraine for more than 20 years. Effective protection of the breeder's intellectual property rights should be a decisive factor, along with the regulatory consolidation of the procedure for obtaining a law enforcement document, for the full-fledged "existence" of a breeding achievement. The principal function of protecting the rights of breeders should be implemented through the effective activities of the Supreme Court for intellectual property.

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Селекційне досягнення у тваринництві як об'єкт права інтелектуальної власності та міжнародний досвід його захисту

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Анотація

Права інтелектуальної власності передбачені у Загальній декларації прав людини. Патент на породу тварин є виключним правом винахідника на своє селекційне досягнення, він є юридичною монополією, що забезпечується державою, а патентний захист унеможливорює комерційне використання без згоди його власника. Виклики сьогодення безпосередньо стосуються забезпечення продовольчої безпеки. Практичне застосування селекційних досягнень у тваринництві, зокрема, полягає у генетичному покращенні тварин з «економічного боку», що прямо впливає на рівень інвестицій та винагород для селекціонерів, а відтак і зростає потреба у ефективному правовому захисті прав інтелектуальної власності. У зв'язку з цим, метою цієї статті є дослідження правового регулювання прав інтелектуальної власності на селекційне досягнення у тваринництві, пропозиції щодо його удосконалення через дослідження міжнародного досвіду. У ході дослідження використовувались філософські, загальнонаукові та спеціально-юридичні методи наукового пізнання, які було обрано з урахуванням мети та завдань дослідження. У статті на основі аналізу нормативно-правових актів, що регулюють порядок отримання правової охорони селекційного досягнення у тваринництві, досліджуються проблемні позиції та пропонуються способи усунення колізій у правовому регулюванні цих питань. Також було проаналізовано міжнародний досвід щодо оформлення правоохоронних документів для селекціонерів та можливості захисту своїх прав. Матеріали статті становлять практичну цінність для подальших вкладень, вдосконалень та виявлення нових питань в дослідженні у сфері селекційного досягнення в тваринництві

Ключові слова: об'єкт права інтелектуальної власності, селекційне досягнення, селекційне досягнення у тваринництві, захист права інтелектуальної власності



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Administrative responsibility for offences related to expert activity in Ukraine

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One of the crucial means of establishing the truth in cases of administrative offences is expertise. As evidenced by judicial practice, the explanations of the individuals involved in the case are quite often contradictory, and only by appointing and conducting a forensic examination it is possible to establish certain circumstances of the case that require the use of special knowledge, which the court must evaluate accordingly. The purpose of this study was a comprehensive analysis of administrative responsibility for violating the procedure for conducting and organizing expert examinations in Ukraine. The principal methods for investigating this issue were the functional method, the logical analysis approach, and the synthesis method. The paper examined the specific features of administrative responsibility for offences related to the sphere of expert activity.

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It was found that the organization and conduct of expertise, as a basic category of expert activity, usually does not require the involvement of a wide range of people. However, the concept of expertise is not always limited only to forensic expertise, which is usually appointed based on a corresponding decision of a court or other authorized body. It was found that expert activity is not defined at the level of a separate legislative act, and therefore there are difficulties in forming general categories for understanding the essence of such a concept. In general, regulations define the requirements for experts, the stated expert opinions, the rights and obligations of experts, as well as responsibility for violating the procedure for conducting expert examinations. That is, the regulations mainly relate to the conduct of forensic expertise, as one of the components of expert activity. Furthermore, the current Code of Ukraine on Administrative Offences does not contain any administrative legal norms concerning administrative liability for offences that may arise in expert activity in general and forensic examinations in particular. It was concluded that the priority actions aimed at improving the institution of administrative responsibility for offences related to the field of expert activity in Ukraine should be as follows: firstly, the field of organization and conduct of non-judicial expertise requires legislative definition and statutory regulation; secondly, considering the fact that the current Code of Ukraine on Administrative Offences does not contain any administrative legal norm that concerns responsibility for offences related to the field of expert activity, namely the implementation of judicial and non-judicial examinations, it is necessary to amend the current Article 185-16 of the Code of Criminal Procedure of Administrative Offences with the following wording: "Violation of the procedure for conducting examinations by authorized individuals entails the imposition of a fine of one to two hundred minimum tax-free wages of citizens". The materials of this paper are of practical value for subsequent research, solving issues and finding gaps in the Code of Ukraine on Administrative Offences

Keywords: expert examination, forensic examination, non-judicial examination, administrative responsibility, expert

Results and Discussion

The procedure for conducting and organizing expert examinations in Ukraine is mainly limited to forensic examinations and is regulated according to the Law of Ukraine "On Forensic Examination" [1]. Separate provisions are also contained in the Order of the Ministry of Justice of

Ukraine No. 53/5 dated 08.10.98 "On the approval of the Instructions on the appointment and conduct of forensic examinations and expert studies and Scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies" [2].

Notably, forensic expertise, albeit one of the most common types of expertise, is not the only one. Thus, as non-judicial expertise, one can recognize scientific and scientific-technical expertise prescribed by the Law of Ukraine "On Scientific and Scientific-Technical Expertise" [3], expertise on environmental impact assessment, expertise of human living conditions, expertise of a complex information protection system, expertise product samples, etc.

As for the very concept of expertise, according to A.V. Furman, this concept covers:

- consideration, research of any case or specific issue to obtain the correct conclusion, establish the correct assessment;
- professional examination of physical evidence or facts to clarify the circumstances and provide appropriate conclusions;
- assessment of the state of an object or process by reputable specialists, including the cause of an event or its possible consequences, as well as the prospects for using things, resources, or making particular decisions;
- the social procedure for psychological assessment of certain situations, achievements of human activity or personality, which is carried out according to the tasks (request) set by the customer, requires an in-depth study of certain psychosocial problems or issues by an expert, and therefore their thorough theoretical and methodological training and functional literacy;

➤ the method of substantiation of the real state of affairs in a certain sphere of public life by an expert, clarification of the thoroughness of solving factual problems by a certain scientific discipline (sociology, didactics, psychology), as well as assessment, which "is associated with the construction of a system of features for recognition, classification, and analysis of complex innovations, the development of means of measuring the studied objects when the environment changes" [4].

Thus, it can be concluded that expertise in the legal field is a multi-meaning category aimed at the analysis and research of processes and phenomena important for an appropriate legal decision.

A forensic expert is a participant in proceedings in cases of administrative offences; however, their involvement in such proceedings is not widely reflected in the studies of administrative scientists. Fragmentary coverage of the issue of involving an expert in proceedings on cases of violation of customs rules, when it is considered appropriate to use special knowledge on the specified category of cases at the stage of consideration of a case on violation of customs rules. In some cases, considering the specific circumstances of the case, the possibility of an expert's involvement at the stage of initiating a case on violation of customs rules, when verifying the content of the protocol by a higher official of the customs body, is not excluded. It is also possible for an expert to take part in the consid-

eration of a complaint against a decision in a case of violation of customs rules.

Article 14 of the Law of Ukraine "On Forensic Expertise" states that "a forensic expert may be brought to legal responsibility on the grounds and according to the legislatively prescribed procedure" [1]. Notably, until 2017, the said Article had a different wording, namely "a forensic expert may be brought to disciplinary, material, administrative, or criminal responsibility on the grounds and according to the legislatively prescribed procedure". Thus, the legislator did not determine the exact list of types of expert liability, leaving explanations in the relevant codified acts concerning liability.

According to statistical data, the number of offences committed by experts over the past three years is almost the same; thus, in 2018 – 876 protocols on administrative offences committed by experts were entered into the unified state register and 431 were brought to administrative responsibility; in 2019, respectively, the number of drafted protocols was 825 and 445 – experts brought to administrative responsibility, while in 2020 – 789 drafted protocols and 397 people received administrative fines for the committed offence [5].

Expert examinations in administrative proceedings are classified according to two main criteria: organizational and procedural, and industry-specific. Forensic examinations can be divided into branches of knowledge, considering the

totality of the following essential features: the subject, object, methodology of expert research and the nature of special knowledge, which play a dominant role in solving the problems of this type of expertise [6].

In the theory of administrative law, until now, scientists have not been able to agree on the exact goals of administrative responsibility. Thus, Ye.V. Shulha points to the prevention of the commission of new offences both by the offenders themselves and by other individuals, some consider the education of the offender's personality to be the primary and main goal of administrative responsibility, while others consider punishment as an affirmation of justice [7].

This position can be considered quite acceptable because all this helps optimize the process of bringing to administrative responsibility in a certain way, which in turn can increase the effectiveness of applying this type of responsibility [8].

The application of administrative liability is always preconditioned by the commission of an administrative violation, the consequence of which is the imposition of a sanction (administrative penalty) or the application of administrative coercive measures to a person suspected of committing a misdemeanour. Each of the types of administrative punishment must correspond to the degree of public danger of an administrative offence and make provision for the application of legally authoritative measures to the violator.

In the procedural aspect, the activity of an expert is consolidated in certain legal norms that determine its role in legal proceedings, decide how it is involved in conducting an expert examination, etc. However, the Code of Ukraine on Administrative Offences, for instance, does not have such regulation. It is possible to entirely agree with the opinion of O.M. Kliuiev, who fairly notes that Article 246 of the Code of Ukraine on Administrative Offences defines two types of entities that make decisions in cases of administrative offences: courts and other authorized bodies (officials). This norm clearly defines that the procedure for proceedings in cases of administrative offences by bodies (officials) authorized to consider cases of administrative offences, as in district, district in the city, city, or municipal courts, are determined by this Code and other laws of Ukraine. Evidently, there is a requirement to regulate the procedure for considering these cases through the application of the Code of Ukraine on Administrative Offences. However, there are not always enough reasons to claim that it is fully implemented. This applies to gaps in legal regulation in the Code of Ukraine on Administrative Procedure and norms on forensic expertise. In general, there is no such definition as forensic examination in the said Code. However, this Code includes some rules regarding the involvement of an expert in the consideration of cases of administrative offences, although they are clearly insufficient [9].

If one analyses the Code of Ukraine on Administrative Offences, then Article 273 prescribes that "An expert is appointed by the body (official) in whose proceedings the case on an administrative offence is pending, in the event that there is a need for special knowledge, including for determining the amount of property damage caused by an administrative offence, as well as amounts of money received as a result of committing an administrative offence, which will be subject to confiscation. The expert shall be obliged to appear on the summons of the body (official) and give an objective opinion on the questions put to them. The expert is entitled to familiarize themselves with the materials of the case relating to the subject of the examination, to make a request to provide them with added materials necessary for giving a conclusion; with the permission of the body (official) in whose proceedings the case of an administrative offence is pending, to ask the person who is being prosecuted, the victim, the witnesses, questions related to the subject of the examination; to be present during the consideration of the case". As for the responsibility of the expert itself, Article 185-4 prescribes responsibility for "malicious evasion of a witness, victim, expert, translator from appearing before the pre-trial investigation bodies or the prosecutor during the pre-trial investigation" [10].

Thus, the administrative responsibility for offences that may arise in carrying out expert activities also applies to forensic examination.

However, item 2.4 of the Order of the Ministry of Justice of Ukraine “On the approval of the Instructions on the appointment and conduct of forensic examinations and expert studies and Scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies” states that “For providing a knowingly false opinion, for refusing without valid reasons from the fulfilment of the duties assigned to them, as well as for the disclosure of data that became known to them during the examination, the expert shall bear criminal responsibility according to the current legislation; For malicious evasion of appearance before pre-trial investigation bodies or the court, the expert bears administrative responsibility according to the current legislation. For violations committed during the examination that do not entail criminal or administrative liability, the expert may be brought to disciplinary responsibility according to the current legislation” [2].

Therefore, it is only possible to assume that for violation of the procedure for conducting and organizing the examination, the person who carried out such an examination may be subject to disciplinary liability.

However, the authors of this paper believe that this approach of the legislator concerning the insignificance of the act regarding the examination procedure is debatable and requires a corresponding revision in terms of the introduction of administrative responsibility.

Conclusions

Having comprehensively analysed administrative liability for offences related to expert activity, it is possible to conclude the following: firstly, the field of organization and conduct of non-judicial examinations requires legislative definition and statutory regulation; secondly, considering the fact that the current Code of Ukraine on Administrative Offences does not contain any administrative legal norm that concerns responsibility for offences related to the field of expert activity, namely the implementation of judicial and non-judicial examinations, it is necessary to supplement Article 185-16 of the current Code of Ukraine on Administrative Offences with the following content: “Violation of the procedure for conducting examinations by authorized persons entails the imposition of a fine of one to two hundred tax-free minimum wages of citizens”.

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Адміністративна відповідальність за правопорушення, пов'язані зі сферою експертної діяльності в Україні

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Анотація

Одним із важливих засобів встановлення істини в справах про адміністративні правопорушення є експертиза. Як свідчить судова практика, пояснення осіб, які беруть участь у справі, досить часто є суперечливими, і тільки шляхом призначення й проведення судової експертизи можливо встановити ті чи інші обставини справи, що потребують застосування спеціальних знань, які суд має відповідно оцінити. Метою даного дослідження виступає комплексний аналіз адміністративної відповідальності за порушення порядку проведення та організації експертиз в Україні. Провідними способами для дослідження цієї проблеми є функціональний метод, підхід до логічного аналізу та метод синтезу. У статті досліджуються особливості адміністративної відповідальності за правопорушення, пов'язані зі сферою експертної діяльності. Визначено, що організація та проведення експертизи, як базової категорії експертної діяльності, зазвичай не потребує залучення широкого кола осіб. Проте, варто зазначити, що не завжди поняття експертизи обмежується лише судовою експертизою, яка зазвичай призначається на підставі відповідного рішення суду чи іншого уповноваженого органу. З'ясовано, що експертна діяльність не визначена на рівні окремого законодавчого акту, а тому виникають труднощі при формуванні, в першу чергу, загальних категорій щодо розуміння сутності такого поняття. Загалом, нормативно-правовими актами визначаються: вимоги до експертів, викладених висновків експертизи, прав та обов'язків експертів, а також

відповідальність за порушення порядку проведення експертиз. Тобто, стосуються переважно проведення судової експертизи, як однієї із складових експертної діяльності. Крім того, чинний Кодекс України про адміністративні правопорушення не містить жодної адміністративно-правової норми щодо адміністративної відповідальності за правопорушення, що можуть виникати у процесі здійснення експертної діяльності загалом та судових експертиз, зокрема. Зроблено висновки, що першочерговими діями спрямованими на удосконалення інституту адміністративної відповідальності за правопорушення, пов'язані зі сферою експертної діяльності в Україні, мають стати: по-перше потребує законодавчого визначення та нормативно-правового врегулювання сфера організації та проведення несудових експертиз; по-друге, зважаючи на те, що чинний Кодекс України про адміністративні правопорушення не містить жодної адміністративно-правової норми, яка стосується відповідальності за правопорушення, що пов'язані зі сферою експертної діяльності, зокрема здійснення судових та несудових експертиз, необхідно доповнити чинний КУпАП ст. 185-16, наступного змісту, а саме «Порушення уповноваженими особами порядку проведення експертиз, тягне за собою накладення штрафу від ста до двохсот неоподатковуваних мінімумів доходів громадян». Матеріали статті становлять практичну цінність для наступних досліджень, вирішенні питань та знаходження прогалин у Кодексі України про адміністративні правопорушення

Ключові слова: експертиза, судова експертиза, несудова експертиза, адміністративна відповідальність, експерт



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Foreigners and stateless individuals as subjects of administrative proceedings

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The right to appeal to a court, including an administrative one, is one of the key rights of citizens guaranteed by the Constitution and laws of Ukraine. Apart from the general constitutional right to judicial protection, Article 7 of the Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges" dated June 2, 2016, guarantees everyone the protection of their rights, freedoms, and interests within a reasonable time by an independent, impartial, and fair court established by law. Considering the relevance of this study, its purpose was to establish the main reasons for improper recognition of the legal status of all participants in administrative proceedings at the legislative level. The study used a set of methods and techniques of scientific cognition. The principal ones are as follows: the dialectical method, which determines the essence and content of the administrative legal status of Ukrainian citizens, foreign citizens, and stateless individuals; the comparative legal method, with the application of which the Ukrainian and foreign regulatory framework governing the status of foreign citizens and stateless individuals were compared; the formal legal method, which, together the method of logical analysis, allowed comprehensively investigating the modern system of legal norms that establish administrative procedural legal personality and the procedure for citizens and subjects of authority to exercise their rights

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and duties in an administrative court; the logical-semantic method allowed developing proposals for improving the legislation of Ukraine in the field of administrative proceedings. It was stated that access to justice for every person is ensured according to the Constitution of Ukraine and according to the procedure established by the laws of Ukraine. However, along with the guaranteed right to appeal to the court of foreigners, stateless individuals (refugees, migrants, immigrants), such a category of subjects of administrative proceedings as stateless individuals stayed outside the limits of Ukrainian legislation. The paper considered the administrative legal status of Ukrainian citizens, foreign citizens, and stateless individuals as subjects of administrative proceedings. To eliminate the shortcomings of the legislative regulation of the legal status of stateless individuals in Ukraine, the author concluded that it is necessary to eliminate the existing deficiency by amending the Law of Ukraine No. 3773-V "On the Legal Status of Foreigners and Stateless Individuals" dated September 22, 2011. The practical value of the obtained results is that the theoretical propositions, conclusions, and proposals formulated in the article can be used: in the research field (for further developments aimed at investigating the issues of administrative justice in Ukraine), in the law-making field (to improve the current legislation of Ukraine), in the field of law enforcement (to improve the activities of administrative courts, state executive authorities, local self-government bodies), in the field related to ensuring the rights, freedoms, and legitimate interests of individuals and legal entities

Keywords: legal status, foreigners, migrants, stateless individuals, judiciary, legislation

Introduction

The main purpose of the judiciary is the administration of justice, the power of which lies in high ethics, social justice as the basis of the consolidation of society, the rule of law, legal certainty, stability, protection of the rights of everyone, and the legal order. In general, the institution of judicial protection has a special role. Instead, it is necessary to emphasize that administrative proceedings, which are the youngest component of the judicial system, are distinguished among all types of judicial proceedings by the most significant functional legal and procedural relations regarding the resolution of disputes in the public legal sphere. That is why a certain number of theoretical and practical aspects of the functioning of administrative justice require the deepest possible analytical understanding and scientific and systematic generalization, one of which is the characterization of subjects in the legal relations of administrative proceedings [1].

One of the key issues of organizing administrative proceedings is establishing the composition and procedural status of participants in administrative proceedings. The analysis of procedural legislation and scientific studies indicate that at the legislative and doctrinal level, there are different ideas regarding the understanding of the composition of individuals taking part in the administrative procedure. Therewith, the category of legal status of any person is an essential component for every party to administrative proceedings; at the same time, the absence of a definition of the legal "status of a stateless individual" in Ukrainian legislation may adversely affect the scope of rights and obligations of the specified category of individuals during the trial in court.

Given the importance of the problem, the issue of determining the composition of the participants in administrative proceedings has always been in the centre of attention of scientists.

Among whom are O.M. Andrunevych, O.V. Bachun, O.V. Haran, S.T. Honcharuk, E.F. Demskyi, A.V. Luzhanskyi, B.V. Malyshev, S.M. Oliinyk, Ye.Yu. Petrov, O.P. Svitlychnyi, I.V. Topor, and others. However, against the background of ongoing judicial reform in general and procedural legislation, not all issues regarding the composition of participants in administrative proceedings have been thoroughly investigated.

Results and Discussion

The analysis of scientific research indicates that, in contrast to the legal definition, scientists mostly use the term “subjects of the administrative procedure” and, accordingly, classify the subjects and participants in administrative procedural relations. In the matter of clarifying the circle of participants in the administrative procedure, the previous wording of Chapter 5 of the Code of Ukraine on Administrative Procedure (CUAP) was entitled “Participants in the administrative procedure”, but as a result of the amendments introduced by Law of Ukraine No. 2147-VIII “On Amendments to the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Ukraine on Administrative Procedure and other legislative acts” dated 03.10.2017, Chapter 4 of the Code of Ukraine on Administrative Procedure No. 2747-IV dated 06.07.2005, is entitled “Participants in the judicial procedure”, and Article 42 of the Code contains an indication that participants in the procedure are parties to the case, third parties, as well as bodies and individuals entitled to apply to the court in the interests of other individuals.

Therefore, the specified Article contains a list of persons interested in the resolution of an administrative case, while the nature of the interest in the administrative case of its participants is heterogeneous. Considering the provisions of the current CUAP and the complex of legislatively established rights and obligations

of persons taking part in administrative proceedings, considering the subject of this study, the specific features of the legal status of foreigners and stateless individuals as subjects of the judicial procedure should be considered.

According to Article 5.7 of the CUAP, foreigners, stateless individuals, and foreign legal entities enjoy the same right to judicial protection in Ukraine as citizens and legal entities of Ukraine. This provision corresponds to the fundamental principles of the legal status of foreigners and stateless individuals established by the Law of Ukraine No. 3773-V “On the Legal Status of Foreigners and Stateless Individuals” dated September 22, 2011, according to Article 1 of the Law, a foreigner is an individual who does not hold the citizenship of Ukraine and is a citizen (subject) of another state or states, while a stateless individual is a person who is not considered a citizen by any state due to the operation of its law and complies with ratified international agreements Ukraine.

According to Article 3.1 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Individuals”, foreigners and stateless individuals who are in Ukraine on legal grounds enjoy the same rights and freedoms, and bear the same obligations as citizens of Ukraine, according to exceptions established by the Constitution, laws, or international treaties of Ukraine.

Article 8.2 of the CUAP points to the equality of all participants in the legal procedure before the law and the court, according to which there can be no privileges or restrictions on the rights of participants in the legal procedure based on race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language, or other characteristics, while Article 42 of the CUAP establishes an exhaustive list of participants involved in an administrative case.

Based on the provisions of the specified article, the legislator divided the participants in the legal procedure based on their legal interest in the results of the decision on the administrative case, dividing them, depending on the procedural rights and obligations granted to them in the legal procedure, into parties and third parties, as well as into bodies and persons entitled to apply to the court in the interests of other individuals. If the parties and third parties have a material and legal interest in the results of the decision on the administrative case, others have a procedural legal interest.

Foreigners and stateless individuals as subjects of administrative proceedings (court) are specified in Article 77 of the Law of Ukraine No. 1404-VIII "On Executive Proceedings" dated 02.06.2016, according to which during the execution of decisions regarding foreigners, stateless individuals, and foreign legal entities who, respectively, reside (stay) or are registered in the territory of Ukraine or have Ukraine's own property, which is owned independently or jointly with other persons, the provisions of this Law shall apply. In case of non-compliance with the decisions by the individuals specified in the first part of this article, the executor applies to the central body of the executive power, which ensures the implementation of the national policy on migration, to the state border protection authorities, with a request to prohibit the entry into Ukraine or the deportation of such individuals outside of Ukraine according to the Law of Ukraine "On the Legal Status of Foreigners and Stateless Individuals".

The Law of Ukraine No. 3671-VI "On Refugees and Persons in Need of Additional or Temporary Protection" dated 08.07.2011 specifies foreigners and stateless individuals as subjects of administrative proceedings. Article 12 of the Law prescribes the right to appeal decisions concerning the status of a refugee and an

individual who needs added protection is entitled to appeal to an administrative court, while Article 10.6 recognizes that a foreigner or a stateless individual is recognized as a refugee in Ukraine or an individual in need of added protection, and is considered to be an individual who permanently resides in Ukraine from the moment the decision to recognize them as a refugee is made or who is legally staying in the territory of Ukraine indefinitely.

The greatest expression of the recognition of foreigners and stateless individuals as subjects of administrative proceedings is found in the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", as indicated by Article 1.27 (regarding individuals in respect of whom the court decided on forced deportation and on detention for identification and ensuring forced deportation, including those adopted according to the international treaties of Ukraine on readmission); Article 4.18 (individuals released from the points of temporary stay of foreigners and stateless individuals illegally staying in Ukraine, based on a court decision to cancel the decision on their detention or forced deportation outside Ukraine); Article 5.17 (in case of receiving a written refusal to submit a submission or petition, a foreigner and a stateless individual may submit, together with the corresponding application, a court decision establishing the fact of their belonging);

parts 4-5 of Article 6-1; (the decision to cancel the decision to recognize an individual as stateless can be appealed to the administrative court within 20 working days from the day the person receives the notification about the cancellation of the decision);

Article 12.3 (the decision to cancel a visa can be appealed according to the legislatively established procedure); paragraph 6 of Article 13.1 (if during the previous stay on the territory of Ukraine, a foreigner or a stateless

individual did not comply with a court decision); Article 22.3 (departure of a foreigner or a stateless individual from Ukraine may be temporarily postponed by a court decision until they perform their property obligations to individuals and legal entities in Ukraine, unless otherwise stipulated by international treaties of Ukraine); Article 26.4 (the decision on forced return can be appealed to the court); part 1, 3, 5 of Article 30 (forced deportation of foreigners and stateless individuals by decision of an administrative court).

Notably, the Law of Ukraine "On Immigration" includes immigrants in the category of foreigners or stateless individuals. According to para. 2 Art. 1 of the Law, an immigrant is a foreigner or stateless individual who received a permit to immigrate and arrived in Ukraine for permanent residence, or, being in Ukraine on legal grounds, received a permit to immigrate and stayed in Ukraine for permanent residence. Article 13.4 of the Law of Ukraine "On Immigration" states that if a person has appealed the decision to revoke an immigration permit to a court, the decision to deport them shall not be taken until the court's decision becomes final. Article 15 of the same law establishes an appeal according to the prescribed procedure to the court against the inactivity of officers and officials.

It is worth adding that Article 1.1.14 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Individuals" contains the term "illegal migrant", which includes foreigners or stateless individuals who crossed the state border outside checkpoints or at checkpoints, but with the avoidance of border control and did not immediately apply for refugee status or asylum in Ukraine, as well as foreigners or stateless individuals who legally arrived in Ukraine, but after the expiration of the period of stay determined for them, lost the grounds for further stay and avoid leaving from Ukraine.

Therefore, according to the Laws of Ukraine "On Refugees and Individuals in Need of Added or Temporary Protection" and "On Immigration", the category of foreigners or stateless individuals is covered by the categories "refugees" and "immigrants".

The specified individuals as participants in administrative proceedings are indicated by the Standard Provisions on the Point of Temporary Stay of Foreigners and Stateless Individuals Illegally Staying in Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1110 dated July 17, 2003. According to the Regulations, foreigners and stateless individuals who are illegally staying in Ukraine may be the following individuals: in respect of whom the court has decided on forced deportation outside of Ukraine; in respect of which the court decided to detain for identification and ensuring forced deportation outside Ukraine, including those adopted according to Ukraine's international treaties on readmission; detained by the State Migration Service, its territorial bodies and subdivisions for the terms and according to the legislatively prescribed procedure; detained by a court decision until the completion of consideration of an application for recognition as a refugee or a person in need of added protection in Ukraine, or a stateless individual.

Having ratified the Convention on the Status of Stateless Individuals dated 28.09.1954 by the Law of Ukraine No. 23-VII "On the Accession of Ukraine to the Convention on the Status of Stateless Individuals" dated 01.11.2013. Ukraine has recognized that stateless individuals are subject to administrative proceedings. According to Article 1 of the Convention, the term "stateless individual" means a person who is not considered a citizen by any State according to its law, which according to Article 16 of the Convention has the right of free appeal to courts on the territory of all Contracting States.

In the territory of the Contracting State of their habitual residence, a stateless individual enjoys the same position as citizens of the State in matters related to the right to appeal to courts. In Article 12.1 of the Convention on the Status of Stateless Individuals, it is also indicated that the personal status of a stateless individual is determined by the laws of the country of their domicile or, if they do not have one, by the laws of the country of their residence.

In the absence of a special law in Ukraine that would regulate the legal status of stateless individuals, in relations with stateless individuals, officials of public authorities and judges should be guided by the provisions of the Convention on the Status of Stateless Individuals. Article 31 of the Convention refers to stateless individuals as subjects of administrative proceedings, which indicates that under certain circumstances, a stateless individual is deported only according to the decisions made in court.

Investigating the subjects of administrative proceedings in Ukraine, O.M. Andrunovich concluded that "the right to judicial protection in an administrative court is an inalienable right of an individual and a citizen, which constitutes a set of norms of international and national legislation, which prescribe the right of an individual to go to court to resolve a legal dispute, as well as the procedure for its resolution in court, which, furthermore, acts as the main right to protect other rights and freedoms of an individual and a citizen. It covers the right to appeal to an available court; consideration of the appeal by the court; fair trial and decision; appeal and cassation appeal of the court decision; reasonable terms for consideration of the appeal by the court; public hearing and announcement of the decision; independent and impartial court; legal aid; ensuring the execution of the court decision" [2] The above is covered by the principle of inadmissibility of

deprivation of the right to protection, rights and legitimate interests of foreigners and stateless individuals, which is directly stated in the CUAP. Furthermore, the right to judicial protection before an administrative court should also cover the right to respect for the rights and interests of other participants in administrative proceedings; to protect a legitimate interest; to demand proper conduct from the subject of power; to apply measures to restore the violated subjective right; to enforce a court decision.

This is based on the rights and obligations arising in the presence of these circumstances, and may also arise from other legal facts.

This also follows the norms of the Constitution of Ukraine or other laws. In particular, attention is drawn to the above in the resolution of the Plenum of the Supreme Court of Ukraine No. 9 of 01.11.1996, according to which the Constitutional provisions on the legality of judicial proceedings and the equality of all participants before the law and the court (Article 129 of the Constitution) oblige the court to ensure equal opportunities for all of them regarding the provision and examination of evidence, the submission of motions and the exercise of other procedural rights. Considering the constitutional provision that justice in Ukraine is administered exclusively by courts, the jurisdiction of which extends to all legal relations arising in the state (Article 124 of the Constitution), all disputes about the protection of the rights and freedoms of citizens are subordinate to the courts.

The right to judicial protection of a person, guaranteed by the Constitution and laws of Ukraine, must be substantiated by the person who applied to the court for the protection of the violated right. As noted in the decision of the Supreme Court of Ukraine dated November 15, 2016 in case No. 800/301/16, guaranteed by Article 55 of the Constitution of Ukraine and

the right to judicial protection specified in the laws of Ukraine makes provision for the possibility of applying to court for the protection of the violated right, but requires that the allegation of violation of rights be substantiated. A mandatory condition for the provision of legal protection by the court is the existence of a corresponding violation of the rights, freedoms, or interests of the individual by the subject of power at the time of their appeal to the court. The violation must be real, relate to the individually expressed rights or interests of the individual who claims their violation.

One should agree with the opinion that "Judicial protection of the rights and freedoms of an individual and a citizen in Ukraine needs further improvement, which can be achieved by improving the quality of the application of constitutional principles of judicial administration by courts. Adherence to the constitutional principles of the administration of justice unambiguously contributes to the strengthening of constitutional legality and is aimed at the development of legal means that ensure the development and protection of constitutional values, guarantee the provision and protection of human and citizen rights and freedoms" [3].

Conclusions

The author of this paper, fully sharing the above positions of scientists regarding the need for agrochemical certification of agricultural land

as one of the basic measures for determining the qualitative composition of soils, proposes as one of the steps to regulate the estimation of agricultural land for organic production, to establish the obligation to conduct agrochemical certification of land on which organic crop production activities are planned. Therewith, to operate with relevant data, the author proposes to determine the terms of agrochemical certification of such lands no later than one year before the submission of an application for certification of organic production. For this, it proposed to amend Part 5 of Art. 37 of the Law of Ukraine "On Land Protection"; Clause 3 of the Procedure for Certification of Organic Production and/or Circulation of Organic Products, approved by Resolution No. 1032 of the Cabinet of Ministers of Ukraine dated October 21, 2020; clauses 1.5 and 1.6 of the Procedure for maintaining the agrochemical passport of the field, land plot, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 536 dated 11.10.2011. This allows objectively estimating the quality of such lands and will serve as a guarantee of the production of organic plant-based goods.

Further scientific research in the field under study should focus on the development and regulatory consolidation of criteria for the quality of land (soils) suitable for growing individual agricultural crops in organic production of plant-based goods.

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Іноземці та особи без громадянства як суб'єкти адміністративного судочинства

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Анотація

Право на звернення до суду, у тому числі адміністративного, є одним із найважливіших прав громадян, гарантованих Конституцією і законами України. Окрім загального конституційного права на судовий захист, зокрема, ст. 7 Закону України «Про судоустрій і статус суддів» від 02.06.2016 р. № 1402-VIII, гарантує кожному захист його прав, свобод та інтересів у розумні строки незалежним, безстороннім і справедливим судом, утвореним законом. Враховуючи актуальність статті, метою є з'ясування основних причин неналежного визнання правового статусу всіх учасників адміністративного судочинства на законодавчому рівні. У дослідженні було використано сукупність методів і прийомів наукового пізнання. Основні з-поміж них: діалектичний метод, за допомогою якого визначено сутність і зміст адміністративно-правового статусу громадян України, іноземних громадян та осіб без громадянства; порівняльно-правовий метод, із застосуванням якого здійснено порівняльну характеристику вітчизняної та зарубіжної нормативної бази, що регламентує статус іноземних громадян та осіб без громадянства; формально-юридичний метод, який у поєднанні з методом логічного аналізу дозволив усебічно вивчити сучасну систему правових норм, які закріплюють адміністративну процесуальну правосуб'єктність і порядок здійснення громадянами та суб'єктами владних повноважень своїх прав та обов'язків в адміністративному суді; логіко-семантичний метод уможливив розроблення пропозицій щодо вдосконалення законодавства України у сфері адміністративного судочинства. Було зазначено, що доступність правосуддя для кожної особи забезпечується відповідно до Конституції України та в порядку, встановленому законами України. Проте порядок із гарантованим правом звернення до суду іноземців, осіб без громадянства (біженців, мігрантів, іммігрантів), така категорія суб'єктів адміністративного судочинства, як апатриди, залишилася поза межами вітчизняного законодавства. Розглянуто адміністративно-правовий статус громадян України, іноземних громадян та осіб без громадянства як суб'єктів адміністративного судочинства. З метою усунення недоліків законодавчого регулювання правового статусу апатридів в Україні, автор прийшов до висновку про необхідність усунення існуючого недоліку, шляхом внесення змін до Закону України «Про правовий статус іноземців та осіб без громадянства» від 22.09.2011 р. № 3773-V. Практична цінність одержаних результатів полягає в тому, що сформульовані в статті теоретичні положення, висновки та пропозиції можуть бути використані: у науково-дослідній сфері (для подальших розробок, спрямованих на вивчення проблематики адміністративної юстиції в Україні), у правотворчій сфері (для удосконалення чинного законодавства України), у сфері правозастосування (для поліпшення діяльності адміністративних судів, органів державної виконавчої влади, органів місцевого самоврядування), у сфері, пов'язаній із забезпеченням прав, свобод і законних інтересів фізичних та юридичних осіб

Ключові слова: правовий статус, іноземці, мігранти, апатриди, судочинство, законодавство



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Problematic issues of preventing and countering domestic violence by the prosecutor's office

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In modern realities, the issue of combating and preventing domestic violence is crucial, since many women and children become victims of such violence, and there are cases of domestic violence against men as well. Proceeding from the relevance of this paper, its subject lies in determining the role of the prosecutor's office in preventing and countering domestic violence, which involves an analysis of the content of its duties and powers in this area of activity. During the study, the method of analysis and synthesis, the empirical method, and the comparison method were applied. This paper considered the issue of the role of prosecutor's offices in preventing and countering domestic violence. The problems of legislative regulation of prosecutor's activities in the system of preventing and countering domestic violence were also investigated. This is a common issue primarily because the norms of the current legislation do not clearly

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regulate what actions prosecutors can prevent or counteract domestic violence, because their powers include the direct procedural support of such criminal cases, i.e., after such violence has already occurred. In conclusion, it was noted that for the prosecutor's office to effectively prevent and counteract domestic violence, it is necessary to amend Article 131-1 of the Constitution of Ukraine, which defines the functions of the prosecutor's office in general, and the prosecutor in particular. It is advisable to supplement this Article with a part that would grant the prosecutor's office the right to take measures to prevent and counteract domestic violence. The study conducted in this paper can form the basis of legislative activity upon adopting amendments to legislative acts governing legal relations in the field of preventing and countering domestic violence

Keywords: prosecutor's office, prosecutor, domestic violence, violence against women, violence against children, prevention of violence, combating violence

Introduction

Given the harm that domestic violence causes to society as a whole, this subject is quite relevant in modern realities, since currently the functions of the prosecutor's office as a body that should prevent and counteract domestic violence are not regulated by the current legislation.

The authors of this study believe, this is primarily because the main functions of the prosecutor's office are to maintain a public accusation in court and procedural management of inquiry and investigation bodies.

However, this area of work is still relevant, since the most vulnerable categories are women and children. Individuals with disabilities, the elderly, internally displaced people, and women from rural areas also have an increased risk.

That is why, on December 7, 2017, for the implementation of national policy in the field of combating domestic violence, the Law of Ukraine No. 2229-VIII "On Prevention and Combating Domestic Violence" was adopted, which defines the organizational and legal principles of prevention and combating

domestic violence, the main vectors of the implementation of national policy on prevention and countermeasures against domestic violence, aimed at protecting the rights and interests of victims of such violence.

This Law was adopted as an effective mechanism for combating all forms of domestic violence and ensuring gender equality. According to this regulation, the prosecutor's office is one of the entities that implement measures to prevent and counteract domestic violence.

Therefore, it is important to clarify the role of the prosecutor's office in preventing and countering domestic violence, as well as to determine its duties and powers in this area of activity. In connection with the criminalization of domestic violence and the adoption of the law on preventing and countering it, there was a need for scientific research on some aspects of this problem.

Domestic violence was the subject of scientific research by such scientists as A. Baida, A. Halai, V. Halai, L. Holovko, M. Yevsiukova, V. Muranova, M. Roshka,

O. Starchuk, Ya. Torchyllo, H. Khrystova,
O. Shapovalova, D. Yaitska, E. Yahiazade.

Results and Discussion

There is no excuse for violence, much less domestic violence. This is not a family matter, not a way of education, not a specific manifestation of love. This is a crime; it should be reported until it may be too late. The statistics are staggering – every third family in Ukraine encounters violence. Between 1 and 3 million children witness or are victims of it every year. The consequences of this, apart from physical ones, are deep mental injuries that will never heal. The situation aggravated due to the quarantine when the abusers and victims were forced to find themselves in a closed space. Over the past year, the number of complaints about violence has increased by more than half. Of these, 86% came from women, 12% from men, and 2% from children [1].

To comply with guarantees for the protection of the rights and interests of persons affected by domestic violence, as well as to ensure proper response to cases of such violence, providing support to affected people, creating conditions for each child to exercise the right to grow up in a safe family environment, on September 21, 2020, the Decree of the President of Ukraine “On Urgent Measures to Prevent and Counteract Domestic Violence, Gender-Based Violence, and Protect the Rights of Persons Affected by Such Violence” was adopted [2].

As for the legislative regulation of the issue of domestic violence, the principal law is the Law of Ukraine “On Preventing and Countering Domestic Violence” adopted on December 7, 2017 [3].

Furthermore, in 2017, the Criminal Code of Ukraine was supplemented by Article 126-1 “Domestic violence”, according to which domestic violence is a deliberate systematic commission of physical, psychological, or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of working capacity, emotional dependence, or deterioration of the victim’s quality of life [4].

Thus, with the supplementation of the Criminal Code of Ukraine with this article, abusers are subject to criminal liability, and not just administrative liability, as prescribed in Article 173-2 of the Code of Ukraine on Administrative Offences.

In total, 778 people were convicted under Article 126-1 of the Criminal Code of Ukraine last year.

In 2020, the Prosecutor’s Office introduced closer cooperation between prosecutors and public organizations that handle issues of countering gender inequality and domestic violence [1].

Criminal liability for domestic violence is a relatively new norm in Ukrainian legislation. This provision of criminal legislation brings Ukraine closer to ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence [1].

Article 1.1.1 of the Law defines the concept of domestic violence, namely acts (actions or inactions) of physical, sexual, psychological, or economic violence committed in the family or within the limits of the place of residence or between relatives,

or between former or current spouses, or between other individuals who live (lived) together as one family, but are not (were not) in a family relationship or married to each other, regardless of whether the individual who committed domestic violence lives (lived) in the same place as the victim, as well as threats to commit such acts.

According to Article 1.5 of the Law of Ukraine "On Prevention and Combating Domestic Violence" dated December 7, 2017, prevention of domestic violence is a system of measures implemented by executive authorities, local self-government bodies, enterprises, institutions, and organizations, as well as citizens of Ukraine, foreigners and stateless individuals, who are in Ukraine on legal grounds, and are aimed at increasing the level of public awareness of the forms, causes, and consequences of domestic violence, the formation of an intolerant attitude towards a violent pattern of behaviour in private relationships, an indifferent attitude towards the victims, primarily towards the affected children, and the eradication of discriminatory ideas about the social roles and responsibilities of women and men, as well as any customs and traditions based on them. Counteraction to domestic violence is defined in Item 12 of this Article as follows: a system of measures taken by executive authorities, local self-government bodies, enterprises, institutions, and organizations, as well as by citizens of Ukraine, foreigners, and stateless individuals who are in Ukraine on legal grounds, and are aimed at stopping domestic violence, providing support and protection to the victim, compensating for the damage caused to them, as well as properly investigating cases of

domestic violence, bringing perpetrators to justice and changing their behaviour [5].

The main principles of activities aimed at preventing and combating domestic violence are defined in Article 4 of the Law, which include:

1) guaranteeing the victims' safety and fundamental rights and freedoms of a person and a citizen, namely the right to life, liberty, and personal integrity, to respect for private and family life, to a fair trial, to legal aid, considering the practice of the European Court of Human Rights;

2) due attention to each fact of domestic violence in the implementation of measures in the field of preventing and countering domestic violence;

3) considering the disproportionate impact of domestic violence on women and men, children and adults, observing the principle of ensuring equal rights and opportunities for women and men in the implementation of measures in the field of preventing and countering domestic violence;

4) recognition of the public danger of domestic violence and ensuring an intolerant attitude towards any manifestations of domestic violence;

5) respect and unbiased and unconcerned attitude towards the victims on the part of subjects implementing measures in the field of prevention and counteraction of domestic violence, ensuring the priority of the rights, legitimate interests, and safety of the victims during the implementation of measures in the field of prevention and counteraction of domestic violence;

6) confidentiality of information about victims and individuals who have reported the commission of domestic violence;

7) voluntariness of receiving support by victims, except for children and disabled people;

8) consideration of the special needs and interests of victims, specifically people with disabilities, pregnant women, children, incapacitated people, the elderly;

9) effective interaction of entities implementing measures in the field of preventing and countering domestic violence with public associations, non-governmental organizations, media, and other stakeholders.

The national policy in the field of preventing and countering domestic violence is aimed at ensuring a comprehensive integrated approach to overcoming domestic violence, providing comprehensive support to affected persons and establishing the non-violent nature of private relations (Article 5 of the Law) [6].

Analysis of Article 6 of the Law suggests what place the prosecutor's office occupies in the system of entities that take measures to prevent and counteract domestic violence. Thus, Part 1 of the said Article identifies the following categories of subjects that take measures in the field of preventing and countering domestic violence:

1) specially authorized bodies in the field of preventing and countering domestic violence;

2) other bodies and institutions that are assigned the functions of implementing measures in the field of preventing and countering domestic violence;

3) general and specialized support services for victims;

4) citizens of Ukraine, foreigners, and stateless individuals who are in Ukraine legally. According to Article 6.3.7 of the Law,

the prosecutor's office, along with the service for children, authorized divisions of the National Police of Ukraine, education management bodies, educational institutions, establishments, and organizations of the education system, healthcare authorities, establishments, and institutions, centres for providing free secondary legal aid, by the courts, authorized by the approbation bodies belongs to other bodies and institutions entrusted with the functions of implementing measures in the field of prevention and countermeasures against domestic violence.

Analysing the above, it can be concluded that the Law does not make provision for special rights and powers of the prosecutor's office in carrying out official activities related to the prevention and counteraction of domestic violence.

Therefore, the activity of the prosecutor's office in the field of prevention and counteraction of violence can be carried out during the prosecutors' performance of the main functions of their activities, which according to Article 131-1 of the Constitution of Ukraine relate to supporting a public accusation in court; organization and procedural management of pre-trial investigations, resolution of other issues according to the law during criminal proceedings, supervision of covert and other investigative and search actions of law enforcement agencies; representation of the state's interests in court in exceptional cases and pursuant to the law.

Thus, considering the requirements of Article 131-1 of the Constitution of Ukraine and the provisions of the Law of Ukraine "On Preventing and Countering Domestic Violence", the role of the prosecutor's office in preventing and countering domestic

violence should be determined considering these norms, as well as measures to prevent domestic violence prescribed in Article 19.1 of the Law, and special measures to counteract domestic violence specified in Article 24 of the Law.

However, the authors of this paper believe that such legal uncertainty concerning the role of the prosecutor's office in countering and preventing domestic violence deprives this body of proper functioning in this area.

To ensure the proper organization of the activities of the prosecutor's office for the protection of children's interests and countering violence, guided by Article 9 of the Law of Ukraine "On the Prosecutor's Office", Prosecutor General I. Venedyktova adopted an order of November 4, 2020 [7]

This order defines the following methods of activity of the prosecutor's office in the field of prevention of domestic violence: comprehensive use of the functions of the prosecutor's office regarding the organization and procedural management of pre-trial investigations, solving other issues in criminal proceedings pursuant to the requirements of the law, supervision of covert and other investigative and search actions of law enforcement agencies, maintaining public prosecution in court, representing the interests of the state in court pursuant to the legislatively prescribed procedure, supervision of compliance with laws in the execution of court decisions in criminal cases, when applying other coercive measures related to the restriction of personal freedom of children, according to the requirements of the Prosecutor General's orders, considering the specific features defined by this order.

Consequently, the prosecutor's office can implement measures to prevent and counteract domestic violence with its local regulations.

Thus, according to Article 19 of the Law, to perform tasks to prevent domestic violence, the subjects implementing the relevant measures ensure as follows:

1) the situation is investigated and statistical data on facts of domestic violence is collected, grouped by article;

2) organization and conduct of sectoral and intersectoral studies of the state, causes, and prerequisites for the spread of domestic violence, the effectiveness of legislation on preventing and countering domestic violence and the practice of its application.

3) organization and conduct of information campaigns among the population, including children and youth, to prevent and counteract domestic violence, explain its forms, manifestations and consequences;

4) development and implementation of educational programs in educational institutions on preventing and countering domestic violence, including against children;

5) involvement of media in educational campaigns aimed at completing the tasks of preventing domestic violence, specifically the development of a caring attitude towards victims, primarily affected children, awareness of the need to immediately report cases of domestic violence, namely to the call centre for preventing and countering domestic violence, gender-based violence and violence against children;

6) organization and conduct of joint and specialized trainings and seminars for specialists working in the field of preventing and countering domestic violence, as well as for law enforcement officers and judges.

Given the definition of the term “counteraction to domestic violence” provided in Article 1.12 of the Law, the measures that make up the specified type of activity are as follows: termination of domestic violence; providing support and protection to the victim; compensation for the damage caused to the victim; proper investigation of cases of domestic violence; prosecution of offenders; changing the behaviour of offenders.

Purposeful measures to counteract domestic violence according to Article 24 of the Law include:

1) an urgent injunction against the abuser. According to Article 25.1 of the Law, an urgent injunction is issued to the offender in case of an immediate threat to the life or health of the victim to immediately terminate domestic violence, prevent its continuation or re-commission. This action is performed by authorized units of the National Police of Ukraine;

2) a restraining order against the offender. According to Article 26 of the Law, a restraining order is issued by the court for a period of one to six months upon application for a restraining order against the offender.

During the past 2020, about 3 thousand such offences were registered in the Unified State Register of Pre-Trial Investigations, almost 2,000 of them were sent to court with indictments. Last year, crimes related to domestic violence were committed against 199 children.

In 2020, nine shelters were created – these are shelters for victims of domestic violence. This year, UAH 275 million is provided to expand the network of victim support services. These funds will be used to maintain existing shelters and day centres, create

new ones, and increase the number of mobile social and psychological aid teams [1].

Thus, the prosecutor’s office, understanding the complexity of the situation in this area, contributes to the prevention and combating of domestic violence.

Having analysed the norms of the current legislation, it can be concluded that the scope of powers granted to the prosecutor’s office to prevent and counteract domestic violence outside the sphere of criminal justice is insufficient and does not allow effective performance of official activities in this area. Based on the study of legislative acts, conclusions were made about the levelling of the role of the prosecutor in preventing and countering domestic violence outside the sphere of criminal justice, which undoubtedly leads to the need to expand the powers of the prosecutor’s office, the need to develop and empower the prosecutor’s office at the legislative level with powers that are not formally, but factually directed for inclusion in activities related to the prevention and counteraction of domestic violence not only in the area of criminal justice, but also outside this area, which must be prescribed in the Law of Ukraine [3]. The task of prosecutors is to effectively represent public prosecution in courts in such cases.

Conclusions

In modern conditions, the role of the prosecutor in preventing and countering domestic violence outside the sphere of criminal justice is not significant, which is completely inconsistent with international practices and the needs of society. The presence of a greater scope of powers outside the sphere

of criminal justice, an effective mechanism of interaction with other subjects to prevent and counter domestic violence would give the prosecutor the opportunity to respond to socially dangerous acts, prevent and counter them more effectively. Proceeding from this circumstance, it is considered necessary to develop and provide the pow-

ers of the prosecutor's office legislatively, not formally, but really aimed at inclusion in activities related to the prevention and counteraction of domestic violence not only in the area of criminal justice, but also outside this area, prescribing them in the Law of Ukraine "On Prevention and Combating Domestic Violence".

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Проблемні питання запобігання та протидії домашньому насильству органами прокуратури

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Анотація

У реаліях сьогодення питання протидії та запобігання домашньому насильству має вкрай важливе значення, оскільки велика кількість жінок та дітей стають жертвами такого насильства, хоча трапляються випадки домашнього насильства і щодо чоловіків. Виходячи з актуальності статті, тема полягає у визначенні ролі прокуратури в запобіганні та протидії домашньому насильству, що передбачає аналіз змісту її обов'язків і повноважень на цьому напрямі діяльності. В ході роботи було застосовано метод аналізу та синтезу, емпіричний метод та метод порівняння. У даній статті було розглянуто питання щодо проблематики ролі органів прокуратури в запобіганні та протидії домашньому насильству. Також досліджено проблеми законодавчого врегулювання прокурорської діяльності в системі запобігання та протидії домашньому насильству. Це поширена проблема у першу чергу через те, що нормами діючого законодавства чітко не врегульовано якими ж діями прокурори можуть запобігати чи протидіяти домашньому насильству, адже в їх повноваження входить безпосередньо процесуальний супровід таких кримінальних справ, тобто після того, як таке насильство вже відбулось. У висновку було зазначено, щоб органи прокуратури могли ефективно запобігати та протидіяти домашньому насильству, необхідно внести зміни у статтю 131-1 Конституції України, яка визначає функції прокуратури в цілому, та прокурора зокрема. Доцільним вбачається доповнити цю статтю частиною, яка б надавала право органам прокуратури здійснювати превентивні заходи щодо запобігання та протидії домашньому насильству. Дослідження, проведені в даній роботі, можуть лягти в основу законотворчої діяльності при прийнятті змін до законодавчих актів, які регулюють правовідносини в сфері запобігання та протидії домашньому насильству

Ключові слова: орган прокуратури, прокурор, прокуратура, домашнє насильство, насильство проти жінок, насильство проти дітей, запобігання насильству, протидія насильству



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Draft Criminal Code of Ukraine: Innovations

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The need to edit the Criminal Code of Ukraine emerged due to the outdated Soviet content of laws that are unable to handle modern issues. In addition, considering the modern needs, it does not make provision for the fulfilment of tasks set by society for the law enforcement system. The idea of the new Criminal Code lies in the protection of the interests of victims, as well as in its more effective use by citizens. Considering the current continuation of work on the draft, the purpose of this paper was to investigate the provisions of the proposed action plan for the Criminal Code of Ukraine. During the study, the method of analysis and synthesis, the empirical method, and the comparison method were applied. The paper analysed the new criminal program proposed for discussion and focused on the areas of reforming the criminal justice system. It was found that the plan proposed for consideration is aimed at protecting the interests of victims, and it is stipulated that it should be convenient to use. The draft stipulates that the new Criminal Code and its application must comply with the decisions of the European Court of Human Rights regarding Ukraine. It was established that the draft of the Criminal Code of Ukraine prescribes the responsibility of officials for non-compliance with the decisions of the European Court of Human Rights. Due to the analysis of prospective legislation on criminal responsibility,

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a conclusion was made about choosing the correct vector to implement the main idea of the new Criminal Code of Ukraine – ensuring justice in the field of criminal justice on new foundations, classifying offences proceeding from the type of damage caused and establishing typical sanctions, determining the relationship between the severity of criminal offences according to an objective criterion, unification of circumstances that increase or decrease the degree of severity, elimination of gaps. The materials of this paper are of practical value for future research of experts, discovery of new questions, proposals, and analysis of new amendments to the draft of the new Criminal Code of Ukraine

Keywords: calculation unit, psychoactive substance, degree of severity, qualification formula, restitution

Introduction

Fundamental changes in the socio-political conditions of the state's life have created prerequisites for reforming the Criminal Code of Ukraine. The need to change the Criminal Code of Ukraine, which was adopted by the Verkhovna Rada in 2001, arose because of the outdated, Soviet content of provisions that are unable to respond to modern challenges, it does not allow fulfilling the tasks that society sets before the law enforcement system and the criminal justice system. The idea of the new Criminal Code is that it should really protect the interests of victims and be convenient to use. Currently, work on the draft of the new Criminal Code of Ukraine is ongoing. The working group on the development of criminal law has completed the discussion of the General part of the new Code.

Considering the importance of the problem, the reformation of criminal legislation has always been the focus of attention of scientists, including M. Buromenskyi, O. Horokh, O. Drozdov, A. Orlean, M. Khavroniuk, and others.

Results and Discussion

The analysis of the new Criminal Code suggests that the structure of the Criminal Code

will be quite conventional. However, it does not have the usual numbering of articles in arithmetic sequence. The analysis of sections and articles of the new Criminal Code of Ukraine gives grounds to assert that it reflects the most progressive and democratic provisions: articles are numbered according to the number of the book, section, and article (e.g., Article 1.3.1 Meaning of the terms of the Criminal Code). Such numbering is somewhat unusual for perception, and the author of this paper believes that it can create inconveniences in law enforcement practice, and therefore interfere with the application of legislation by ordinary citizens [1]. Definitions of concepts in the code are set out more concisely, complex concepts are divided into sub-paragraphs. Notably, the draft of the new code sets out both factually existing norms and new concepts. Instead of the “tax-free minimum wage of citizens”, it is proposed to use such a term as “calculation unit”, which will amount to 200 hryvnias.

The General part consists of three books. The first book is about the Criminal Code, its features as a law. The second book is about the concept of a criminal offence. The third book is criminal legal means and their application. Next is the Special part, which is

divided into 8 books and begins with crimes against a person and a citizen.

Notably, for the first time, Section 1.2. of the CCU defines the principles and fundamentals that judges, prosecutors, lawyers, and investigators must be guided by at all times.

A positive aspect of the draft CCU under study is the introduction of a new Section 1.3, which concerns the clarification of the terms of the CCU. The corresponding terms have received a fixed and clearly defined meaning, which renders their misinterpretation impossible. For instance, the concept of psychoactive substance has been unified, such substances include narcotic drugs, psychotropic substances, alcoholic beverages, intoxicating drugs, potent medicinal drugs, etc. There are 84 such terms proposed in the Criminal Code [2].

The next essential point is that the proposed Criminal Code sets out a specific calculation unit, based on which fines will be charged and damage will be determined, which amounts to 200 hryvnias. The volume of the calculation unit is fixed and can change no more than once a calendar year. This allows finally moving away from the “tax-free minimum wage of citizens”.

In the draft Criminal Code under study, the definition of the composition of the criminal offence and its elements is fixed at the legislative level, which, according to the author of this paper, is a correct decision. Article 2.1.2 states that the composition of a criminal offence is a set of mandatory features that determine the object, the objective side, the subject and the subjective side of the criminal offence [2].

Given the limited scope of the article, the author would like to draw attention to the subjective side of the composition of the criminal offence, since for the first time the

concepts of legal error and factual error are legislatively defined:

➤ a legal error is a person's misunderstanding: a) that the act or inaction committed by them is prescribed by the Code as a criminal offence; b) what means of criminal liability can be applied to them;

➤ a factual error is a person's incorrect understanding of the presence or absence of a sign of a criminal offence.

The draft Criminal Code also sets out the concept of intent specified and non-specified. Intent is considered specified if the person expects the occurrence of damage in a certain amount. Intent is considered non-specified if the person expects the occurrence of damage in any amount.

An entirely different approach to the concept of multiplicity is observed in the new Criminal Code as well. It is legislatively stipulated that the types of multiplicity of criminal offences are a) a set of criminal offences; b) recidivism of criminal offences. It is indicated that the totality of criminal offences is the commission by a person of two or more single criminal offences: a) for none of which they were convicted and b) for each of which means of criminal liability are to be applied to the person.

The age of criminal liability stays unchanged (16 years), but along with the terms “minor” and “underage individual”, the term “young individual” appears – aged from 18 to 21 years. However, what is interesting, in the opinion of the author of this paper, is the definition of the subject of a criminal offence, namely: the subject of a criminal offence (the general subject of a criminal offence) is a reprehensible individual – a person who, directly or through other persons who are not subject to criminal liability, committed a criminal offence at the age from which,

according to the Code, criminal liability for its commission may arise.

Special attention should be paid to the classification of criminal offences prescribed in the general part of the draft Criminal Code of Ukraine, depending on the degree of severity. Criminal offences, depending on the severity, are divided into misdemeanours and crimes, and depending on the form of guilt – into intentional and negligent.

For the first time in the Criminal Code, intentional crimes have ten degrees of severity, considering: a) the type of damage caused by them, b) features of the composition of the crime, which change the degree of severity of the crime. The author of this study believes that the developers factored in the good practices of foreign countries.

Negligent crimes have two degrees of severity, considering the type of damage caused by them. Certain ratios are established between the damage caused and the severity of the committed intentional criminal offence. It is considered appropriate to link the gravity of the crime to the consequences and aggravating/mitigating circumstances.

A unified algorithm for determining the severity of a crime is also provided. The degree of gravity of a crime committed in the absence of a sign of *corpus delicti* that changes the degree of its severity is fundamental. The degree of severity of a crime committed in the presence of a sign of *corpus delicti*, which changes the degree of its severity in comparison with the fundamental one, changes in a clearly defined sequence. There are also certain rules that reduce the severity of the crime. If there are no grounds for reducing or increasing the severity of the crime, the court cannot change the basic severity of the crime. This approach is correct and applicable in the world.

The qualification formula will probably be the most difficult challenge for the participants in the proceedings, since it is easy to miss a symbol in the list of numbers, hyphens, and full stops, and the procedural document will already contain a misqualified content of a crime. In other words, such a description of the formula is more suitable for technical documentation using electronic databases. And considering the possible totality of crimes or a new rule to qualify acts against each victim, one will end up with a procedural document incomprehensible to an individual.

As for the criminal legal means that can be applied to persons who have committed crimes, such measures include groups of measures of punishment, restitution, and compensation, confiscation of property and seizure of possessions, as well as security measures, among which the innovation is the disclosure of information about the individual who committed the crime. A substantial change is the reduction in the number of types of punishments from 12 that are available in the Criminal Code to only 3. For the commission of a crime, the following types of punishments are established and can be applied as the principal ones: a fine, imprisonment for a certain term, and life imprisonment.

For committing a misdemeanour, the following types of punishments are established and can be applied as the principal ones: a) monetary penalty; b) corrective unpaid work; c) restriction of freedom of movement; d) arrest.

As for fines, their size varies, but the legislator put the calculation unit as the basis. Therewith, the payment of the fine can be paid in instalments or delayed for a year.

Imprisonment for a certain term is established for a period of three months to twenty years, and for crimes against international humanitarian law related to the

intentional deprivation of a person's life, up to thirty years. Admittedly, the question arises regarding the effectiveness of applying a 30-year punishment, since imprisonment leads to degradation, and is a destructive measure.

Life imprisonment is provided only for crimes of 9th and 10th degrees.

At the same time, the category "criminal legal means" appears, which, apart from punishments, includes socially useful work, probation, probation arrest, electronic monitoring, compensation, restitution, confiscation, and restrictive measures.

An essential point is the possibility of applying criminal legal means to a legal entity. When applying a criminal legal means, a legal entity is obliged to make restitution or compensation in full. Of particular interest is the provision prohibiting the support of a legal entity at the expense of public finances [2].

Article 3.1.6 – sanctions for crimes, which defines the punishment for a crime depending on its severity (10 degrees of severity), is an innovation for the Criminal Code, the sanctions are placed in a tabular form, which is also new for the Criminal Code.

Notably, the Criminal Code will also list circumstances that exclude the possibility of criminal liability. Thus, there is a circumstance of playing sports – "Causing harm while playing sports" – it is legal to cause harm to the life or health of a person during a sports competition or training, if: a) the corresponding sport is recognized in Ukraine according to the established procedure, b) competition, training is officially organized, c) the person who is harmed has voluntarily and in advance given consent to engage in this sport, and d) the person who causes harm respects the rules of this sport.

The author of this paper believes that such a circumstance as causing harm with

the consent of a person is controversial, and therefore deserves attention. It is lawful to cause damage with the consent of a person, if: a) the damage is caused to the rights and interests that this person is authorized to dispose of, b) the person's consent is voluntary, c) this consent was obtained in advance according to the requirements of the law.

The person authorized to dispose of the relevant rights and interests is a legally capable person or a legal representative of an incapacitated or disabled person. Causing death with the consent of a person is not considered lawful.

As for the section that defines the types of security tools, the legislator tried to clearly define them. Thus, a means of security is a forced limitation in the exercise of human rights or freedoms, which is applied to secure society to a person convicted by a court of law for committing a criminal offence, or to a person who has committed an illegal act prescribed by the Criminal Code. The author of this paper believes that a security measure – the publication of information about a person's conviction – is questionable. Disclosure of information is a means of security, which lies in posting information about a person convicted of committing an intentional crime in a) media determined by the Court, b) the Unified State Register of Individuals Who Committed Crimes. It is comforting that the legislator provided a caveat, in case of publicizing information about a person's conviction, it is not allowed to post the personal data of other participants in the criminal proceedings.

Restitution and compensation appear as a means of ensuring the violated rights of the victim. Thus, a person who committed a criminal offence, as a result of which the personal right of the victim was violated and/

or caused damage to the victim, the territorial community, the state, shall be obliged to make restitution and/or compensation [2].

Analysis of the draft of the Criminal Code allows noting that the proposed CCU has no such type of punishment as confiscation of property, which is available in Article 51 of the current CCU. Instead, a separate Section 3 was proposed, which handles the confiscation of property and the seizure of possessions. Consequently, confiscation of property lies in the forced gratuitous withdrawal of compensation for damage to victims, money, property rights, and other property that belongs to the convicted person by right of ownership to the state fund.

Confiscation of property is applied in cases of conviction of a person for an intentional criminal offence.

Attention should also be paid to the section concerning the specific features of criminal legal means in relation to a person who has committed a criminal offence at a minor or young age. The legislator uses the term “young age” for the first time – a young individual – a person who has reached the age of 18 but has not reached the age of 21.

The author of this paper supports the opinion of experts who believe that it is necessary to make provision for the possibility of exemption from serving a sentence for minors who have committed a crime repeatedly during probation. The new Criminal Code should also make provision for a mechanism for observing the rights of a person after serving their sentence and erasing their criminal record.

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So far, only 5 books have been written for the Special part of the Code (the first of them is called “Crimes and Misdemeanours Against a Person and Citizen”), but from them one can conclude on the general structure.

At the beginning of each section, there are articles that list aggravating and mitigating circumstances for this category of crimes (if any). For each individual crime, there are no particular penalties, but only indications of the degree of such a crime. It is interesting that the Special part will have no sanctions because all of them were transferred to the General part as they become typical.

The first books written already specify new types of crimes: illegal accusation of committing a crime, violation of the right to defence, coercion to testify; forced marriage, exploitation of a person, enforced disappearance.

Conclusions

Thus, as the study proved, the implementation of the principal idea of the new Criminal Code – ensuring fairness in criminal justice on a new basis, classifying offences proceeding from the type of damage caused and establishing typical sanctions, overcoming the voluntarism of the legislator, determining the correlation between the severity of criminal offences according to an objective criterion, the unification of circumstances that increase or decrease the degree of severity, the clarification of a large number of definitions, the elimination of gaps, all this allows moving from the “state-criminal” relationship to the system of “victim-state-criminal” relations [3].

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Проект Кримінального кодексу України: новели

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Анотація

Потреба у редагуванні Кримінального кодексу України виникла через застарілий радянський зміст законів, що не мають змоги реагувати на сучасні проблеми. Також, враховуючи потреби сучасного часу, він не передбачає виконання завдань поставлених суспільством перед правоохоронною системою. Ідея нового Кримінального Кодексу полягає в захисті інтересів потерпілих, а також у більш ефективному використанні громадянами. Враховуючи теперішнє продовження роботи над проектом, мета статті полягає у дослідженні положень запропонованого плану дій Кримінального кодексу України. В ході роботи було застосовано метод аналізу та синтезу, емпіричний метод та метод порівняння. У статті проаналізовано запропоновану до обговорення нову кримінальну програму та зосереджено увагу на напрямках реформування системи кримінальної юстиції. З'ясовано, що запропонований до розгляду план спрямований на захист інтересів потерпілих, передбачено, що він має бути зручним у користуванні. У проекті зафіксовано, що новий Кримінальний кодекс та його застосування мають відповідати рішенням Європейського суду з прав людини щодо України. Встановлено, що в проекті Кримінального кодексу України передбачена відповідальність для посадовців за невиконання рішень Європейського суду з прав людини. У результаті аналізу перспективного законодавства з питань кримінальної відповідальності зроблено висновок про обрання правильного вектору реалізації основної ідеї нового Кримінального кодексу України – забезпечення справедливості у сфері кримінальної юстиції на нових засадах, класифікації правопорушень виходячи з виду заподіяної шкоди та встановлення типових санкцій, визначення співвідношення між тяжкістю кримінальних правопорушень за об'єктивним критерієм, уніфікація обставин, які підвищують або знижують ступінь тяжкості, ліквідація прогалів. Матеріали становлять практичну цінність для майбутніх досліджень експертів, відкриття нових питань, пропозицій та аналізу нових внесень щодо проекту нового Кримінального Кодексу України

Ключові слова: розрахункова одиниця, психоактивна речовина, ступінь тяжкості, формула кваліфікації, реституція



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Validity of applying the principle of self-determination of peoples by separatist entities in Ukraine

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The process of modern social development is determined by two dialectically opposite tendencies: centripetal, expressed in worldwide integration and globalization, and centrifugal, manifested in regional localization, one of the forms of which is the phenomenon of separatism – the desire of regions within states to separate, to acquire greater political independence, sovereignty up to territorial separation or joining another state. The purpose of this paper was to analyse the theoretical issues of national self-determination and the principle of equality of peoples in its relationship with separatism. The study used a set of methods and techniques of scientific cognition. The principal ones included the dialectical method, comparative legal method, formal legal method, and method of logical analysis. The paper analyses the possibility of reference to the principle of self-determination of peoples by separatist entities in Ukraine as a justification for their activities. The minimum necessary criteria of legal grounds for self-determination are considered, including the presence of an effective connection of the subject of

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self-determination with a certain territory; the presence of the subject itself, i.e., the people (ethnos), which claims self-determination; and recognition by the international community of such a potential subject as the bearer of the right to self-determination. As for the connection with the territory, the doctrine of international law and practice recognizes the right to cultural and national self-determination in a certain territory for any ethnic group. This right is limited to the common interests of the entire people of the state, which lies in the unconditional preservation of the inviolability and integrity of its territory. As for the presence of the subject of self-determination itself, the people recognize the historical community of people that has developed in a certain territory and has stable features of language, culture, and mentality, as well as the awareness of their unity and difference from others through conscious self-name. At the same time, diasporas and migrants must obey the laws of the country of residence on the right of citizenship or the right of permanent residence. As for the recognition of the subject of self-determination by the international community, they recognize those who are under colonial rule, occupation by a foreign state, or who are subject to a policy of racism. Consequently, international law does not protect separatist movements whose goal is secession if they do not meet these criteria. This means that separatist entities in Ukraine are not entitled to secession, and by their methods of activity they are terrorist organizations. The practical value of the materials and conclusions presented in this paper lies in their further use in further developments aimed at the analysis and study of the self-determination of peoples through separatism, in the law-making sphere, and the sphere of law enforcement related to ensuring the rights and freedoms of citizens

Keywords: people, international recognition, right to self-determination, secession, territory

Introduction

Considering the theoretical foundations and international legal practice of the relationship between the principles of territorial integrity of states and the self-determination of peoples, it is necessary to analyse the possibility and validity of the application of the principle of self-determination of peoples by separatist entities in Ukraine. Do they meet at least the minimum necessary criteria for the existence of a legal basis for self-determination in the general international legal context?

The author of this study believes that such mandatory criteria are the presence

of an effective connection of a potential subject of self-determination with a certain territory regarding which self-determination can be carried out; the presence of the subject itself, i.e., the people (ethnos, not the population), which potentially claims self-determination; and recognition by the international community of such a potential subject as the bearer of the right to self-determination. Therefore, this study will consider the compliance of the "Republic of Crimea", "Donetsk People's Republic" and "Luhansk People's Republic" with these criteria.

Results and Discussion

Territory criterion

Observance of the principles of equality and self-determination of peoples in conjunction with the principle of territorial integrity of states is one of the urgent issues of modern international law, although international law makes provision for various forms of external self-determination, such as unification, accession, or division of states [1]. In the doctrine of international law and the practices of states, the provision that in case of the disintegration of one state and the emergence of new ones on its territory, the latter inherit this territory within the limits established by the treaty and extend their state sovereignty to it [2] has long been strengthened.

Consequently, in matters of disposing of its territory, the state is limited by the interests of the people, who have the exclusive right to make a final decision. Any ethnic group living on the territory of a state is entitled to cultural and national self-determination (development), limited, however, by the common interests of the entire people of the relevant state. No national (ethnic) self-determination is entitled to negate such a common interest as the unconditional preservation of the inviolability and integrity of the territory of the state [3].

According to B.M. Klymenko, historicity as a factor in the formation of a territory belonging to a self-determined people also requires a careful and dialectical approach, since in the historical process, many peoples changed the places of their settlements, moved, merged with other peoples, formed new and stable economic, social, and other ties. Historicity implies a long process, which, in isolation from other factors, can

distort the real state of affairs and serve as grounds for unjustified territorial claims [4].

When implementing the principle of self-determination of peoples, it is necessary to remember that all the fundamental principles of international law are interrelated, and its implementation should not harm the territorial integrity of states. However, in a particular situation, it is sometimes quite difficult to achieve a harmonious combination of these principles, and if it is not possible to find solutions to these issues based on international law, then it is necessary to search for effective political means to reach a compromise, showing good will and tolerance towards each other [5].

People (ethnos) criterion

In this connection, the issue of the existence of “the people of Crimea”, “the people of certain districts of Donetsk region” and “the people of certain districts of Luhansk region” as bearers of the right of peoples to self-determination, bearers of sovereignty and sources of state power, on whose behalf, respectively, the resolution of the Verkhovna Rada of the Autonomous Republic of Crimea “On the independence of Crimea”, “Declaration on the sovereignty of the Donetsk People’s Republic” and “Declaration on the proclamation of independence and state sovereignty of the Luhansk People’s Republic” were adopted, and the appropriateness of definitions of “the people of Crimea”, “people of Donetsk region” and “people of Luhansk region” from the standpoint of constitutional and international law [6; 7; 8].

The resolution of the Verkhovna Rada of the Autonomous Republic of Crimea “On the

independence of Crimea” states that “the Verkhovna Rada of the Autonomous Republic of Crimea, proceeding from the direct expression of the will of the peoples of Crimea [...] decides to declare Crimea an independent sovereign state – the Republic of Crimea, in which the city of Sevastopol has a special status”. In the “Act on the Proclamation of State Independence of the Donetsk People’s Republic” it is declared that “based on the will of the people of the Donetsk region [...] the Regional Council of the Donetsk region declares the creation of a sovereign state – the Donetsk People’s Republic” [9]. In addition, in the “Declaration on the Proclamation of Independence and State Sovereignty of the Luhansk People’s Republic” it is noted that “the Luhansk Regional Council, expressing the will of the people, [...] declares the state sovereignty of the Luhansk People’s Republic”.

Similarly, in the “Constitution of the Republic of Crimea” and in the “Constitution of the Donetsk People’s Republic” and in the “Temporary Fundamental Law (Constitution) of the Luhansk People’s Republic” there is no definition of the term “people”, but it is only declared that: “The source of power in the Republic of Crimea is its people, who are part of the multinational people of the Russian Federation” or “The source of power in the Donetsk (Luhansk) People’s Republic is its people” [10; 11; 12]. Moreover, it is necessary to pay attention to the fact that in all three “constitutions” the same wording is contained as a carbon copy, under the same numbers of paragraphs and in the same articles, which leaves no doubt about the single (Russian) authorship of all documents.

As stated in Paragraph 1 of the Declaration on the sovereignty of the Donetsk

People’s Republic: “citizens of all nationalities of the Donetsk People’s Republic constitute its people, who are the bearer of sovereignty and the source of State Power” [7]. A similar norm is contained in the “Declaration on the sovereignty of the Luhansk People’s Republic”: “Citizens of the Republic of all nationalities constitute the people of the Luhansk People’s Republic”. But the founding acts of the “Republic of Crimea” do not even mention who constitutes the “multinational people of Crimea”.

Thus, from the documents cited above, it becomes evident that the “people of Crimea”, “the people of Donetsk region” and “the people of Luhansk region” as a whole emerge exclusively based on a single criterion – territorial, as a set of people living on the territory of an administrative-territorial unit of Ukraine.

Thus, recognizing the right to self-determination of the population of any administrative-territorial unit, we come to an absurd situation: if such a right belongs to the population of an oblast (autonomous republic), diverse in its ethnic and national composition, why does it not belong to the population of a district, cities, villages, etc.? At the same time, the question arises whether the population of a particular district, city, village, or street can consider itself a people with the right to self-determination? Consequently, the population of each village can declare a republic within its territory. If so, the process of sovereignization can be endless. Therefore, I.I. Lukashuk fairly notes that “the right to self-determination belongs to the people, the nation, i.e., a fairly large and integral community. Ethnic, religious, linguistic minorities are entitled to cultural autonomy, to respect for their interests within

the framework of a democratic state" [13]. It is in this sense that it is meaningless to talk about the people of a certain region.

In turn, in the science of constitutional law, the term "people" is defined as a totality of citizens of the entire state, and the definition of "population" is used for local self-government issues.

According to the definition of Wikipedia, "nation" (Greek – *ἔθνος* (ethnos)) is a historical community of people that has formed on a certain territory and has stable features of language, culture, and mentality, as well as an awareness of its unity and difference from others through conscious self-naming [14]. The latter is usually recorded in the ethnonym, as the self-name of the people. A historically formed ethnos acts as a social organism that reproduces itself mainly through ethnically homogeneous marriages and the transmission of language, traditions, etc. to new generations. For a more sustainable existence, the ethnic group strives to create its socio-territorial organization (state), and ethnic groups, especially in modern conditions, to their autonomous associations, consolidating their rights in legislation. In world practice, diasporas and migrants are subject to the laws of the country of residence in the national states based on the right of citizenship or the right of permanent residence.

Therefore, even in this sense, it is incorrect to discuss the "people of Crimea", "people of Donetsk region" and "people of Luhansk region", and from a scientific standpoint, it is impossible.

In turn, the study of the recognition by the international community of the right to self-determination by the people necessitates an answer to the question whether the

"people of Crimea", "the people of Donetsk region" and "the people of Luhansk region" bear the right to self-determination according to international law?

In relation to the right of peoples to self-determination, the terms "people" and "nation" are used in international law. M.V. Ostroukhov believes that the right to self-determination is inherent in ethnic communities (peoples) [1].

The famous English international lawyer, President of the International Court of Justice of the United Nations in 2006-2009, Rosalyn Higgins, raising the question of who exactly is entitled to self-determination, notes the following: "The emphasis in all relevant documents, as well as in state practice (under which I refer to statements, declarations, adopted positions) on the importance of territorial integrity means that "peoples" should be understood in the sense of all the peoples of a given territory. Admittedly, all members of certain minority groups are part of the peoples of this territory. In this sense, they are also, as individuals, holders of the right to self-determination. But minorities as such have no right to self-determination. This means, in essence, that they are not entitled to secession, independence, or association with similar groups in other states" [15]. Evidently, Professor Higgins believes that the people of the entire population of a given state are entitled to self-determination, while the national minority living on the territory of this state are not entitled in the same way.

Similarly, Ukrainian international lawyer, judge of the European Court of Human Rights in 1998-2008, V.H. Butkevich, regarding the possibility of self-determination of

national minorities, emphasizes that “modern international law does not automatically link the rights of national minorities with the right to self-determination” [16].

Criterion of recognition by the international community

Furthermore, according to the russian scientist V.L. Tolstykh, the peoples who are entitled to receive help from the international community in achieving self-determination are: “Firstly, peoples under colonial rule; secondly, peoples living in the territory occupied by a foreign state; thirdly, peoples in respect of whom the state in whose territory they live conducts a policy of racism” [17]. And the scientist further states that “international law does not protect separatist movements whose purpose is secession, if they do not meet the above-mentioned characteristics” [17].

Thus, the recognition of the right of a certain nation to self-determination is not declarative, but constitutive, i.e., it creates a new subject in the field of international law.

As for the problem of separatism in Ukraine, this means that the population of certain districts of the Donetsk and Luhansk regions (as well as the Autonomous Republic of Crimea) is not considered by the UN as having the right to self-determination, is not recognized by the international community as a subject of international law, and, accordingly, is not entitled to such self-determination [18, 19]. Considering the above, the population of the Autonomous Republic of Crimea and certain dis-

tricts of the Donetsk and Luhansk regions, a priori not being separate peoples, not having a historical effective connection with the respective territory, have no right to support from the international community in terms of assistance in achieving self-determination through the fact that it: is not a people in the sense of the right of peoples to self-determination; is not entitled to self-determination regarding a particular historical territory; and not recognized by the international community as a people with the right to self-determination, which, in fact, the international community demonstrated by rejecting the possibility of recognizing the “Republic of Crimea”, “DPR”, and “LPR”.

Furthermore, It is interesting that the “DPR” and “LPR” try to create the appearance of pseudo-state activities, hold “referendums” and “elections”, take part in negotiations with representatives of Ukraine, russia, the OSCE, and even sign protocols. But are groups like the “DPR” and “LPR” capable of performing any obligations under international law? And do they want it?

It is doubtful that these questions can be answered positively. When a non-state actor starts a struggle with a state, ideology, or system (capitalist, Western, etc.), it opposes itself to them and, accordingly, does not want to share their values and methods.

As for the “DPR” and “LPR”, they will not be able to apply international law for another reason: they cannot be recognized as states (even the russian federation, which provides them with political, military,

informational, and other support, does not recognize them as states), and considering this, they cannot enter into any official international relations and, therefore, to be subjects of international law, bearers of international rights and obligations. These and similar entities are consciously incapable of being equal in sovereignty to states, and therefore, to strengthen the stability of the interstate system, the so-called declarative theory of state recognition must be rejected, so that the separatists, who make claims for state independence with the use of force, and their sponsors a priori had no chance or hope of success.

To ensure its effectiveness, international law must be a conservative, rigid, regulatory system. It should be clear to the new “players” claiming statehood that they are obliged to accept the current rules established by the recognized states, and not try to “dilute” these rules with their own internationally illegal behaviour [20]. International law at the beginning of the 21st century is predominantly positive law arising from the agreement of the will of states and the behaviour of a separate subject of international law (a state or, even more so, a non-state entity), which contradicts the agreed will of states expressed in the another applicable norm of international law, should be considered as a violation of this norm [21].

Thus, according to international practice, the “Republic of Crimea”, “DPR” and “LPR” fall under the concept of separatism, which is based on “the aspiration of the population of this or that territory, of these or

that separate ethnic communities that do not have a common recognition of the right to self-determination, to separation from the state, and the very process of separation or secession is done with a bet on full autonomous existence or joining another state” [1].

Conclusions

Thus, the content of the principle of equality and self-determination of peoples and the principle of territorial integrity regarding the declaration of “independent states” in Crimea and the East of Ukraine based on the principle of self-determination of peoples, suggests as follows:

➤ firstly, the principle of equality and self-determination of peoples was implemented by the people of Ukraine through the creation of a sovereign state, and the protection of the territorial integrity of Ukraine is a continuation and security of its observance;

➤ secondly, an encroachment on the territorial integrity of Ukraine is also an encroachment on the right of the people of Ukraine to self-determination;

➤ thirdly, the “Republic of Crimea”, “DPR”, and “LPR” are proclaimed in violation of the principles of equality and self-determination of peoples and the principle of territorial integrity and cannot be recognized by the international community;

➤ fourthly, the “Republic of Crimea”, “DPR”, and “LPR” are by their very nature separatist entities without signs of statehood, and by their methods of activity they are terrorist organizations.

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Питання обґрунтованості застосування принципу самовизначення народів сепаратистськими утвореннями в Україні

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Анотація

Процес сучасного суспільного розвитку визначається двома діалектично протилежними тенденціями: доцентровими, що виражаються в загальносвітовій інтеграції і глобалізації, і відцентровими, що виявляються в регіональній локалізації, однією з форм якої є феномен сепаратизму - прагнення регіонів у складі держав до відокремлення, набуття більшої політичної самостійності, суверенітету аж до територіального відділення або приєднання до іншої держави. Мета статті полягає в проведенні аналізу теоретичних проблеми національного самовизначення та принципу рівноправності народів у його взаємозв'язку з сепаратизмом. У дослідженні було використано сукупність методів і прийомів наукового пізнання. Основні з-поміж них: діалектичний метод, порівняльно-правовий метод, формально-юридичний метод та метод логічного аналізу. У статті наданий аналіз можливості посилення сепаратистськими утвореннями в Україні на принцип самовизначення народів, як обґрунтування своєї діяльності. Розглянуті мінімально необхідні критерії правових підстав для самовизначення, серед яких: наявність ефективного зв'язку суб'єкта

самовизначення із певною територією; наявність самого суб'єкту тобто народу (етносу), який претендує на самовизначення; і визнання міжнародним співтовариством такого потенційного суб'єкта носієм права на самовизначення. Щодо зв'язку з територією в доктрині міжнародного права і практиці за будь-яким етносом визнається право на культурно-національне самовизначення на певній території. Це право обмежується загальними інтересами всього народу держави, який полягає в безумовному збереженні недоторканності й цілісності її території. Щодо наявності самого суб'єкта самовизначення, то народом визнається історична спільність людей, яка склалася на певній території та володіє стабільними особливостями мови, культури і психічного складу (ментальність), а також усвідомленням своєї єдності і відмінності від інших через свідому самоназву. Водночас діаспори та мігранти мають підпорядковуватися законам країни проживання на праві громадянства чи праві постійного проживання. Щодо визнання суб'єкта самовизначення міжнародним співтовариством, то ними визнаються ті, що перебувають під колоніальним пануванням, окупацією іноземною державою чи щодо яких проводиться політика расизму. Отже, міжнародне право не захищає сепаратистські рухи, метою яких є сецесія, якщо вони не відповідають цим ознакам. Це означає, що сепаратистські утворення в Україні не мають права на сецесію, а за методами діяльності є терористичними організаціями. Практична цінність матеріалів та висновків полягає в подальшому використанні їх у подальших розробках, спрямованих на аналіз та вивчення самовизначення народів шляхом сепаратизму, у правотворчій сфері та сфері правозастосування, пов'язаній із забезпеченням прав, свобод громадян

Ключові слова: народ, міжнародне визнання, право на самовизначення, сецесія, територія

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