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МЕТОДОЛОГІЯ ДОСЛІДЖЕНЬ ПРАВОВОГО РЕГУЛЮВАННЯ ЕКОНОМІЧНИХ ВІДНОСИН В УМОВАХ ПРИВАТИЗАЦІЇ ТА ЄВРОІНТЕГРАЦІЇ

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RESEARCH METHODOLOGY OF LEGAL REGULATION OF ECONOMIC RELATIONS IN THE CONDITIONS OF PRIVATIZATION AND EUROPEAN INTEGRATION

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Метою статті є окреслення методології досліджень правового регулювання економічних відносин в умовах приватизації та євроінтеграції, зокрема обрання стратегії пізнавальної та практичної діяльності, закладення принципів побудови, форм та засобів наукового пізнання в умовах наближення правового регулювання економічних відносин до європейського правопорядку, яке не позбавлене впливу приватизації суспільних відносин. Наукові дослідження можливості, необхідності та наслідків правового регулювання економічних відносин характеризується тим, що загальна теорія держави і права спирається на висновки економічної теорії при визначенні методів і режимів правового регулювання суспільних відносин, особливо співвідношення права та економіки; це все потребує якісного перегляду ступеня та характеру обумовленості держави і права економічною системою суспільства. Отже проблематика зводиться до питання меж регулювання та впливу на економічні відносини, зважаючи на досягнення теоретичної економіки.

Дослідження правового регулювання економічних відносин в умовах приватизації та євроінтеграції дозволить сформувати основи для сучасних теорій приватного та господарського (економіч-

The purpose of the article is to outline the research methodology of the legal regulation of economic relations in the conditions of privatization and European integration, in particular, the choice of a strategy of cognitive and practical activity, laying down the principles of construction, forms and means of scientific knowledge in the conditions of the approximation of the legal regulation of economic relations to the European legal order, which is not devoid of the influence of the privatization of public relations Scientific studies of the possibility, necessity and consequences of legal regulation of economic relations are characterized by the fact that the general theory of the state and law relies on the conclusions of economic theory when determining the methods and regimes of legal regulation of social relations, especially the relationship between law and economy; all this requires a qualitative review of the degree and nature of the conditioning of the state and law by the economic system of society. So, the problem is reduced to the question of the limits of regulation and influence on economic relations, taking into account the achievements of theoretical economics.

The study of legal regulation of economic relations in the conditions of privatization and European integration will

ного) права. Теорія інтересу (за Ульпіаном) хоч і має методологічний вплив, однак нині дозволяє окреслити лише приватне право, адже з Римського періоду публічне право змінило свою сутність. Пропонуємо здійснювати дослідження економічних відносин, виходячи із сутності соціальної ринкової економіки, людиноцентричного підходу у державній діяльності та окреслення вичерпного кола відносин, які піддаються публічному впливу та регулюванню. Саморегулювання економічних відносин за умов сталого розвитку має здійснюватися в межах, встановлених законодавством, із законодавчо вичерпним переліком простору для обдумування для публічної влади (зокрема, щодо реалізації елементів ринкової економіки). Доцільно унормувати засади об'єктивних економічних законів, які становитимуть принципи здійснення та захисту суб'єктивних прав та публічної діяльності, а також впроваджувати поступову приватизацію суспільних відносин.

Ключові слова: економічні відносини, правове регулювання, приватне право, економічне право, приватизація суспільних відносин, європеїзація

allow to form the grounds for modern theories of private and economic law. Although the theory of interest (according to Ulpian) has a methodological influence, it currently allows us to outline only private law, because public law has changed its essence since the Roman period. It is proposed to carry out a study of economic relations, based on the essence of the social market economy, a human-centered approach in state activity and an outline of an exhaustive range of relations that are subject to public influence and regulation. Self-regulation of economic relations under the conditions of sustainable develop-ment should be carried out within the limits established by legislation, with a legislatively comprehensive list of space for deliberation for public authorities (in particular, regarding the implementation of elements of the market economy). It is expedient to standardize the principles of objective economic laws, which will constitute the principles of the implementation and protection of subjective rights and public activity, as well as to implement the gradual privatization of social relations.

Keywords: economic relations, legal regulation, private law, economic law, privatization of social relations, Europeanization

Formulation of scientific problem and its significance. Legal regulation of social relations is an important process of their arrangement with the help of legal means in order to ensure the appropriate set of social interests that require legal guarantees, and is characterized by such properties as 1) state security; 2) generality; 3) unity (monality); 4) formalization; 5) systematicity; 6) effectiveness; and also differs from another phenomenon – legal influence, which in turn includes other forms and directions of action of law on people's consciousness and behavior(Tsvik et al., 2011, pp 207–212). In view of this, the question arises regarding the need to regulate all social relations or the expediency of applying appropriate legal influence on them.

The Constitution of Ukraine establishes an exhaustive range of social relations, which are defined and established exclusively by laws (Article 92). This does not indicate that only these relations should be regulated by law, but is a constitutional guarantee of "protection" of this circle of relations from their regulation by secondary legal acts. Demarcation of the competence of the parliament, the government, and the president provides an opportunity to assert the form of a regulatory act that normalizes social relations. In any case, the exercise of power is based on the principle of the rule of law established by the Basic Law of Ukraine (Part 1, Article 8), the legal force of normative legal acts (Part 2, Article 8), as well as a certain margin of appreciation and the principle of good governance, which were reflected in the legal positions of the Constitutional Court of Ukraine on so-called disputes about the competence of bodies, as well as on the development of norms of the Basic Law of Ukraine.

Analysis of research on this problem. Scientific studies of the possibility, necessity and consequences of legal regulation of economic relations are characterized by the fact that the general theory of the state and law relies on the conclusions of economic theory when determining the methods and regimes of legal regulation of social relations, especially the relationship between law and economy; all this requires a qualitative review of the degree and nature of the conditioning of the state and law by the economic system of society(Tsvik et al., 2011, p 41). So, the problem is reduced to the question of the limits of regulation and influence on economic relations, taking into account the achievements of theoretical economics.

It is extremely difficult to summarize all the scientific achievements of this issue in Ukraine, because it can lead to the transition of the discussion to the level of the need for the existence of this or that branch of law as independent or complex, as well as the need for its codification. The research of foreign legal scholars on the coordinates "law – economy" is reduced to the formation of a separate scientific school – the economic analysis of law(Posner, 2021, pp 37–69).

The purpose and objectives of the article. The purpose of this article is to outline the research methodology of legal regulation of economic relations in the conditions of privatization and European integration. So, it is about choosing a strategy of cognitive and practical activity(Danylian & Dzoban, 2015, p 293), laying down the principles of construction, forms and means of scientific knowledge(Khridochkin & Makushev, 2017, p 158), in the conditions of approximation of the legal regulation of economic relations to the European legal order, which is not exempt from the influence of privatization of social relations.

Such purpose necessitates the following objectives: outlining the need for knowledge of economic relations in legal research, outlining the subject of their legal regulation, establishing the role of civil society and privatization of relations (in order to find optimal models of legal regulation and influence), to establish trends in the regulation of economic relations in the European legal order (in order to predict the limits of legal regulation), as well as to emphasize the privatization of the regulation of economic relations in accordance with the modern economic model.

Presentation of the main material and substantiation of the obtained research results

1. Economic relations in legal studies. Economic relations mean the set of relations between people in the process of production of material and spiritual goods and their appropriation in all spheres of social reproduction (direct production, distribution, exchange and consumption) and consist of: 1) appropriation of natural objects through the labor process; 2) relations of specialization, cooperation, combining production, etc. within a separate enterprise, association, organization and between enterprises; 3) organizational and economic relations that are formed and developed in the process of managing the company's managers, conducting marketing research, etc.; 4) relations between people regarding the appropriation of labor, means of production, property management in this area, control over production, etc. In general, relations can be systematized into technical-economic, organizational-economic and socio-economic(Mochenyi, 2000, pp 471–472).

Obviously, not all these relations can be "transported" into the legal sphere, especially considering the objectivity of the economic laws of the development of society. That is why economic activity adequate to the modern needs of the economy is subjected to legal regulation(Znamenskyi, 2011, p 314). The Ukrainian SSR Law "On the Economic Independence of the Ukrainian SSR" (03.08.1990) has become the primary domestic basis for legal influence and legal regulation. Currently, the system of legislation in this area is: a) norms of the Constitution of Ukraine, in particular regarding the social orientation of the economy (Article 13); b) Economic Code of Ukraine (further – the ECU) – an act that defines the basic principles of economic activity in Ukraine and regulates economic relations; c) Law of Ukraine "On state forecasting and development of economic and social development programs of Ukraine" (23.03.2000) as a consequence for the practical implementation of economic policy.

D. V. Zadykhailo draws attention to the fact that under the current legislation of Ukraine the means and mechanisms of macroeconomic regulation are distributed according to their sectoral affiliation between economic, budget, tax, natural resource, agrarian legislation, which harms their systematic application(Zadykhailo, 2014, p 28). In the legal literature, there is an opinion that "most

of the norms of the Civil Code of Ukraine are reference or blanket, and therefore have a minimal regulatory impact and mostly duplicate the provisions established in other normative legal acts. On the basis of the analysis of the provisions of the Commercial Code of Ukraine, it was concluded that its norms, in view of their minimal regulatory impact on business relations and taking into account the detailed regulation of these relations in the Civil Code of Ukraine, can be canceled without any reservations"(Kuznetsova et al., 2020, p 100).

Ha-Joon Chang points out that the free market economy has contributed to increased distrust of politics; so, economists who criticize state intervention "convinced the whole world, including politicians and bureaucrats themselves, that we cannot trust people in power, because they do not act in the public interest", i.e. "the less the government does, the better"(Chang, 2017, p 330).

The fundamental guidelines for state intervention in the economy of Ukraine are established in the Constitution of Ukraine regarding the state's duty to ensure "the protection of the rights of all subjects of ownership and economic activity, the social orientation of the economy" (the first sentence of the part 4 of Article 13). At the same time, one should be aware that this duty is related to other provisions of the Basic Law of Ukraine, which constitute the foundations of the state system: the principle of economic diversity of public life (part 1 of Article 15), as well as ensuring the economic security of the state as one of its most important functions (part 1 of Article 17).

This constitutional approach corresponds to the economic model of the European Union, which is formulated in the second sentence of the third part of Article 3 of the Treaty on European Union (further – TEU): "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance".

M. V. Savchyn states that for a proper analysis of models of state intervention in the economy, one should also bear in mind the system of collective actions that have developed in society; as a result, liberal, liberal-democratic and societal models of state intervention in the economy demonstrate a certain set of requirements for the rules and procedures of state intervention in economic processes(Savchyn, 2020, p 14).

Thus, declaring the observance of the relevant economic model as an objective phenomenon, the model of state intervention must comply with the constitutional principles, namely, the declared directions in general, and the principle of the rule of law, in particular, and therefore we are talking about the mandatory objective necessity of combining public legal and private law principles of regulation. This leads to the expediency of normalizing the legislation establishing the legal economic order, based on "the optimal combination of market self-regulation of economic relations of economic entities and state regulation of macroeconomic processes, based on the constitutional requirement of the state's responsibility to people for its activities and the definition of Ukraine as sovereign and independent, democratic, social, legal state" (part 1 of Article 5 of the ECU).

Therefore, legal research should first of all focus on the substantiation of the possibility of market self-regulation, in particular regarding the formulation of norms for institutional markets; secondly, based on the constitutional and legislative principles of the normalization of the economic model, it is necessary to justify the limits of state influence on economic relations in accordance with the requirements of the state's responsibility to the person for his activity and definition of Ukraine as a sovereign and independent, democratic, social, legal state.

As a result, methods of legal regulation and means of state influence on the economy of Ukraine are still the subject of a long scientific debate. Thus, representatives of the school of economic law note the success of the concept of economic legal order, which is formed on the basis of an optimal combination of market self-regulation of economic relations of economic entities and state regulation of macroeconomic processes, based on the constitutional requirement of the state's responsibility to the person for its activities and the definition of Ukraine as a sovereign and independent, a democratic, social, legal state (part 1 of Article 5 of the ECU)(Shchebryna, 2003, p 396). Instead, representatives of the civil law school refer to the needlessness of the so-called

"double" regulation and the expediency of accepting the private law concept of civil and commercial law(Kuznietsova, 2003).

These discussions took place during creating different codified acts in the conditions of building a market economy and exiting another economic crisis. Arguments that testified in favor of one or another concept of regulation of economic relations had their merits in view of the variety of ways to solve crisis phenomena, but they hardly testified to the normative-legal orientation of regulation to the market economy, because civil legislation has formed separate principle provisions on regulation social relations (inadmissibility of deprivation of property rights, freedom of contract, freedom of entrepreneurial activity, etc.), instead, economic legislation declares specific instruments of state regulation of economic activity (for example, licensing, patenting and quotas; technical regulation; regulation of prices and tariffs, etc.).

Therefore, the methodological basis is the constitutional and / or legislative limits of state influence (intervention) on the economic model, on the basis of which public regulation will be carried out. Such state activity forms the appropriate economic legal order, and regulation (public or private) must take into account objective economic laws in the conditions of sustainable development.

2. Problems of choosing the subject of legal regulation. A "pure" market economy ("pure" capitalism) involves the implementation of such principles as private property, freedom of choice and entrepreneurship, personal economic interest, competition, economic risks, pricing as the main coordination mechanism, and in general – the absence of a special governing body that would determine what to produce and where to get resources, i.e., minimum state intervention(Mamalui et al., 2005, p 62).

The necessary for state intervention (influence) in the course of economic processes is objectively determined by fiasco situations, the inability of market mechanisms to self-regulate(Bodrov et al., 2010, p 95). That is why the state must not only compensate for these failures (fiascos), but also maintain a balance of interests of various groups and strata of the population, ensure social stability, create prerequisites for sustainable economic development, and prevent crisis situations(Bodrov et al., 2010, p 102).

The Constitution of Ukraine establishes that "the legal order in Ukraine is based on principles, according to which no one can be forced to do what is not provided for by law" (part 1 of Article 19). The peculiarities of the economic order are established within the economic legislation (Article 5 of the ECU), which was previously mentioned. A. O. Selivanov and P. B. Plotnitsky argue that under the conditions of a market economy there are only isolated cases of regulation in the interests of individual citizens, since they are rather an object than a subject of the legal system that supports law and order(Selivanov & Plotnitskyi, 2022, p 65).

O. V. Bezuh defines the economic order as the dominant system of material production in society, an objectively and subjectively determined state of life (italics – V. K.), which is characterized by internal consistency, regularity of the system of legal relations based on legal norms, moral principles, business rules and customs, which ensures the harmonization of private and public economic interests; at the same time, horizontal relations are based on partnership (equal submission to order), and public relations are based on additional opportunities and protection of economically weak participants in market relations(Bezukh, 2021, pp 32–33).

As an object of economic regulation, the economic system is now viewed from the standpoint of its institutional sectors, that is, economic units that are capable of owning assets, accepting obligations, participating in economic activities and entering into transactions with other units on their own behalf. As a result, the following are distinguished in the economy of Ukraine: 1) the sector of non-financial corporations; 2) sector of financial corporations; 3) the general public administration sector; 4) household sector; 5) sector of non-commercial organizations .

Demarcation of the legal regulation of economic relations is carried out in a slightly different plane, in particular, on the basis of the separation of civil and entrepreneurial (commercial) relations, which in modern conditions quite often have a complex private and public legal nature. The European approach to legal regulation of economic relations boils down to ensuring such

fundamental freedoms as: 1) freedom of movement of goods and services; 2) freedom of movement of workers; 3) freedom of establishment; 4) freedom of movement of services; 5) freedom of capital and payments(Remien, 2012, p 762). EU member states exercising their own sovereignty in matters of public and private law in accordance with the basic provisions of the EU acquis mainly distinguish between "civil and commercial matters". Thus, the European Court of Justice does not perceive a distinction based on subject composition, instead it addresses the essence of the disputed relationship, reflecting the theory of interest proposed by Ulpian (Dig. 1.1.1.2)(Dutta, 2012, pp 195–196).

Thus, a question arises regarding the possibility and necessity of regulating economic relations by civil law, in particular entrepreneurship. Attempts to codify European private law resulted in proposals for the unification of mainly contract law (Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference and Principles on European Contract Law). It is quite logical to say that contractual relations are private, however, hardly all economic relations are private. Thus, European researchers pay attention to the problem of coordination of the sectors of consumer and commercial contracts(Twigg-Flesner, 2010, p 159). Along with this, the thesis that the Civil Code of Ukraine (further – the CCU) is "the code of life of the entire civil society"(Kuznietsova, 2015, p 14) or calling the CCU the "economic constitution"(Kuznietsova & Kokhanovska, 2016, p 52) is a somewhat "romanticized" approach, because the author named features of civil society(Kuznietsova, 2015, p 10) are only partially manifested in the code as a normative act approved by the legislator (in particular, the CCU does not establish norms about the legitimacy and democratic nature of power, the rule of law, the distribution of power, the presence of the opposition, etc.), but the concept "economic Constitution" has a slightly different definition and understanding.

In any case, the process of modernization is a natural and necessary phenomenon. However, the complete elimination of the codified legal act is a serious challenge for the entire legal system. Thus, O. O. Bakalinska emphasizes that it is desirable that the processes of updating the codes take place in parallel and in a mutually coordinated manner, since "the purpose of recodification is to improve legal regulation, ensure its effectiveness, protect the rights and legitimate interests of participants in legal relations"; at the same time, the scientist draws attention to the need to take into account the leading trends in the development of modern legislation in the world, to which she refers: "UN Guiding Principles on Business and Human Rights, Principles of International Commercial Contracts of UNIDRUA, Recommendations of the Committee of Ministers of the Council of Europe on Human Rights in Business, OECD Guidelines for Multinational Enterprises, the updated EU Strategy on Corporate Social Responsibility, as well as the Principles, Definitions and Model Rules of European Private Law, Principles of European Contract Law, Principles of European Tort Law, updated Agreements within the WTO, updated 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, other international agreements and conventions"(Bakalinska, 2021).

Therefore, the choice of the subject of legal regulation should be made on the basis of a scientifically based concept of private (civil) law, as well as the theory of economic (or commercial) law. In turn, the latter theory should not duplicate (or replace) the regulation of private relations, but only supplement it and fulfill the function of public provision and approval of the economic legal order.

3. Civil society and privatization of relations. Jürgen Bazedow defines the term "economic constitution" as a set of legal provisions that regulate the production, flow, purpose and consumption of economic resources and that have priority over other norms within the legal order; the catalog of economic goals of the EU is set out in the above-mentioned Article 3 of TEU; therefore, according to Walter Eucken, the elements of a market economy are currency stability, open markets, guarantees of property rights and freedom of contract, unlimited liability of undertakings and stable economic policy(Basedow, 2012, pp 8, 12).

The mentioned elements are mainly of a public-legal nature, although in any case they affect private relations (however, they do not regulate them). Under the condition of market or state

failure (fiasco), the role in regulating social relations is acquired by the mechanisms of civil society, which are described by the following theories.

The Public Goods Theory (Burton Weisbrod, 1974, 1977) assumes that 1) it is possible to create goods for many people at the same price as to implement them for one person, because the satisfaction of the needs of one person does not prevent the satisfaction of the needs of others at the same time; 2) the production of a good for one person does not prevent the consumption of the same good by other persons. The Contract Failure Theory (Richard Nelson and Michael Krashinsky, 1973, 1977) predicts that it is difficult to find a quality service offered in the market, so (for example, Kenneth Arrow, 1963) individual organizations are unprofitable because they are responsible for a large group of persons (for example, hospitals). Thus, it is necessary to reduce the cost of wages of the organization's management in order to increase costs for the quality of services. Thus, there is no need to return contributions to the authorized capital of the organization or to pay dividends to participants, given that there is a need only for reasonable compensation for the costs of management services. As a result, non-profit organizations have their own specifics regarding contracts within the organization: 1) management compensation; 2) compensation of costs for the production of goods; 3) determining the minimum level of payment (David Easley and Maureen O'Hara, 1983). In view of this, non-profit organizations have a greater advantage in terms of the balance of price and quality of the goods they produce (Burton Weisbrod and Mark Schlesinger, 1986). Subsidy Theories (Eugene Fama and Michael Jensen, 1983) concerns non-entrepreneurial organizations and the stage of their emergence, that is, it has public-law aspects regarding the provision of subsidies to them in developing systems. The Consumer Control Theory (Avner Ben-Ner, 1986), is devoted to the comparison of organizations that do not distribute profits and consumer cooperatives, which are controlled by consumers of the goods they produce(Hansmann, 2004, p 5).

Jürgen Basedow notes that the concept of "regulation" is used in English-speaking countries in a formal or technical form to identify the boundaries of the general sphere of government, as opposed to parliamentary, executive power influence on general or special groups through the issuance of relevant acts(Basedow, 2002, pp 2–3). In continuation of this position, Luke Nottage considers "economic regulation" as limiting competition and stabilizing markets in banking, transport, telecommunications or other similar areas(Nottage, 2012, p 163).

In general, the theory of regulation is reduced to the implementation of public interests, in particular, in relation to economic relations – the formation of commercial law, then entrepreneurial law and entrepreneurial regulation. As a result, the mechanisms of non-market and market institutional introduction of rules are used, which were discussed in detail by Buthe Tim and Mattli Walter using the following examples: 1) public non-market regulation – the Kyoto Protocol and norms of the International Labor Organization; 2) private non-market regulation – ISO, IEC, IASB standardization norms; 3) public market regulation – anti-trust legislation; 4) private economic regulation – standards applied by companies (for example, Windows) or multinational companies (for example, CRS – a single reporting standard): the current stage of economic regulation is the transition from commercial regulation to corporate governance(Nottage, 2012, pp 163–164).

The analysis of recent studies indicates a gradual decrease in the role of state management of the economy, which is actually provided for by its market model. Therefore, three legal regimes of regulation of economic relations are distinguished: 1) public regulation; 2) self-regulation; 3) private regulation. Thus, the relevant sector of the economy can be subject to exclusively private law regulation (the household sector), purely economic and legal regulation (the financial corporation sector), administrative and legal regulation (the public administration sector), or mixed legal regulation, provided that both public and private interests in the remaining sectors.

However, a key issue in the separation is the possibility of a proper separation of regulatory powers and justice, which can apply the respective legal regimes. Fabrizio Cafaggi in this aspect considers self-regulation as a consequence of the implementation of freedom of contract and delegated self-organization, therefore he singles out co-regulation, in the process of which private regulators are involved in order to develop a formal normative act. The consequence of such

interaction is “expostrecognized regulation” – private regulation in the form of self-regulation, created by independent private participants in economic relations and recognized by the state as hard or soft law, i.e., a private person acquires “public functions”(Cafaggi, 2006, pp 12–33).

Similar processes are not without relevant problems, in particular, regarding the normative and institutional pluralism of sources of legal regulation, the fragmentation of the choice of the subject of regulation, as well as conflicts and choices in the case of the parallel existence of different models of regulation in the state(Svetiev, 2014, pp 157–162). In particular, we are talking about the so-called privatization of social relations, according to which the state as a regulator loses its influence on certain spheres of social relations, transferring them to other participants – business entities or civil society. However, this does not indicate the leveling of the public interest and the transition to the so-called “selfish” interests of subjects of private law. In this connection, it should be mentioned the impossibility of fully implementing the principles of the market economy, because world practice shows the need to implement the social functions of the state, therefore the complete absence of its regulatory influence leads to the negative consequence of the concentration of significant capital, as a result of which other economic principles of resource distribution are violated(Mochernyi et al., 1998, pp 110–112).

The ECU should not be perceived exclusively as a public-law regulatory act, and the CCU – exclusively as a private-law one. In particular, we can talk about the peculiarities of the protection of consumer rights, because it is about the protection of an individual participant in private relations, which generally allows for the protection of so-called “public goods”; or, on the contrary, the actions of one person to protect his subjective civil rights gives rise to the so-called “endowment effect”, that is, the accumulation of positive practice for others(Leitzel, 2015, pp 67–69, 135–136). In view of this, the conclusion about the direction of economic and legal regulation in the conditions of a market economy on the relations between business entities and consumers as economic entities(Bezukh, 2021, p 206) deserves attention, noting separately that purely “private” is a somewhat narrower group of relations that are formed regarding personal non-property and property rights and interests, which in the classical sense are a separate group of economic relations not related to entrepreneurship in their essence.

This model of social relations is a market-oriented privatization model and assumes that legal norms will ultimately crystallize as a result of the desire of individuals to obey themselves(Fisher, 2021, p 179).

Therefore, economic relations that have a private law nature are necessarily self-regulated by their participants in accordance with the limits provided by the state as a regulator. The gradual abandonment of state regulation (rather, even management) of economic processes provides opportunities for institutional or proactive regulation of economic processes that have a public-legal manifestation (for example, the activities of self-regulatory organizations). Thus, civil society interacts with the state in the “distribution of spheres” of legal regulation, as a result of which the privatization of social relations occurs.

4. Europeanization of legal regulation of economic relations. Market economic relations must be provided with proper legal regulation regarding the possibility of free implementation of private property relations, freedom of choice and entrepreneurship, personal economic interest, competition, economic risks, as well as pricing as the main coordination mechanism. It should be noted that the principle of coordination is important both for the market economy, in particular for determining the possible market equilibrium(Kirzner, 1992, pp 4–5), as well as for civil society, which ensures the interaction of the government and private sectors. Relevant guidelines for improving the legal regulation of economic relations are followed in the Association Agreement with the EU.

Firstly, the basis of relations between Ukraine and the EU are the principles of a free market economy (Article 3 of the Agreement), which are divided into economic and trade (paragraph “d”, part 2 of Article 1 of the Agreement). The public influence on trade and trade-related matters is relations with customs, duties and other mandatory payments; non-tariff measures; and trade defenses. At the same time, institutions of civil society play an important role, in particular,

consulting, involving experts, justifying the legality of introducing certain procedures, as well as the possibility of delegating powers to non-governmental bodies.

An example of the latter is the separate regulation of the status of self-regulatory organizations in the field of financial services (Article 131 of the Agreement), which indicates the development of one of the key areas of optimization of state intervention.

The "third sector", on the one hand, is the relationship regarding the realization of the freedom of association of individuals for the purpose of joint exercise of subjective civil rights, on the other hand, it is a form of social organization of individuals that forms a counterbalance to the public sector for the purpose of coordination and cooperation in the regulation of social relations. Such a phenomenon makes it possible to transfer the rules of conduct from the level of private regulation to the state in case of their legitimization by a significant part of society (quite often in scientific literature it is mentioned about the transformation of religious norms into legal ones), or to give civil society organizations delegated behavior regarding the regulation of relations with the participation of their members.

The influence of private regulation is limited only to the participants of this relationship; covered by private regulators performing regulatory functions for the realization of public interests; characterized by co-regulation or delegated self-regulation, according to which private regulators interact with public entities, law-making bodies, which provides an opportunity to extend legal influence to an indefinite circle of persons(Cafaggi, 2006, p 35).

As a result, non-state regulation can be carried out in the form of statutory regulation applied in the field of professional regulation, contractual regulation inherent in multilateral and bilateral agreements, as well as in the "unforeseen" form applied in the case of unofficial recognition of the "norms" of non-governmental organizations(Scott, 2006, pp 134–145).

The main difference between private regulation of economic relations and state regulation is the actual absence of public coercion regarding the implementation of "norms", as a result of which the concept of private ordering is used, which can be applied in all types of economic relations, including foreign economic relations. That is why state regulation can be reduced to mandatory regulation (which is generally based on private law principles elevated to the norm of law) in certain areas of social relations, such as transport policy or competition law, or non-mandatory (selective) regulation that guarantees only framework norms regarding the choice of subjective law, which has not undergone detailed public regulation(Basedow, 2013, p 219).

A feature of the regulation of economic relations in market conditions is the possibility provided by legislation to implement objective economic laws in social life. In particular, the theory of games is particularly popular in economic research, which allows participants to accurately analyze and find a way out of a conflict situation by the participants in the relevant relationship. Given its content, it is quite effective in civil society, as it provides models of "coordination" and "cooperation". Realization of private interest in order to avoid conflict affects the stability of all economic relations, creating a form of Nash equilibrium, and therefore the corresponding public interest is realized. The proper exercise by the participants of private relations of their subjective rights and the proper fulfillment of their duties leads to the general social order, for example, the proper implementation of the right to own natural resources leads to the improvement of everything the natural environment, and the state guarantee of the private insurance system – to reduce social costs(Georgakopoulos, 2005, pp 50–55).

At the same time, all the mentioned processes should not harm the foundations of the economic model – the social market economy (Article 3 of the TEU) and the social orientation of the economy (part 4 of Article 13 of the Constitution of Ukraine). The philosophy of such a model has its origins in the German model (Soziale Marktwirtschaft) built after the Second World War, which has similar features to the British model (Butskellism) and has the following features: a) a decentralized political constitution characterized by a system of checks and balances; b) an independent central bank; c) a legally secured system of industrial democracy and industrial training; d) banking system of financing firms and monitoring their activities(Hallett, 1991, pp 80–81).

The above-mentioned elements of the market economy (according to Walter Eucken) must be provided by public implementation mechanisms. In particular, the proper implementation of freedom of association (both for entrepreneurial and non- entrepreneurial organizations), the presence of effective mechanisms for their registration, as well as the recognition of certain rights and obligations of so-called "informal associations"; an exhaustive list of prohibitions that limit the openness of markets (it should be mentioned about the special statuses of individual subjects of market relations, for example, banks, insurance organizations, stock exchanges, etc.); legislative limits of the exercise of property rights (in particular, the problems of public and common property, which have more economic features than legal ones); freedom of contract (in particular, both in relation to the public sphere and to the purely private – marriage relations or association relations); the issue of limits of legal responsibility (especially of "professional participants" of the market, as well as in the field of consumer law); and currency stability (especially with the outlook for the Eurozone).

Conclusions and prospects for further research. The study of legal regulation of economic relations in the conditions of privatization and European integration will allow to form the foundations for modern theories of private and business (economic) law. Although the theory of interest (according to Ulpian) has a methodological influence, it currently allows us to outline only private law – "private law is threefold: it really covers natural, ancestral or civil prescriptions" (privatum ius tripertitum est: collectum etenim est ex naturalibus praeceptis aut gentium aut civilibus), because public law – "public law lay with the saints, with the priests and with the magistrates" (publicum ius in sacris, in sacerditobus, in magistratibus constitit) (Dig. 1.1.1.2) – has changed its essence since the Roman period. On the basis of this, we propose to carry out a study of economic relations based on the essence of the social market economy, a people-centered approach in state activity and an outline of an exhaustive range of relations that are subject to public influence and regulation. Self-regulation of economic relations under the conditions of sustainable development should be carried out within the limits established by legislation, with a legislatively comprehensive list of space for deliberation for public authorities (in particular, regarding the implementation of elements of the market economy). In the end, it is expedient to standardize the principles of objective economic laws, which will constitute the principles of the implementation and protection of subjective rights and public activity, as well as to implement the gradual privatization of social relations. All these aspects testify to the impossibility of the radical abolition of the ECU and the sudden (even in the conditions of the transition period) "privatization" of economic relations, given the failure idea that the CCU can fully play the both roles of "economic constitution" and the "civil society code".

Посилання:

1. Bakalinska, O. O. (2021). Kontseptsiia modernizatsii hospodarskoho zakonodavstva yak vidpovid na suchasni vyklyky [The concept of modernization of economic legislation as a response to modern challenges]. https://coordynata.com.ua/koncepcia-modernizacii-gospodarskogo-zakonodavstva-ak-vidpovid-na-sucasni-vikliki (in Ukrainian).

2. Basedow, J. (2002). Economic Regulation in Market Economics. In J. Basedow, H. Baum, K. J. Hopt, H. Kanda, & T. Kono (Eds), Economic Regulation and Competition. Regulation of Services in the EU, Germany and Japan. Kluwer Law International.

3. Basedow, J. (2012). EU Private Law. In J. Basedow, K. J. Hopt, R. Zimmermann, & A. Stier (Eds), The Max Planck Encyclopedia of European Private Law. Volume I (pp 537–541). Oxford University Press.

4. Basedow, J. (2013). The Law of Open Societies – Private Ordering and Public Regulation of International Relations. General Course on Private International Law. Martimes Nijhoff Publishers.

5. Bezukh, O. V. (2021). Osoblyvosti pravovoho rehuliuvannia pryvatnykh ekonomichnykh vidnosyn v umovakh rynku: monohrafiia [Peculiarities of legal regulation of private economic relations in market conditions: monograph] (Y. S. Shemshuchenko (Ed)). The Academician F. H. Burchak Scientific-Research Institute of Private Law and Entrepreneurship of National Academy of Law Sciences of Ukraine (in Ukrainian).

6. Bodrov, V. H., Safronova, O. M., & Baldych, N. I. (2010). Derzhavne rehuliuvannia ekonomiky ta

ekonomichna polityka: navch. posib [State regulation of the economy and economic policy: training manual]. Akademvydav (in Ukrainian).

7. Cafaggi, F. (2006). Rethinking Private Regulation in the European Regulatory Space. In F. Cafaggi (Ed), Reframing Self-Regulation in European Private Law. Kluwer Law International.

8. Chang, H.-J. (2017). Ekonomika. Intruktsiia z vykorystannia [Economy. Instructions for use]. Nash Format (in Ukrainian).

9. Danylian, O. H., & Dzoban, O. P. (2015). Filosofiia. Pidruchnyk [Philosophy. Textbook] (2nd ed). Pravo (in Ukrainian).

10.Dutta, A. (2012). Civil and Commercial Matters. In J. Basedow, K. J. Hopt, & A. Stier (Eds), The Max Planck Encyclopedia of European Private Law. Volume I. Oxford University Press.

11.Fisher, T. (2021). Privatization of Legal Institutions. In A. Dorfman & A. Harel (Eds), The Cambridge Handbook of Privatization (pp 177–194). Cambridge University Press.

12.Georgakopoulos, N. L. (2005). Principles and Methods of Law and Economics. Basic Tools for Normative Reasoning. Cambridge University Press.

13.Hallett, G. (1991). West Germany. In A. Graham & A. Seldon (Eds), Government and Economies in the Postwar World. Economic policies and comparative performance, 1945-85 (pp 79–103). Routledge.

14.Hansmann, H. (2004). Economic Theories of Nonprofit Organization. In R. Steinberg (Ed), The Economics of Nonprofit Enterprises (pp 4–18). Edward Elgar Publishing Limited.

15.Khridochkin, A. V., & Makushev, P. V. (2017). Metodologiya sovremennogo pravovedeniya: uchebnoe posobie [Methodology of modern law: textbook]. Yzdatelskyi dom “Helvetyka” (in Russian).

16.Kirzner, I. M. (1992). The meaning of market process. Essays in the development of modern Austrian economics. Rotledge.

17.Kuznetsova, N., Kot, O., Hryniak, A., & Pleniuk, M. (2020). Abolition of the Commercial Code of Ukraine: Potential Consequences and Necessary Prerequisites. Journal of the National Academy of Legal Sciences of Ukraine, 27(1), 100–131. https://doi.org/10.37635/jnalsu.27(1).2020.100-131.

18.Kuznietsova, N. S. (2003). Predprinimatelskoe zakonodatelstvo v Ukraine i v stranah Evropy (chast-nopravovye aspekty) [Business legislation in Ukraine and European countries (private law aspects)]. In E. B. Kubko & V. V. Tsvetkov (Eds), Problemy garmonizacii zakonodatelstva Ukrainy i stran Evropy [Problems of Harmonization of Legislation of Ukraine and European Countries]. Yurinkom Inter (in Russian).

19.Kuznietsova, N. S. (2015). Hromadianske suspilstvo ta osobysti nemainovi prava [Civil society and personal non-property rights]. Pravo Ukrainy [Law of Ukraine], 4, 9–17 (in Ukrainian).

20.Kuznietsova, N. S., & Kokhanovska, O. V. (2016). Suchasne pryvatne pravo Ukrainy: vektory yevropeiskoho rozvytku [Modern private law of Ukraine: vectors of European development]. Visnyk Natsionalnoi Akademii Pravovykh Nauk Ukrainy [Bulletin of the National Academy of Legal Sciences of Ukraine], 86(3), 49–55 (in Ukrainian).

21.Leitzel, J. (2015). Concept in Law and Economics. A Guide for the Curious. Oxford University Press.

22.Mamalui, O. O., Hrytsenko, O. A., Hrytsenko, L. V., & Darnopykh, H. Y. (2005). Osnovy ekonomichnoi teorii: pidruchnyk [Fundamentals of economic theory: a textbook] (O. O. Mamalui (Ed)). Yurinkom Inter (in Ukrainian).

23.Mochenyi, S. (2000). Ekonomichni vidnosyny. In Ekonomichna entsyklopediia Tom 1. A–K [Economic relations. In Economic encyclopedia. Volume 1. A–K]. Vydavnychyi tsentr «Akademiia» (in Ukrainian).

24.Mochernyi, S. V., Yerokhin, S. A., Kanishchenko, L. O., Synyshyn, I. M., & Ustenko, O. A. (1998). Osnovy ekonomichnoi teorii: posibnyk [Basics of economic theory: manual] (S. V. Mochernyi (Ed)). Vydavnychyi tsentr «Akademiia» (in Ukrainian).

25.Nottage, L. (2012). Commercial regulation. In J. M. Smith (Ed), Elgar Encyclopedia of Comparative Law (2nd ed). Edward Elgar.

26.Posner, R. A. (2021). Rubezhy teoryy prava [Boundaries of the theory of law]. Izd. “KNT.” (in Russian).

27.Remien, O. (2012). Fundamental Freedoms (General Principles). In J. Basedow, K. J. Hopt, R. Zimmermann, & A. Stier (Eds), The Max Planck Encyclopedia of European Private Law. Volume I (pp 762–767). Oxford University Press.

28.Savchyn, M. V. (Ed). (2020). Pravove rehuliuvannia ta ekonomichni svobody i prava: monohrafiia [Legal regulation and economic freedoms and rights: monograph]. Vydavnytstvo “RIK-U.” [Publishing house «RIK-U.»] (in Ukrainian).

29.Scott, C. (2006). Self-Regulation and Meta-Regulatory State. In F. Cafaggi (Ed), Reframing Self-Regulation in European Private Law. Kluwer Law International.

30.Selivanov, A. O., & Plotnitskyi, B. P. (2022). Pravove rehuliuvannia pravoporiadku ta pravovoho rezhymu v Ukraini [Legal regulation of law and order and the legal regime in Ukraine]. In Pravoporiadok i

pravovyi rezhym v Ukraini. Naukova monohrafiia [Law and order and the legal regime in Ukraine. Scientific monograph] (pp 58–73). Lohos (in Ukrainian).

31.Shchebryna, V. S. (2003). Pravovoe rehulyrovanye khoziaistvennoi deiatelnosty v Ukrayne [Legal regulation of economic activity in Ukraine]. In E. B. Kubko & V. V. Tsvetkov (Eds), Problemy garmonizacii zakonodatelstva Ukrainy i stran Evropy [Problems of Harmonization of Legislation of Ukraine and European Countries]. Yurinkom Inter (in Russian).

32.Svetiev, Y. (2014). European Regulatory Private Law: From Conflicts to Platforms. In K. Purnhagen & P. Rott (Eds), Varieties of European Economic Law and Regulation. Liber Amicorum for Hans Micklitz. Springer.

33.Tsvik, M. V., Petryshyn, O. V., & Avramenko, L. V. (2011). Zahalna teoriia derzhavy i prava [General theory of state and law] (M. V. Tsvik & O. V. Petryshyn (Eds)). Pravo (in Ukrainian).

34.Twigg-Flesner, C. (Ed). (2010). The Cambridge Companion to European Union Private Law. Cambridge University Press.

35.Zadykhailo, Y. V. (2014). Derzhavne makroekonomichne rehuliuvannia: pytannia systematyzatsii pravovoho zabezpechennia [State macroeconomic regulation: the issue of systematization of legal support]. Yuryst Ukrainy [Lawyer of Ukraine], 2(27), 25–32 (in Ukrainian).

36.Znamenskyi, H. L. (2011). Hozyajstvennoe pravo kak otrasl nacionalnogo zakonodatelstva [Economic law as a branch of national legislation]. In Y. S. Shemshuchenko (Ed), Pravovaya sistema Ukrainy: istoriya, sostoyanie i perspektivy: v 5 t. T. 4.: Metodologicheskie osnovy razvitiya ekologicheskogo, zemelnogo, agrarnogo i hozyajstvennogo prava [The legal system of Ukraine: history, state and prospects: in 5 volumes, Volume 4]. Pravo (in Ukrainian).

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