ЦИВІЛЬНЕ ПРАВО, СІМЕЙНЕ ПРАВО

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TO THE QUESTION OF FORMATION OF LEGAL POLICY IN PRIVATE LAW SPHERE

In the article the author studies the notion of private legal policy, defines it and describes its main characteristics and principles. A special attention is paid to the quality of the private legal policy and its purpose in Ukraine. The recommendations on improvement of the private law norm-making are done.

Key words: policy of law, private legal policy, legislative work, economy of law.

Problem statement. The legal system is a complex, multilevel phenomenon which has a hierarchical structure. In our view, the domestic legal system in order consists of certain macro-levels, which by convention can be named: *mathematics of law* (general concepts, formulas, and structures), *philosophy of law* (a set of methodological approaches to the possible development of legal system), and *policy of law* (specific targeted direction towards the development of a particular legal system in specific conditions)[1].

Among the sectorial kinds of legal policy, certainly the most important, in our view, is a private legal policy, as a kind of state policy, as a set of ideas, goals, objectives, methods, approaches, which focus on the development of private law regulation. This special situation of private-legal policy is primarily related to the fact that it determines the direction of development of private law (and therefore the most natural for an individual branch of law), and thus the issues of further effective regulation of private law relations, which are the foundation for the development of civil society. The private legal policy is the key to the protection of human rights and economic development in the state. And therefore to the formation, implementation and monitoring

[1] We have mentioned this approach in the pages of scientific literature: Стефанчук Р. Шляхи реформування цивільного законодавства: погляд на Захід та Схід / Р. Стефанчук // Право України. — 2009. — № 8. — С. 53–61.

of civil policy implementation (policy in the sphere of private law) should be given serious attention.[1]

Private law policy, like any social process, must have a *specific quality measurement*. Quality, as a scientific category, includes the following components: a) *purpose* (what is this policy for); b) *efficiency* (that is, by what means is this policy); c) *stability* (how much this policy will be sustained and long-term in time); d) *effectiveness* (the extent to which the goal and the money spent on the implementation of this policy are consistent with the results obtained). Unfortunately, today almost none of these components of civil policy did have a proper implementation and monitoring.

So, today there is no a clearly defined *purpose of private legal policy* and its fundamental principles and system of values and priorities. On the contrary, in some places the conquest of the developers of the Civil Code and the leading scientists in the field of promoting the interests of private, is undermined by «the state lobbying», which in spite of all attempts to secure the dominance of «public» interest on «private».

Analysis of recent research and publications. If the questions of mathematics and philosophy of law is object of serious scientific research, the policy of law in Ukraine is unreasonably ignored. Certain articles, which sometimes appear in periodicals, are a pleasant exception, in particular, works of V. I. Borisov [1, p. 305–312], V. Golina [2, p. 24–30], L. A. Muzika [3, p. 154–160], etc.

Paper purpose. The purpose of the article is to study the notion of private legal policy, to define it and to describe the mail characteristics and principles of it. Also we'll try to give recommendations on improvement of the private law norm-making in Ukraine.

Paper main body. It should be noted that the importance of the objective of private-legal policy should take us on its regularity. Inasmuch a normal private legal policy cannot proceed without purposeful and systematic legislative activities. At the same time, the realities of Ukraine are the following. According to the chief of the Main Legal Department of the Verkhovna Rada of Ukraine M. O. Tepluk: «... only in 1997 and 1999 the Parliament adopted a resolution on the General Plan of Legislative Work for these years, and in 2006 approved the Perspective Plan of Legislative Work of the Verkhovna Rada of Ukraine of the fifth convocation. As you can see, we can't speak

[1] By the way, in the Russian Federation, they have long been paying serious attention to this question, both at the theory of law level and at the level of legal policy in the sphere of private law (see: Российская правовая политика. Курс лекций [Текст] / Афанасьев С. Ф., Беляев В. П., Вавилин Е. В., Демидов А. И., и др.; Под ред.: Малько А. В., Матузов Н. И. — М. : Норма, 2003. — 528 с.; Правовая политика России: теория и практика [Текст]: монография / Под ред.: Малько А. В., Матузов Н. И. — М. : ТК Велби, Изд-во Проспект, 2006. — 752 с.; Проект концепции правовой политики в Российской Федерации до 2020 г. [Текст] / Малько А. В., Матузов Н. И., Шундиков К. В.; под ред.: Малько А. В. — М. : Дело, 2008. — 40 с.; Российская правовая политика в сфере частного права [Текст] : материалы «круглого стола» журналов «Государство и право» и «Правовая политика и правовая жизнь», г. Казань, Казанский (Приволжский) федеральный университет, 22 июня 2011 года / отв. ред. А. В. Малько, Д. Н. Горшунов. — М. : Статут, 2011. — 295 с.).

about a sufficient consistency. And now, we must be self-critical, there is no clear definition of priorities in this activity, and therefore occurs due to consolidation of efforts of public authorities in the process of preparation and elaboration of draft laws» [1].This assessment of a leading expert on these issues forces us to rethink the need for planning of legislative activities and definition of legislative priorities. Therefore, the change of chaotic introduction of legal acts must correspond to planned and consistent standard of project activities with clearly placed emphasis and priorities. Perhaps, if this approach had been designed, the formation of national legislation of Ukraine, we would not have started with the adoption of the Criminal code. As in all transitional legal orders the regularity begins establishing the rules of game on two levels of relations — horizontal (private, i.e. relations on a «man — man») and vertical (administrative, that is the relations on the scheme of «human — state»). So the first thing they should focus its efforts on was codifications in the field of private (civil) and public (administrative) law. And only after that they should have talk about the feasibility of reforms in the sphere of criminal law. The reform in the opposite direction that took place in Ukraine, speaks of the immaturity of society and the permanence of repressive measures for the normalization of social relations. Separately they should have paid attention to the fact that the conduct of systematic reform of financial legislation should go in a logical accompaniment with the reform of procedural legislation. Therefore, the planned legislative work is an important factor of the implementation of private-legal policy.

The regularity of prospective legislation directly depends on the availability of normal rules of lawmaking. It seems that causes no denying the truth of the phrase that was at the time expressed by the eminent French thinker J.-J. Russo, that half of the errors of mankind would have been spared if they have agreed to the terms. And really, before we start any new business, we must always clearly define the rules of our future games. And the fact that until now we do not have legislation that clearly governs issues relating to the content, structure, process of making those acts which should continue to regulate various spheres of public life seems strange. And it is so despite the fact that the urgency of this issue has been raised repeatedly in the pages of scientific media[2].

Several times this legal act under different names was considered and even taken by the Verkhovna Rada of Ukraine («On the Laws and Legislative Activity», «On Normative Legal Acts» and such as). But as in the famous fable: «... and things are there.»

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[1] Законодавчий процес — не скринька Пандори (інтерв'ю з М. О. Теплюком) // Юридичний вісник України. — 2009. — № 46 (750).

[2] See: Панов М. І. До проекту закону «Про нормативно-правові акти» // Вісник Академії правових наук України. — 1995. — № 4. — С. 139–163; Мірошниченко А. М., Попов Ю. Ю. Чи потрібен Закон України «Про нормативно-правові акти»? // Форум права. — 2009. — № 1. — С. 362–372; Косович В. Закон «Про нормативно-правові акти» як засіб удосконалення нормативно-правових актів України / В. Косович // Вісник Львівського університету. Серія юридична. — 2011. — Вип. 52. — С. 10–20 та ін.

It is quite clear that quality backbone work should not be based on the Rules of Procedure of the Verkhovna Rada of Ukraine, and primarily on a single backbone legislative act, which is based on the main provisions of the Constitution of Ukraine that should create a solid foundation for the formation of the joint and such that does not contain internal contradictions, system of legislation. This law should be directed to regulation and protection of public relations connected with development of normative-legal acts, adoption, and entry into force, state registration and accounting, and establish uniform requirements for norm-making technique for all subjects of law-making. It is particularly important for this legislative instrument to determine system, types and hierarchy of normative legal acts in order to avoid situations like those in which in spite of the decision of the Constitutional Court of Ukraine regarding the unconstitutionality of the institution of registration, the person could not exercise its rights because the registration was compulsory in a number of ministerial regulations and by-laws. Or a situation in which constitutional rights are limited by the laws of Ukraine, for example, by setting «minimum living wage» instead of «guaranteed minimum living wage», the actual leveling of those or other human rights because of lack of funding. In its ideal form the specified law should be «legal ABC» for all future legal acts. Therefore, we consider its adoption the number one task that needs to be solved urgently.

Another issue that is almost overlooked is the issue of the *«economy of law»*. We have had a«good tradition» when submitting any normative legal act to copy in the explanatory note the phrase that the implementation of this law will not entail additional expenses from the budget. However, today in Ukraine there is practically no legislation that is «moneyless» for their costs. And that's not taking into account that the development and preparation of bill also has a commercial price tag, not when talking about lobbying for a particular bill. Therefore, it seems important here to start in Ukraine an important component of legislative activity as the «economy of law». For example, instead of the foundations of economic theory, which today is studied in the vast majority of law schools, it would be appropriate to introduce the teaching of «Economic Rights»[1], or «Economic Analysis of Law»[2]. Because for the lawyer is no less important than the issues of fixation of legal norms is the question of its content, in particular: why this approach to the formation of the legal regime of property is more justified; why exactly such a legal fixation of responsibility for the compliance with the law will be most effective; why this tax rate should act in particular circumstances and the like.

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[1] It was already partly mentioned in national scientific literature, in particular: Джунь В. Методологічні питання дослідження господарського права / В. Джунь // Вісник Академії правових наук України. — 2010. — № 1. — С. 154–168; Володвик О. А. Особливості економіко-правового мислення або чому українські юристи не опановують економічний аналіз права / О. А. Володвик [Електронний ресурс] // Сборник тезисов Международной научно-практической интернет-конференции «Экономико-правовые исследования в XXI веке». — Режим доступу: http://www.hozpravo.com.ua/conferences/uchastnik/index.php?ELEMENT_ID=616. — Назва з екрана.

[2] An important book in this regard is the work: Познер Р. А. Економічний аналіз права [Текст] / Р. А. Познер; пер. з англ. С. Савченко. — Х. : Акта, 2003. — 862 с.

When talking about the *stability of legislative work*, unwittingly, we recall the best examples of legislative activity that exist in foreign countries. Always there is a logical question as to why the Constitution of the United States was able to overcome the bicentennial anniversary and always in the eyes of Americans and the entire world will be the bulwark of the state and democracy? And of course Napoleon was right who claimed to be forgotten all his victories and defeats, and the Civil Code, which also overstepped its bicentennial anniversary, they will always remember. On this background, the desire of the Ukrainian legislators to *perfect current legislation*, especially codified acts that are always all over the world are called to be a pillar of stability and higher systematization quality looks rather strange. And this is due not only to the fact that, for example, for such a long period of existence in the Civil Code of Ukraine were made almost 100 (!) changes and additions.

Well the first thing that strikes is of course the number. Analyzing this situation, we note that in philosophy there is a methodological principle of «Occam's razor» the essence of which is that one should not multiply entities without urgent need; we should not make laws only for their number and general accounting. Therefore, we believe that now is the time to take more responsibly to the issue of quality and stability of legislation in Ukraine. The time has come to understand that the number of laws is not always turns into quality. Sometimes it is vice versa, that the large number of normative mass and permanent changes and additions thereto may adversely affect the mission to become the one and uniform regulator of social relations.

But the question is not just about numbers. The fact is that when some of changes really were related to the need to improve the text of the Civil Code, the making of the vast majority of them are just not understandable to experts in the field of civil law. So, for example, remains a mystery the changes to the Civil Code of Ukraine introduced the trust as a special kind of property rights (Part 2 of Article 316 of the Civil Code of Ukraine). Questions arise on amendments to Article 268 of the Civil Code of Ukraine, according to which the limitation period does not apply to the requirement of the central executive power body managing the state reserve, concerning the performance of obligations arising from the Law of Ukraine «On State Material Reserve». Illogical changes are highlighted in Article 190 of Civil Code of Ukraine, which not only recognized the property rights quality of inconsumable things, but also set up between the notion of «property right» and «real right» the sign of identity, while ignoring such types of property rights as contractual, corporate, exclusive and other civil rights. The latest amendments to civil legislation also contain significant gaps. According to them, there is no deal now that may be contrary to the interests of state and society. If you think about all this horror, these changes actually legalize dominance of public over private interests. Henceforth, the state will have the right to challenge any contract, which, in its subjective opinion, does not correspond to its interests. It should also be noted that this «reform» returned confiscation, as a consequence of non-compliance of deal (which is now somehow again be cited as agreement) to the interests of he state and society. I would like to remind that

its absence in the previous version has always been considered a big victory for developers of the code on public intervention in the private sector. More alarming is the fact that still no one knows who the initiator was and who is responsible for these changes and why civil scientific community does not react to these ridiculous things that are directed at the destruction of civil law mechanism[1]? But it's important that everyone knows who is behind this or any other bill. The «quiet lobbying» should belong to the past. Everyone remembers the time when the project of the Civil Code was developing and we all knew who their developers were and who was responsible for the quality of this project. It is clear that it was an inviolable authority in the sphere of civil law. Today *there are actually no named bills*, the developers of normative legal acts and amendments to them, as a rule, are unknown, and like pests, hidden in the corners.

So to solve this issue it would be advisable to create a *Codification Council*, which could exist in the Parliament and to decide on the feasibility and appropriateness of consideration of a normative legal act on amendments and additions to the existing codifications and fundamental laws. This Council should consist of leading scientists, which would clearly show how «safe» and «qualitative» will be the adoption of relevant amendments and supplements and how much it will affect the general level of legal regulation.

Very bad deal in Ukraine is a question of *law effectiveness*, defined as a ratio of actual results of implementation of the law with its purpose. Schematically it is possible to display it as «the purpose — means — result».

When talking about the purpose of a law, it should be noted that every law has two objectives: general and specific. The general objective of any law is that it needs to be the main legal regulator of social relations, that is uniquely and uniformly to regulate the most important model of public relations. The essence of special purpose is somewhat different — each specific law should be the ideal regulator of a particular group of public relations. However, the law is only the first stage of its «life». Further practice will have to show how effective (or ineffective) its continued existence is. As far as social relations are a changing and dynamic thing, and therefore the legislator must, following general laws of social development, keep pace with the changes in social life that occur and affect the quality of legislative support.

Therefore, to determine the effectiveness of current legislation a constant monitoring[2] to identify issues of legal regulation and their operational de-

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[1] Although some of the work of the «scientific resistance» in some places still appear in the scientific literature, in particular: Сібільов М. М. Про необхідність збереження основних концептуальних положень чинного Цивільного кодексу України / М. М. Сібільов // Університетські наукові записки. — 2011. — № 2. — С. 74–80.

[2] The need for legal monitoring today is seriously discussed in scientific literature, in particular: Эффективность законодательства в экономической сфере: научно-практическое исследование [Текст] / Отв. ред.: Тихомиров Ю. А. — М. : Волтерс Клувер, 2010. — 384 с.; Жужгов И. В. Мониторинг правового пространства Российской Федерации [Текст] : монография. — Невинномысск: НГГТИ, 2010. — 168 с.; Арзамасов Ю. Г., Наконечный Я. Е. Концепция мониторинга нормативных правовых актов [Текст] / Ю. Г. Арзамасов, Я. Е. Наконечный. — М. : Юрлитинформ, 2011. — 208 с.

cisions should exist. Moreover, this monitoring should be based on known cybernetics principle of «feedback». This principle refers to the system supplying return signal for measuring the coefficient of performance (COP) of the system or to the proportionality of achieved results and the system itself. Extrapolating this definition to the plane of legislative activities, you should pay attention to the fact that it is a generalized practice of law-use can serve as a basis of «feedback» to the existing system of legislation.

This means that now is the time to seriously address the monitoring of law enforcement, to identify the effectiveness of current legislation. We should detect and dispose *blocks of «legal garbage»* that remain as Soviet legacy. It is not normal that in the twentieth year of independence, we have the Housing Code of the Ukrainian SSR (!) (1983), in which we continue «... putting into practice the Leninist idea of building a Communist society... consistently implement the program of housing construction developed by the Communist party». And such examples are many.

You should also pay attention to the fact that apart from cleaning the frank legislative anachronisms, you should focus on fixing the so-called «legal debts». So, for example, quite a few provisions of the Civil Code of Ukraine refer to legal acts, which are still not developed. Thus, in recent years, the absence of any law on compensation of harm to the victim of a crime required by Part 2 of Article 1177 of the Civil Code of Ukraine has attracted more attention. Also those legislative debts are important which are recognized as necessary for the proper functioning of applicable civil legislation (primarily a law on the harmonization of provisions of the Civil and Commercial Codes of Ukraine).

In particular some evident «misprints» should be removed from the Civil Code that are still in it. For example, Article 488 of the Civil Code of Ukraine contains an obvious error in view of the fact that Part 4 and 6 are absolutely identical in content. Part 3 of Article 1122 of the Civil Code of Ukraine which establishes a special condition of commercial concession, requires a logical conclusion and drafting, at the same time, its text is just logically incomplete. Specific questions on the content arise in respect of Article 1180 of the Civil Code of Ukraine, which defines the features of vicarious liability of parents and other individuals who have consented to the acquisition of full legal capacity of minors. However, it should be borne in mind that the Civil Code of Ukraine uses the term «receive» and «granting» full civil capacity, should also be coordinated within the code. On our conviction the attainment of full legal capacity occurs regardless of the wishes of parents or others. Therefore, this approach should be agreed and further in the text. In turn, the «provision», which should be included in this article, should be associated with this will.

So the work ahead is great. After all, the question of approval and protection of rights and freedoms is the main duty of the state. However, such liberal treatment of human rights is not conducive to faith in the legal state and civil society building. We probably need our own M. M. Speranski who would take the responsibility and managed to clean the «Augean stables» of

the modern civil law. Thus this issue should be addressed comprehensively. It's time to think about creating the Concept of Development of Civil Legislation and its implementation.[1]

Another problem of modern private law is that today, we should recognize that *we has actually completely lost inter-industry links in the field of jurisprudence*. We closed in our «branch apartments» and actually small track trends in the development of neighbors. The activity we're starting to be only in cases of a threat «to national integrity and security» to own «apartment industry». It was in the area of civil law, when fought off attacks of the «commercialists», and then struggled with the administrative agreement, then with a separatism tendency of «intellectuals» and the like. But the reason for this lies, I think much deeper. I still think that the main trouble is that in Ukraine, as in most post-Soviet countries, the theory of state and law has ceased to perform its basic function — to be a science of law and the only measure of branch law on its suitability and eligibility.

So, with unusually rapid development of national legislation, in the twentieth year of the independence of Ukraine we are unable to conduct a national discussion about the system of law. After all, this is the main! Not knowing where we are going, how can we effectively develop «our economy».

However, there is a chance for changes. But everything should be done carefully and gradually — from the Constitution of Ukraine. Personally I am a terrible enemy of «god-fearing» attitude to the Constitution of Ukraine. I found that the exclamations like «... but this is stated in the Constitution of Ukraine» are quite embarrassing. I think we should remember the Roman statement — «*errare humanum est*»! It appears that this approach basically helps to ensure that scientific researches, which always are designed to be the channel of development of national legislation, to carry prognostic and prospective nature, today, have largely a commentary tone, or worse are transcribing legal acts without the quotes or what is worse — they are a plagiarism of the first water. And so when we have the possibility of scientific analysis to improve some positions, with the scope of their more accurate understanding and correct application, it should be done.

Under Article 4 of the Civil Code of Ukraine, the basis of civil legislation of Ukraine is the Ukrainian Constitution. In turn, the Civil Code is determined as the main act of the civil legislation of Ukraine. And usually, given the hierarchy of normative acts, we are talking about the need to improve exactly the provisions of the Civil Code of Ukraine and to bring them into conformity to the Constitution of Ukraine. Such a process is even provided by the procedure for appeal to the Constitutional Court of Ukraine and the relevant decisions of unconstitutionality of some provisions of national legal acts or their interpretations.

However, analysis of the provisions of the Constitution of Ukraine suggests that it is predominantly public in nature and includes public norms

[1] The European Union (prepared in the academic Draft Common Frame of Reference), Kazakhstan, Russia demonstrate such experiences.

aimed at protecting the public interest. Thus private interest in the Constitution and its security and protection remain mainly outside the legal influence.

So today I would like to talk about a new approach that includes so much the «constitutionality» of the civil law, as a *«civil character» of constitutional legislation*. This, so to say, provides a «feedback» between civil technique and constitutional provisions, in which we could consider the private interest, the main provisions of the civil legislation, its specifics and peculiarities, so that in the period of reforming of the Ukrainian Constitution we can more clearly and correctly write and defend fixation at the constitutional level of private law provisions. This will be discussed further.

Thus, according to Part 2 of Article 5 of the Civil Code of Ukraine, the act of the civil legislation does not have retroactive effect in time, except in cases where it mitigates or cancels the civil liability of the person. There is no doubt that the proposed formula of retroactivity of act of civil legislation in general is correlated with the proposed more general formula of retroactivity of regulatory act, which is contained in Article 58 of the Constitution of Ukraine. However, it should take into account certain peculiarities of the civil law method of regulation and protection of public relations, which is built on the basis of legal equality and optionality. And therefore, if we make as a retroactive basis the fact of mitigation or cancelation of liability of a person, it should be remembered that this is solely at cost of the other side! And so, we are dealing with actual uncompensated infringement of the rights and interests of the other party. So apparently relevant provisions on retroactivity of the new edition of the Constitution of Ukraine must undergo significant changes.

Certain questions arise in connection with the application of provisions of Article 61 of the Constitution of Ukraine, concerning legal liability. Thus, according to Part 1 of this article stated that no one may be made twice criminally liable in the same way. However, in this context, a legitimate question arises about the possible application of penalty, other accessory penalties, and also compensation of moral harm.

In addition, in this context, it is established that the legal liability of a person is individual in nature. This provision is extremely valuable and correct. However, the civil law knows the features of harm made by two or more persons. And therefore this provision unequivocally can only be applied to shared responsibility. Whereas the application of joint and subsidiary liability, in our view, has certain peculiarities regarding the application of this principle.

Another provision of the civil law, which deals with civil liability, has specific questions about its relations with the constitutional principles. In particular, it's about that in some cases the size of the civil liability may be modified according to the material situation of individuals. Thus, according to Part 1 of Article 1186 of the Civil Code of Ukraine taking into account the financial situation of the victim and the person who caused damage, the court may decide on the compensation of its damage in part or in full. Pursuant to Part 4 of Article 1193 of the Civil Code of Ukraine the court may reduce the size of compensation of harm, caused to a natural person, depending on his

financial situation. However, according to Part 2 of Article 24, the Constitution of Ukraine clearly states that there can be no privileges or restrictions based on race, color, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, language or other signs. Moreover, the civil law, unlike, for example, law on social security, doesn't have character of social protection and regulates the relations between legally equal parties. So apparently it should also consider if we should form a system of privileges, or apply the European principle of definition of what are not privileges and restrictions.

Thus, according to Paragraph 1 of Part 1 of Article 92 of the Constitution, exclusively the laws define rights and freedoms of man and citizen, guarantees of these rights and freedoms, main duties of citizen. However, this approach does not account for the fact that these legal categories may be also contained in the agreements as it is mentioned in Article 6 of the Civil Code of Ukraine. Therefore, apparently, it should be now more accurately clarified that rights and freedoms (obligations) can be provided to the person (relied on) in accordance with laws or agreements.

The issues associated with the property also require certain adjustments. Thus, under Article 13 of the Constitution of Ukraine the land, its subsoil, air, water and other natural resources located within the territory of Ukraine, natural resources of its continental shelf, the exclusive (maritime) economic zone are the property of the Ukrainian people. Except the question that arises about how can be realized a right of ownership to the atmospheric air (which requires a corresponding adjustment of this article), we believe that the design of property rights of the Ukrainian people should be revised. The basis for the future constitutional allocation should be laid on the separation of ownership of state, communal (municipal) and private.[1]

Another issue that would fit into the overall palette is a question of studying of foreign experience. Despite the fact that in Ukraine there are ongoing work on the study and adaptation of national legislation to the legislation of the European Union, at the same time, we should recognize the fact that today a serious study of foreign experience of legal norms drafting and practice of its application is practically not carried out. Our knowledge in this area is largely limited to those truths which we received at lectures on international law or from certain available (usually published on the Internet) sources. In

[1] By the way, experts in the sphere of commercial law already have some achievements in this field (see.: Конституційні основи правового забезпечення економіки України (проблеми конституційної економіки) : зб. наук. матеріалів «круглого столу» (м. Донецьк, 2 лип. 2010 р.) / НАН України, Ін-т екон.-прав. дослідж. [та ін.] ; [редкол.: В. К. Мамутов (відп. ред.) та ін.]. — Донецьк : Юго-Восток, 2011. — 121 с.; Конституційні засади економічної системи України : монографія / В. А. Устименко [та ін.] ; за ред. д-ра юрид. наук, проф. В. А. Устименка ; Нац. акад. наук України, Ін-т екон.-прав. дослідж. — Донецьк : Юго-Восток, 2011. — 218 с., etc). At the same time, they essentially contradict civil law convictions, because they propose to return «collective property», promote the dominance of public over private interests, a return to the planned economy, the decrease in the value of the contract in economic relations and the like. And so this should encourage us, civilists, to creation of an alternative research project, and its settling.

Ukraine, we don't have translations not only of modern works of the world's leading lawyers, but even legal acts of foreign countries. Multiplying it all on lack of jurisprudence translation professionals and dictionaries of quality, we are practically in a state of «legal scientific vacuum», when we (with rare exception) «do not read them» and «don't publish our works at their place». It seems such a condition is not satisfactory. So we should begin immediate work on the translation of basic normative legal acts of the world, summarization and translation of modern works of foreign authors, exploring the latest scientific researches that happen in the world. It is also important to raise the level of knowledge of languages and computer literacy among experts in the field of law. Earlier, in the pre-revolutionary period, every scientist or other expert in the field of law knew necessarily 4–6 languages, but today these professionals are rare.

Conclusions. Therefore, there is a difficult road before us. But the road will strengthen only one who goes on it. Therefore, the formation of a systematic, logical and consistent legal policy should be a guideline, a road map that will give us the ability to restart our legal system.

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ДО ПИТАННЯ ФОРМУВАННЯ ПРАВОВОЇ ПОЛІТИКИ В СФЕРІ ПРИВАТНОГО ПРАВА

Резюме

У статті автор досліджує поняття приватноправової політики, визначає його та описує його основні характеристики і принципи. Особлива увага приділяється якості приватноправової політики та її цілям в Україні. Автор дійшов висновку про відсутність в Україні чіткої приватноправової політики. Ним було проаналізовано основні складові процесу її формування. Надані рекомендації щодо вдосконалення нормотворчості в цій сфері.

Ключові слова: правова політика, приватноправова політика, законодавча робота, економіка закону.

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К ВОПРОСУ ФОРМИРОВАНИЯ ПРАВОВОЙ ПОЛИТИКИ В СФЕРЕ ЧАСТНОГО ПРАВА

Резюме

В статье автор исследует понятие частноправовой политики, определяет его и описывает его основные характеристики и принципы. Особое внимание уделяется качеству частноправовой политики и ее цели в Украине. Автор пришел к выводу об отсутствии в Украине четкой частноправовой политики. Им были проанализированы основные составляющие процесса ее формирования. Даны рекомендации по улучшению нормотворчества в этой сфере.

Ключевые слова: правовая политика, частноправовая политика, законодательная работа, экономика закона.