

Does a Modern European State Need a Law on Legal Acts? What Shall be the Law on Legal Acts in Ukraine?

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Abstract

The purpose of this study is to determine whether a modern European state needs to adopt a law on legal acts as a document that primarily sets out the statutory rules for law-making, which is necessary in order to adapt Ukrainian legislation to the European legal standards.

For analytical purposes, we have determined that the European legal framework encompasses special laws on legal acts as well as laws establishing the rules for law-making methods. Research has been done on doctrinal approaches to the legal method issues. In addition, we have made a brief analysis of the European Union legal framework concerning the law-making rules and studied the respective law-making legislation of Ukraine.

It has been concluded that the adoption of a special law on legal acts is not a priority task in the field of legal regulation for modern European states, although it is highly desirable in order to develop, amid academic pluralism, approaches to understanding legal methods and the need to compile a list of law-making tools for the purposes of regulatory definition and standardisation of types, forms and rules for evaluating adopted legislation (ex-post evaluation). To make law-making activities efficient in the states that used to be part of the socialist legal system in the past, legal formalisation is required, especially in post-Soviet states, such as Ukraine.

Key-words: Law-making Rules, European Legislation, Legal Act, Draft Law of Ukraine on Legal Acts, Law-making Method, Principles of Law.

1. Introduction

The quality of legal acts as the main pillars of the regulatory mechanism in a modern state depends on the extent to which the law-making method is used in the process of their development. Today, there are two approaches to the legal formalisation of the law-making rules in the European legal environment: they may be established either by laws on legal acts or special laws and regulations in the field of law-making. Very often the array of law-making tools as well as their content are far from being unified both at the national and international levels and, at the same time, tend to be in constant development.

In this context, states seeking to integrate with European legal principles are faced with a challenge: what should be the form and content of a legal document defining the law-making method?

The above mentioned topic is important for Ukrainian lawyers and, we hope, is of interest for European legal scholars, which makes the research topic relevant and practical.

A legal act and the rules for its creation are traditionally studied by European scientists through the prism of legal sources. This going back centuries process of development of the legal act doctrine commenced with the Digest of Justinian, the works of H. Grotius, Th. Hobbes, and J. Locke and continues to this day. Today, the concept of a legal act is the main focus of the literature on legal methods and the quality of legislation. Despite this centuries-old "legacy", the question as to what shall be the level and form of legal formalisation of the status of a legal act and the rules for its creation, interpretation and application is still open.

The purpose of this paper is to study the European legal background in order to evaluate whether it is necessary and reasonable to adopt a law on legal acts as a legal document setting out the rules for the law-making method, as well as to inform European lawyers, who are actively involved in the examination of the latest Ukrainian legislation (for example, the staff of the European Commission for Democracy through Law) about the respective draft act compiled in Ukraine.

The goal set can be achieved in the framework of our research by addressing the following objectives: studying the European practice of legal formalisation of the status of a legal act and the rules for its creation; describing the main doctrinal approaches to understanding law-making and legal method as the basic element of the legislation on legal acts; a brief analysis of EU laws that define the law-making method requirements; analysis of the latest draft Law of Ukraine on Legal Acts.

2. Materials and Methods

The research framework consists of scientific articles dedicated to the legal method, as well as European legal acts on law-making rules, and the emerging Ukrainian legislation on legal acts.

To analyse the legal doctrine of legal acts and legal method, we have selected individual studies done both by the representatives of Western European legal tradition, and legal scientists from Ukraine and other former Soviet states (since these are the works that are massively used in the development of Ukrainian legislation and may be of interest to European jurists).

The European legal framework in the field of legal acts — the main pillar of civil (continental) law — is quite extensive. Our research is based only on those legal documents whose titles explicitly indicate that they determine the "status" of legal acts and those whose titles indicate the rules for their creation. The unifying principle for these categories of legislative documents is the rules of legal (law-making) method set out thereby.

The focus of analysis and evaluation of the emerging Ukrainian legislation on legal acts was the draft act developed during 2020. This draft act is generally consistent with the philosophy behind the legislation on legal acts adopted by other states and is aimed at ensuring compatibility with European law-making standards.

The methodological framework of our research consists of a number of general and specific research methods. The comparison method is used to compare the forms and level of rule-making legislation mechanisms in the European Union, Ukraine and other European countries. The results of comparison reveal the existing options for the legal formalisation of the legal method as the pivotal ingredient to legislation on a legal act – the main legal source of European law.

We have used the scientific analysis method to evaluate the existing doctrinal approaches to the idea and the conceptual constituents of legal method. The dialectical approach helps track the evolution of scientific knowledge about the law-making method tools.

The system method provides the basis for a comprehensive and interrelated review of legal notions related to a legal act such as the system of laws and regulations, law-making method, law-making process, principles of law, law enforcement, and so on. This research method is indispensable for illustrating the common nature of the heterogeneous in names, but uniform in content European legislation on legal acts and legislation on the rules for law-making. Based on this method, we propose a hypothesis about the universality of European legislation on a legal act and the rules for its creation, as well as their supranational nature.

The method of technical and legal analysis has been used to evaluate the Law on Legal Acts being drafted in Ukraine. It is aimed not only to evaluate the overall quality of the developed draft law based on its structural content but also to identify possibilities to improve it, depending on the level of legal formalisation of the legal act institutions, for example, the tools of the law-making method.

3. Results

3.1. Legal Act and Law-making Method in the European Legal Field

It has been established that many countries have already developed a certain consistent legal practice in respect of the legislation on legal sources. Laws on legal acts are currently in force in such countries of the world as Azerbaijan, Armenia, Belarus, Bulgaria, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. In Lithuania, there is the Law of the Republic of Lithuania On the Law-Making Principles, which is similar in terms of content.

In a number of countries, even those that have not adopted continental law, there are special norms and regulations defining the status of legal acts and establishing rules for their creation. Germany has adopted a guide on legislative drafting (the Manual for Drafting Legislation), Switzerland has a manual on drafting regulations (Guide de legislation), the Netherlands — instructions for the regulations (Aanwijzingen voor de Regelgeving) and a drafting directive (Draaiboek voor de wetgeving), the United Kingdom — Drafting Guidance, and France — a handbook for legislative drafting (Le Guide de Légistique).

Even a brief analysis of the structure of these legal documents reveals that the legal method is the so-called common basis underlying all legislation related to a legal act. The important role of the legal method in the legal regulation mechanism encourages us to analyse how this concept is viewed in the European legal science as well as the practice of its application in the European legal system.

3.2. Legal Method in Legal Doctrine

Law experts from Western Europe, in particular from the Romano-Germanic law countries, express different opinions on legal method. Some believe that the scope of legal method covers only law-making and legal proceedings, where the norms developed by science are interpreted and applied (Willibalt Apelt, 1950). Others say that legal method is, on the one hand, a kind of intellectual law-making, and on the other hand, the work aimed the at logical systematisation of legal norms that is essentially a joint effort of legal doctrine and judicial practice (Bydlinski, 1991). There is a group of

professionals who argue that legal method is a set of tools and procedures designed to ensure the implementation of the law purposes and its protection (Ibid.). At the same time, some Western European scholars flatly deny the need for the very concept of legal method, since they believe that it is not relevant to the meaning of law and "vulgarises" law as such (Zippelius, 1978).

There is also no unified position on the elements of legal, primarily rule-making, method at the scientific level. Scientists even today note various means of rule-making method. There are just a few provisions regarding certain means of law-making. The professionalism of the legislative language is necessary for the accuracy, clarity and brevity of the instructions of the law, excluding any possibility of its violent interpretation (Weck, 1913). Presumption of law is defined as an assumption, directly or indirectly enshrined in the rules of law and therefore having legal significance (Pawlowski, 1999) as an assumption about the presence or absence of objects (phenomena), that is based on the connection between them and existing objects (phenomena), and confirmed by life experience (Engisch, 1983). The use of legal fictions dates back to Roman law (Larenz, 1991). Legal fiction is a mean of rule-making method that serves to simplify legal regulation and therefore cannot be challenged (Bydlinski, 1988). The task of the legislator is to use the exclusive technique of fiction within reasonable limits by combining the requirements of legislative policy and rule-making method (Kramer, 2005). As for the prerequisites for introducing legal axioms into the text of legal act, there should be a need for legal formalization of generally recognized legal provisions, to establish the basic principles of law and legal regulation, and to create basic rules of law (Bydlinski, 1988). By improving the textual and content certainty of legal acts, legal axioms also contribute to their better understanding and perception by legal entities (Ibid.).

3.3. Legal Regulation of Law-making in the EU

Today, at the level of the European Union, a number of special documents have been created that determine the rules for drafting legal acts issued by the bodies of the Union, that can be used in the formation of the national legislation of the EU member states. Using the best practices of domestic specialists, we will briefly consider them. On June 8, 1993, the EU Council adopted the Regulation on the quality of drafting of legislation. This act sets out the requirements for the title, preamble, terminology, and structure of the text. The Regulation recommended: the use of clear, simple, concise, and unambiguous terminology in the development of draft acts; mutual consistency of various acts; clear definition of rights and obligations arising from the act; application of the standard structure of the act; clear definition of the date of entry into force of the act and the necessary transitional period

provisions. Regulation did not recommend the use necessary of abbreviatory, EU jargon, long sentences; references to other acts, internal reciprocal references that make it difficult to perceive the text of the act; inclusion of provisions of a non-normative nature (such as wishes and political statements) in the texts of acts, inconsistency of draft acts with existing legislation, aimless repetitions of texts of other acts; inclusion in the act on amendments of independent provisions, that are not amendments (Doktorova, 2005). On December 20, 1994, the Commission, the Council and the EU Parliament adopted an interinstitutional agreement on an accelerated method of working with the official codification of legal texts. By the following interinstitutional agreement of December 22, 1998 “On common guidelines for the quality of drafting of Community legislation”, five groups of such rules were determined: general ones for different parts of the act; rules on references; on amendments to acts; on final provisions; on the cancellation of appendices (Kopylenko & Bohachova, 2011). In addition, on November 28, 2001, the agreement “On a more structured application of the technique for revising regulations” was adopted (Doktorova, 2005). At the end of 2003, the Joint Practical Guidelines of the European Parliament, the Council, and the Commission were developed for persons involved in the drafting of legislation within the framework of the Community guidelines, which provide that: Community draft legislative acts shall be clear, simple and understandable, and correspond to the types of certain acts; the development of acts should take into account the range of persons for whom these acts are intended; too long articles and sentences, unnecessarily complex wording and frequent use of abbreviations shall be avoided; the terminology used in the relevant act shall be consistent both in the act and with other applicable acts within the relevant area; all acts shall be developed in accordance with a standard structure; the operative part of the binding act does not cover non-normative provisions; if the terms and definitions used in this act are ambiguous, they shall be defined in a single article at the beginning of the act, and so on Kopylenko and Bohachova (2011), Kondyk (2005) examining the technical and legal aspects of improving the law-making activity of public authorities in the context of Ukraine's integration to the EU legislation, points out that in international practice, virtually uniform rules for normative drafting have been formed, which include the rules regarding the title, preamble, and conceptual apparatus; the structure of a legal act; style and syntax; references; the titles of articles; appendices (Kondyk, 2005).

When creating EU legislation, the principles of law-making are also applied, which are based on the general civilizational principles of law: democracy; legality; humanism; scientific character; professionalism; diligence, meticulousness of draft preparation; and technical perfection of the adopted acts (Ibid.). The European Union has developed a General Practice Guide as a platform for

general principles for the development of EU legal acts. The first edition of the guide was published in 2000, the second one – in 2013.

3.4. Creation of Ukrainian Legislation on Legal Acts

When adopting a law on legal acts, Ukraine proceeds from its international obligations. The importance of international law for law-making in Ukraine is clearly illustrated by the rules of the Law of Ukraine dated March 18, 2004, No. 1629-IV “On the National Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union”. Section three of this legislative act stipulates that the state policy of Ukraine on the adaptation of legislation is formed as an integral part of the legal reform in Ukraine and is aimed at ensuring uniform approaches to law-making standards, compulsory consideration of the requirements of European Union legislation in law-making standards, training of qualified specialists, and creating appropriate conditions for institutional, scientific and educational, law-making, technical, and financial support for the adaptation of Ukrainian legislation.

Drafting of the Law on Legal Acts of Ukraine has a long history. This is the draft Law of Ukraine “On Laws and Legislative Activity in Ukraine” (for example, No. 894 of May 14, 2002), and drafts of Law on Legal Acts of Ukraine, which were even adopted by the Verkhovna Rada of Ukraine, but vetoed by the President of Ukraine (for example, No. 1343-1 of January 21, 2008, adopted by the Verkhovna Rada of Ukraine on November 18, 2009). Such well-known Ukrainian lawyers as N. I. Kozyubra, N. I. Panov, A. I. Yushchik and others were involved in their development. Due to objective and subjective factors, these laws have not been adopted by the parliament, so there is still a wide range of issues that can be taken into account when creating a new draft law. The latest draft of Law on Legal Acts of Ukraine is formed taking into account the European legal experience, including with respect to legal technology. The draft law contains the following main sections: general provisions, the system of legal acts, planning of law-making activities, the rule-making method, preparation of a draft legal act, consideration of the draft laws and adoption (publication) of a legal act, official promulgation of a legal act, accounting and systematization of legal acts, the operation of a legal act, its enforcement, control over enforcement, official interpretation and official clarification of a legal act, information technology in drafting and application of legal acts, final provisions, and transitional provisions.

Comparing this structure with the structures of the previous draft laws (About laws and legislative activity, 2003), it is possible to state the presence of new sections “control over enforcement”, “information technology in drafting and application of legal acts”. Approval should be divided into separate sections of the final and transitional provisions (which corresponds to the rules of

structuring legal acts and often is not implemented by the drafters). The structure of the draft law generally corresponds to the traditional and recognized sequence (staging) of the classical law-making process. Of course, there may be suggestions for improving it, for example on the advisability of a separate section on registration of legal acts against the background the of inconsistency of legal acts establishing the rules for their registration and legal acts establishing the legal status of public authorities. However, in our opinion, it is important that such regulatory requirements are reflected in the law, and not necessarily highlighted in a separate section. The content of each section deserves comprehensive support.

4. Discussion. Evaluation of the Draft Law on Legal Acts of Ukraine

The assertion that today European legislation (both national and pan-European) is generally perfect is beyond doubt. This illustrates the proper use of the existing rules the of rule-making method in the process of law-making, regardless of the level of its legal consolidation – legislative or subordinate, primary or secondary legislation. Under such circumstances, the adoption of a special Law on Legal Acts is not a priority, although it is desirable for the formation of unified approaches to the understanding of legal technology and the establishment of a list of means of standard drafting, for the normative definition and unification of the types, forms and rules for ex-post evaluation. Legal regulation of law-making activities in order to increase the level of its effectiveness in the post-socialist legal area needs legal formalization, especially in the post-Soviet states, in particular in Ukraine. Therefore, in our opinion, these states have adopted the Law on Legal Acts.

One of the important directions of creating a real mechanism for bringing national law in line with international law can be the use of rules for drafting developed at the level of European interstate legal systems, that is, the toolkit for the formation of European law. This is not just a way of copying legal principles or rules of law, but the introduction of the experience of their creation in the legal system of Ukraine, primarily through the Law on Legal Acts of Ukraine.

On the basis of the substantive component of the rules for creating the norms of common European law and taking into account scientific research in the field of legal technique, we consider it possible to carry out a critical analysis of the draft Law on Legal Acts of Ukraine and suggest possible tools for its improvement. In the first article of the draft, law a list of definitions is suggested. It should be noted that there are three most used options for the definition of terms: 1) at the beginning of the text of a legal act; 2) when the term is first used in the text; 3) in the notes. In the text of the draft Law on Legal Acts of Ukraine, definitions are given both at the beginning in the first article “Definition of

terms”, and in the text itself, for example, in a separate article that defines the concept of “law”. In order to unify the terms defined by the legislator and avoid duplication, in our opinion, it is advisable to choose one of the options. The first one is accessible for perception, in which the terminological alphabet necessary for a correct understanding of the legal act is given at the beginning of the text. It should be noted that in the proposed version there are controversial definitions, for example, the retroactive effect of a legal act (in our opinion, needs to be expanded) and definitions of terms (definitions) that are practically not used in the draft law, for example, “rules”, “procedure”, “instructions”. At the same time, there are those that need legislative specification in the form of definitions, however, their definitions are absent, for example, “local legal act” and “surviving the effect of a regulatory legal act”.

By analyzing the text of the draft law, it is possible to identify a number of ambiguous regulatory and legal prescriptions. The controversial nature of future legislative legal provisions is determined by the different interpretation of many general theoretical concepts, legal phenomena and legal structures. Let's characterize them.

All textbooks on the general theory of state and law offer definitions of a legal act as a key concept in the theory of law. These definitions vary in scope and content (Nersisants, 1999).

We also see the interpretation of a legal act in various legal documents (however, in legal practice there is no unity in its understanding). To unify the approaches, the developers of the draft Law on Legal Acts of Ukraine proposed a comprehensive definition of the main source of law of Ukraine in terms of content and optimal form: a legal act is an official document adopted by a law-making entity that establishes, changes or cancels the rules of law in the form and procedure established by the Constitution and laws of Ukraine. In order to concretize the term “rule of law” (Rabinovych, 2008), since it is known that there are different approaches to the understanding of the concept of “law”²¹, the draft law proposes its definition: this is a generally binding rule of conduct that applies to an impersonal circle of persons, designed for repeated application, is protected and provided by the state.

The article of the draft law, which defines the system of legal acts of Ukraine, is of great practical importance. This rule defines not only the list (set) of the main types of legal acts of the Ukrainian state, but also establishes the basis for their hierarchical subordination, depending on the legal force. We get answers to a number of legal questions and challenges. At the same time, it is impossible not to pay attention to the existing objectively determined theoretical inaccuracy, which is difficult to avoid by modeling the rule on the system of legal acts. The main defining element of the system of legal acts is the laws of Ukraine: Constitution, constitutional laws, codes, ordinary and special

laws. In the legal system of Ukraine, the term legislation is actively used (which raises many questions). Based on the requirements of article 9 of the Constitution of Ukraine, legislative rules of various legal acts and decisions of the Constitutional Court of Ukraine, the draft law considers the term “legislation of Ukraine” as a hierarchical system of legal acts and international treaties of Ukraine. In other words, legislation covers both laws and subordinate legal acts and international treaties. The article of the draft law on the system of legal acts actually separates laws and subordinate legal acts. Fully justified, it does not mention international treaties (although they are constitutionally recognized as an integral part of domestic (national) legislation), since a legal act and a normative treaty are different forms of law.

The draft law, like the previous draft laws, does not answer to the question of the hierarchy of the normative decrees of the President of Ukraine and the decisions of the Verkhovna Rada of Ukraine of a normative nature. We can recall the historical discussion between representatives of the Parliament and the head of state regarding the official sources of publication of laws provided for by the Regulations of the Verkhovna Rada of Ukraine, approved by resolution No. 129/94-BP of July 27, 1994, and Decree of the President of Ukraine of June 10, 1997 No. 503 / 97 “On the procedure for the official publication of legal acts of Ukraine and their entry into force”.

The legal definition of the “legal status” of local legal acts is of practical importance for the legal regulation of relations at the level of public enterprises, institutions, and organizations. A number of theoretical questions arise: whether the so-called “departmental acts” belong to this category of regulatory sources; whether legal acts issued by the heads of public and non-public enterprises, institutions and organizations that are mandatory for all employees differ in their legal properties; whether local legal acts should be included in the legally defined system of legal acts of Ukraine; why, in the opinion of some scientists, is it inappropriate to include legal documents of a normative nature issued by public organizations as part of the state mechanism in the system of legal acts of Ukraine, and instead it is necessary to introduce decisions of professional self-government bodies/self-regulating organisations (with this approach, for example, the order of the rector of the University is not a normative act, but the decision of the primary union organization of the University, which includes not all University employees is a normative one)?

In our opinion, when deciding whether to attribute one or another group of legal acts to the system of legal acts of Ukraine, it is advisable to follow several criteria:

- Legal status of a law-making entity: whether the authorized entity save the right to issue rules of conduct that are mandatory for other subordinate entities;

- Normative value: the existence of a rule of law that applies to a certain non-personified group of persons and is designed for repeated application;
- Legal significance: such rules are provided by means of legal coercion and determine legal consequences;
- Formal legal compliance: whether it is mandatory to comply with the requirements of standard rule-making method regarding their content and form when creating such acts.

The use of objective criteria in defining a legal document as a legal act and, accordingly, its introduction into the system of legal acts of Ukraine, will prevent discussions on granting the status of normative (and, accordingly, entering into the Unified State Register of Legal Acts of Ukraine) to various types of legal acts, which are created by legal entities in the domestic legal system against the background of its constant intensive development.

In the process of developing the draft Law on Legal Acts of Ukraine, it is proposed to include recommendation (framework) legal acts in the category of legal acts. The idea seems to be clear, based on the existing legal practice in Ukraine. For example, which category of legal acts should be attributed to the Methodological Recommendations of the Ministry of Justice and other ministries on issues of drafting technique, approved by orders of ministers (Methodological recommendations on development of draft laws and observance of requirements of normative design technique, 2000). The use of the term “recommendation” in the titles of these acts is aimed at the fact that such documents are not binding. We believe that in this case the term “recommendations” is associated with the term “rules”, that is, a recommendation is an indication of the sequence of certain actions and the need to comply with the established rules. In addition, it is necessary to proceed from the features of these legal acts, which are characteristic precisely for normative legal acts. At the same time, a separate allocation of the category of recommendatory legal acts seems to be doubtful, since the main feature of a regulatory legal act is a general binding nature.

We are convinced that the introduction of the section “planning of law-making activities” into the draft Law on Legal Acts of Ukraine should be supported. The statement of the question on the planning of law-making activities a decade ago would be a caveat just because it was a phenomenon that was associated with the socialist past of our state. However, the life experience has shown that if in the economic sphere planning causes certain reservations, in the legal sphere it is an important factor in improving the law-making process.

Attention to the issues of forecasting and planning of law-making work is now observed not only in the increase in the number of scientific studies on this topic, but also in the formal legal consolidation of the obligation to plan normative (first of all, legislative) work. Clause 12 of the Law

of Ukraine dated February 10, 2010 No. 1861-VI “On the Regulation of Procedure of the Verkhovna Rada of Ukraine” provides that the Chairman of the Verkhovna Rada of Ukraine shall organize the development of plans for legislative work of the Verkhovna Rada. In the Regulation of the Cabinet of Ministers of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 950 dated July 18, 2007, a whole chapter is devoted to the issue of planning legislative work (Chapter 1, Section 7). The legislative consolidation of planning as a stage of the law-making process is determined by its potential positives, namely: the possibility of concentrating the efforts of the drafters of the legislation on legal regulation of important social relationships; ensuring completeness, balance, continuity, comprehensiveness regulation impact on public relations; coordination of activities of various law-making entities; providing a continuous, uniform, corresponding to the social needs of the law-making process; elimination of the instability of legal regulation; the possibility a of preliminary determination of the financial, organizational and other efforts of the state necessary for the implementation of the future legal act.

Today, the statement that the quality of legal acts is determined by the level of use the of rule-making method in the process of their drafting has acquired an axiomatic character. The positions of Ukrainian scientists regarding the toolkit of drafting technique are different. Zh. A. Dzeiko draws attention to the following rules and means of rule-making method: linguistic rules and means of fixing the rules of law in laws, constructing the structure of the law, legal fictions and presumptions, legal symbols, the concept of law, rules for conducting of legal expertise of laws, rules for preventing conflicts and gaps in legislation, requisite and structural rules, and the so on (Dzeiko, 2007). Bogacheva (2013) divides the means the of rule-making method into the means of legal expression of the will of the legislator and the means of verbal and documentary presentation of the text of the law. V. I. Ryndyuk (2008) distinguishes linguistic, logical and procedural forms of rule-making method, general and special (techniques for drafting constitutional laws, techniques for amending legislative acts and codification technique) types of rule-making method (Ryndyuk, 2008).

In our opinion, the most pragmatic way is to distinguish the means of drafting into two groups: those related to the content of legal acts, and those that law-making entities use to provide rules of law with the appropriate form (Kashanyina, 2007). The content (requirements for the content of a legal act) should include following requirements and means:

- a. general requirements (legality, compliance with moral standards, expediency, validity, efficiency, timeliness, stability, economy, reality, optimality (Shutak, 2013). They provide for the endowment of legal acts with properties without which they are not able to properly implement the legal regulation of public relations;

- b. logical requirements that contribute to the unity, consistency, coherence, and continuity of regulatory requirements set out in legal acts;
- c. means of content formation: principles of law (as a means of rule-making method). They serve as a kind of basis for the law-making entities. For example, the principle of humanism encourages developers of legal acts to fix in rules of law inseparable natural human rights; legal structures ensure the stability and economy of law. They reflect strong connection between the elements of legal phenomena, and fix the determining position of certain institutions or even areas of law. For example, the legal structure of property rights determines the initial parameters of regulation of property relations by the rules of civil law; legal definitions are used by drafters for the purpose of interpreting terms, a certain understanding of which causes corresponding legal consequences; legal presumptions, legal fictions and legal axioms serve as additional tools for modeling rules of law.

The second group of requirements and means (regarding the form of a regulatory legal act) includes:

- a. legal terminology and rules for its use (language rules). The superiority of terminology as a means the of textual design of rules of law is determined by the fact that the effectiveness of their implementation in legal practice largely depends on the verbal materialization of regulatory prescriptions. For example, the optimal use of formally defined and evaluative terms in articles of legal acts, the use of a particular form of presentation, the formation of rules of prescriptions or logical rules contribute to the proper reflection of rules of law in legal acts;
- b. structure of legal act (parts, designations of components, appendices, references, etc.). It is a factor in the legal formulation of a normative legal act and facilitates the operation of legal regulations. For example, paragraph numbering is convenient when referring to articles of legal acts;
- c. requisites - an integral part of legal documents. Their absence may be the reason for the recognition of the normative legal act as invalid.

What do we see from the above in the previous and considered draft Law on Legal Acts of, at least formally? A separate section “Rule-making method” contains rules on such components of rule-making method as: the structure of legal act; the quality of the legal technique of the legal act; terminology, text, style, details, title, preamble, components, references to component parts of a regulatory legal act; final provisions of the legal act; transitional provisions of a legal act; application of a legal act; amendments to legal acts. As we can see, with the exception of the definition of terms, practically nothing is said about the means of drafting technique that determine the content basis of a

legal act. That is the reason: there was no mention of them in various legal acts of a recommendatory nature; their list for practitioners seems to be theorized. In our opinion, this approach is unfounded. For the vast majority of people in the society, the content of a legal act is more important than its form. If, for example, the Tax code of Ukraine is updated in accordance with the needs of taxpayers, they will evaluate it as “excellent”, even if there are gross philological errors in the text of the amended rules of law.

In this regard, it seems appropriate to point out some principles of law that provide both “meaningful” and “formalized” preparation of a legal act. We are speaking about permissive and, accordingly, generally permissive principles of law. The permissive principle is traditionally denoted by the formula “only that is permitted is allowed” (or “everything is prohibited except for the directly permitted”), and the generally permissible – “everything is allowed except for the expressly prohibited”. The methodological potential of these general legal principles makes it possible to achieve the adoption of a high-quality legal act in the process of drafting. In particular, the methodological function of these principles consists in the ideological justification of the vector of legal regulation chosen by the law-making entity – to guarantee a regime of strict regulation (with the definition of responsibility) or maximum freedom in certain legal relations. Accordingly, the rights and obligations of the addressees of the legal act or the freedom of discretion are clearly defined (which entails the need to develop a mechanism for monitoring its implementation).

The methodological function of these principles is the systematic use of different means and rules – the so-called technical and legal complexes. For example, the technical and legal complex of a permissible nature presupposes the presence of a peculiar set of means and rules of a legal technique, namely, the presumption of the "constitutionality of legal acts", the axiom "a legal act is interpreted by the body that issued it", as well as other principles, which are subject to the appropriate ideology (in other words, sub-principles) – legality, publicity, inevitability of legal consequences. In turn, the technical and legal complex of a generally permissible nature provides for the presumption of the "legitimacy of non-prohibited", the axiom “all doubts in favour of the accused”: as well as the "sub-principles" of conscientiousness, reasonableness, discretion, prohibition of interference in personal space.

The above principles of law play a generalizing role in the use of other normative means and rules, increase, in our opinion, the effectiveness of legal regulation, especially in the context of the need for a clear distinction between public and private legal relations.

Also, in the draft law under consideration, for the first time, it is proposed to normatively formalize the stages of preparing a draft legal act: a law-making initiative, organizing the preparation of a draft, developing a draft concept, preparing a draft and its approval.

The section “Official publication of a regulatory legal act” is of great practical importance. The entry into force of certain legal acts of Ukraine is connected with their promulgation, while there is no legal definition of the sources of official publication, with the exception of official printed publications, in Ukraine today. This is especially relevant for local executive authorities and local governments. Many questions arise regarding the practice of recognizing the regulations of these public institutions as official sources for publishing of legal acts issued by them on their official websites. Today's realities require the legalization of electronic information carriers as sources of official publication of certain categories of legal acts.

The article of the draft law “Entry into force of legal acts” contributes to the unification of the rules for the entry into force of legal acts of Ukraine, which are currently “dispersed” in national legislation. This rule establishes the procedure for entry into force of legal acts that form the system of normative legal acts of Ukraine.

The section of the draft law “Accounting and systematization of legal acts” is a step towards the normative recognition of methods of systematization of legislation developed at the level of legal theory. It also offers new areas of legal improvement – recodification and decodification.

A positive role in the practice of legal regulation should be played by the section of the draft law “Effect of a normative legal act”, which primarily defines the direct and retroactive force (the surviving action is being discussed) of a legal act. It is proposed to formalize these general theoretical postulates by law, the application of which sometimes caused some controversy. This can be illustrated by the decisions of the Constitutional Court of Ukraine in cases related to the retroactive effect of legal acts.

In the draft law under consideration, as in the previous relevant draft laws, there is an important section devoted to the law enforcement, first of all, to the definition of ways to overcome such shortcomings of legal acts as gaps, conflicts, competition. Lawyers will have questions regarding the section “Control over law enforcement”, since today, when it comes to determining the level of effectiveness of law enforcement, the term legal monitoring is commonly used. In our opinion, in the light of the importance of law enforcement for the effective performance of state functions, legal regulation of forms and types of assessment of law enforcement is necessary and relevant.

When developing the draft law, it was obviously impossible to avoid the issue of interpretation of legal acts of Ukraine. As a result, there is a separate section “Official interpretation and official

explanation of a legal act”, which sets out the principles, types, subjects, methods, and legal force of the official interpretation the of legal act.

Such rules of law in the draft law are determined by the requirements of the time, since the question of the methods and forms of interpretation, the “legal status” of interpretative legal acts is currently mainly based only on the legal doctrine and legal awareness of lawyers. The problem of authentic interpretation requires a normative definition. It is also necessary to distinguish between official interpretation and law-making activities.

The draft law has a new section “Information technologies in drafting and application”, which is probably the result of informatization of all spheres of public life, compared to previous draft laws.

5. Conclusion

Summing up, it can be stated that the quality of a legal act, as the main source of the law of the continental legal system, largely depends on the legal regulation of the rules for its creation. In more than ten states, such rules are enshrined in special laws on legal acts. The states of Western Europe have chosen a slightly different model: the formalization of the rules the of rule-making method in special manuals, directives, rules, etc. (both at the national level and at the EU level). The adoption of a special law on a legal act is not a priority task of European States in the legal sphere, although it is desirable for the formation of unified approaches to understanding legal techniques and establishing a list of means of drafting, for the normative definition and unification of the types, forms and rules-ex post evaluation. Legal regulation of law-making activities for its effectiveness in the post-socialist legal space needs legal formalization, especially in post-Soviet States, such, as for example, in Ukraine. Therefore, these States have adopted laws on legal acts. Today, the Law on Legal Acts is being created in Ukraine, which is methodologically important for the entire domestic legal framework. The authors of the draft law sought, taking into account the European legal experience, to normalize the defining doctrinal and practical approaches to understanding the legal act, to define the hierarchical system of legal acts of Ukraine, to describe the technique and technology of their creation, to highlight the most important points related to the systematization, application and interpretation of legal acts, and so on. At the same time, this law is being drafted on the basis of general theoretical pluralism. The group of authors consists of scientists and practitioners, each of whom has its own position, and, therefore, each rule is the result of discussions and compromise. It is difficult to achieve perfection under such conditions, but it is important to complete the long-term epic of creating a law on the main source of Ukrainian law – a legal act.

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