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THE SUBJECT-MATTER OF COMPARATIVE LEGAL ANALYSIS OF UKRAINE, EUROPEAN UNION MEMBER STATES AND NORTH AMERICA ON ADMINISTRATIVE AND LEGAL SUPPORT FOR INTELLECTUAL PROPERTY AND INVESTMENT PROTECTION

Abstract. Purpose. The purpose of the article is a comparative legal analysis of Ukraine, EU Member States and North America regarding the administrative and legal support for intellectual property and investment protection. **Results.** The article reveals the content of the subject-matter of the comparative legal analysis of Ukraine, the EU Member States and North America regarding the administrative and legal support for intellectual property and investment protection. It is proven that they are interrelated in many aspects by material goods in the form of intellectual property and investments, which are usually updated by actors of administrative law virtually and digitally. They constitute the content of administrative service and executive administrative activities of public administrators through the comparative and legal analysis of legislation, empirical material, case law and other interpretation of the provisions of law, scientific, financial and legal doctrines in Ukraine, EU Member States and North America. The legal framework for protection of intellectual property and investments combines: 1) From the perspective of statics, intellectual property and investments are different forms of ownership (investments are tangible property while intellectual property objects are intellectual property), but they are updated for consumers, usually in virtual digital space (format); 2) There is a mutual need for proper specification to prevent access to them by outsiders; 3) This results in many common grounds and remedies; 4) The appropriate level of protection of intellectual property rights has a direct impact on the investment climate in the State and vice versa. **Conclusions.** It is concluded that the content of the subject-matter of the comparative legal analysis of Ukraine, the EU Member States and North America regarding the administrative and legal support for intellectual property and investment protection. It is proven that they are interrelated in many aspects by material goods in the form of intellectual property and investments, which are updated by actors of administrative law, usually, virtually and digitally. They represent the content of administrative service and executive administrative activities of public administrators through the comparative and legal analysis of legislation, empirical material, case law and other interpretation of the provisions of law, scientific, financial and legal doctrines in Ukraine, EU Member States and North America.

Key words: content, investments, intellectual property, protection, comparative legal analysis, subject-matter, digital format.

1. Introduction

In democratic legal countries with market economies, intellectual property and investment occupy an important place in the State and civil society system. The former is the basis for social and economic progress, the latter supports this process. They are interrelated in many fields.

Accordingly, such an important aspect of social relations cannot remain outside law. The static scope of such regulatory mechanism is private law. However, in the evolution of legal protection of values in question, the provisions of public law, primarily administrative and financial law, are of importance.

However, as domestic experience shows, the protection of intellectual property rights and investment protection are at an inadequate level, which is a leading factor in the low standard of living of citizens, because good and significant investments in the domestic economy almost do not come. Without them neither decent wages for workers, nor success for business, nor increase of gross domestic product of the Ukrainian economy are possible.

In other words, addressing the issue of intellectual property rights and investment protection will directly improve the well-being of citizens.

The comparative legal analysis of Ukraine, EU Member States and North America regarding the administrative and legal support for intellectual property and investment protection was under focus by domestic administrative law scientists, such as V. Halunko, P. Dikhtievskiy, A. Zamryha, A. Ivanyshchuk, O. Kuzmenko, M. Loshytskyi, D. Pavlov, O. Pravotorova, A. Chubenko, O. Yunin, et al. However, they did not directly address the issues concerned analysing more general, special or related challenges.

2. Comparative legal analysis

According to the *Explanatory Dictionary of the Ukrainian Language* “subject-matter” is any concrete material phenomenon perceived by the senses; logical concept, component of the content of thought, knowledge, etc.; what is aimed at the cognitive, creative, practical activity of someone, something; the range of knowledge, which is a separate discipline of teaching (Bilodid, 1972). Practically the first two of these encyclopaedic interpretations of the category of subject-matter are such that to some extent may be inherent in our research.

Therefore, we can make a hypothesis that the subject-matter of the comparative legal analysis of Ukraine, EU Member States and North America regarding the administrative and legal support for intellectual property and investment protection can be a material good (intellectual property and investments), which is the content of our knowledge, as well as cognitive, creative, practical activities of actors of law related to it in the form of comparative analysis of the administrative and legal support. Let us prove them.

The first component of the subject-matter of our research is “intellectual property”, in the most general sense it is the intangible property that is the result of creativity (such as patents or trademarks or copyrights) (British Encyclopaedia, 2020). According to the Encyclopaedia Britannica, intellectual-property law is the legal regulations governing an individual’s or an organisation’s right to control

the use or dissemination of ideas or information. Various systems of legal provisions exist that empower persons and organisations to exercise such control. Copyright law confers upon the creators of “original forms of expression” (for example, books, movies, musical compositions, and works of art) exclusive rights to reproduce, adapt, and publicly perform their creations. Patent law enables the inventors of new products and processes to prevent others from making, using, or selling their inventions. Trademark law empowers the sellers of goods and services to apply distinctive words or symbols to their products and to prevent their competitors from using the same or confusingly similar insignia or phrasing. Finally, trade-secret law prohibits rival companies from making use of wrongfully obtained confidential commercially valuable information (e.g., soft-drink formulas or secret marketing strategies) (British Encyclopedia, 2020).

Under art. 418 of the Civil Code of Ukraine “Intellectual property right is the human right to the result of intellectual, creative activity or to another object of intellectual property right” (Civil Code of Ukraine, 2003). The concept of “intellectual property” arose in the process of long-term practice of legislating their rights to the results of intellectual activity in industrial, scientific, artistic, industrial and other fields by certain persons. In society, relations with respect to the creation and use of intellectual property are governed by a system of legal provisions, called intellectual-property law. Objects of intellectual-property law include literary and artistic works; computer programmes; compilations of data (databases); performance; phonograms, videograms, broadcasts (programmes) of broadcasting organisations; scientific discoveries; inventions, useful models; industrial designs; layout (topography) of integrated circuits; rationalisation proposals; plant varieties, animal breeds; commercial (brand) names, trademarks (marks for goods and services), geographical indications, trade secrets (Civil Code, art. 420). The object of intellectual property right can be only the intangible object, that is, the result of intellectual, creative activity. However, not every product of creative activity is recognised as an object of intellectual-property law, but only the one that is protected by the Civil Code of Ukraine and other laws of Ukraine on intellectual property. The results of creative activities, which for one reason or another have not been protected by intellectual property rights, may be recognised as objects of civil law, but not of intellectual property rights. Objects of intellectual property rights can be not only the results of intellectual, creative activity, but also other

objects defined by the Civil Code of Ukraine and other laws. These are so-called means of individualisation of participants of civil circulation, goods and services and other non-traditional objects, equated with objects of intellectual property rights. Nevertheless, they are protected by intellectual property rights (Civil Code of Ukraine, 2003).

According to the Encyclopaedia Britannica "investment" is a process of exchanging income during one period of time for an asset that is expected to produce earnings in future periods. Thus, consumption in the current period is foregone in order to obtain a greater return in the future. For an economy as a whole to invest, total production must exceed total consumption. Throughout the history of capitalism, investment has been primarily the function of private business, however, during the 20th century governments in planned economies and developing countries have become important investors (British Encyclopaedia, 2020).

From the perspective of the Ukrainian reality, "investments" are economic operations involving the acquisition of fixed assets, intangible assets, corporate rights and/or securities in exchange for funds or property, long-term investing of capital in any enterprise for profit. Investments are grouped into public and private, direct and portfolio; in services, housing; real (direct), intellectual, financial and replacement of worn fixed assets; long-term capital (funds) investment in various sectors of the economy, mainly outside the country, as well as property and intellectual values invested in business and other activities, resulting in profits or social benefits (Chubenko, Loshytskyi, Pavlov, Bychkova, Yunin, 2018).

3. Legal nature of the categories "intellectual property" and "investment".

The question arises: what unites these two scientific categories – intellectual property and investment – what is the subject-matter of the joint study? In our view, the answer lies both in their scientific nature (statics) and in the ways of their legal protection (dynamics). However, first, the focus should be on some aspects of the legal nature of property rights. According to V. Halunko, property relations constitute a system of exceptions to access to tangible and intangible resources. If there are no exceptions to access to resources, then they are nobody's, belong to no one, or that means that the same belongs to everyone, because there is free access to them. To exclude others from free access to resources means to specify, that is, to define precisely property rights. The more clearly defined and securely protected property rights are, the better the link between property owners and their well-being. There-

fore, the specification encourages effective decision-making. The reverse of the erosion of property rights occurs when they are imprecise or poorly protected (Halunko, 2018).

To sum up, the administrative and legal support for intellectual property and investment protection combines: 1) From the perspective of statics, intellectual property and investments are different forms of ownership (investments are tangible property while intellectual property objects are intellectual property), but they are updated for consumers, usually in virtual digital space (format); 2) There is a mutual need for proper specification to prevent access to them by outsiders; 3) This results in many common grounds and remedies; 4) The appropriate level of protection of intellectual property rights has a direct impact on the investment climate in the State and vice versa.

Consequently, the well-being of citizens, the proper development of business in legal, democratic and market economies depend directly on interrelated legal processes regarding the respect and protection of intellectual property as a precondition, foundations and, in some cases, a remedy for investment protection.

When protection of intellectual property and investments is based on administrative law, the external form of realisation of executive functions is public administration. According to V. Halunko, public administration is characterised by: 1) external expression of the realisation of the tasks (functions) of the executive authority; 2) administrative activities of the public administration; 3) the purpose of meeting the public interest; 4) negatively restricted from: legislative activity; administration of justice and criminal procedure; political activities; private interest activities. Public administration as a form of exercising public power is administrative activity of public administrators, which is external expression of realisation of tasks (functions) of executive power, to satisfy the public interest and to be negatively restricted to legislative judicial and political activities. In terms of content, the types of public administration are grouped into: 1) administrative services by the public administration, when the public administration should more fully satisfy the rights, freedoms and interests of individuals; implementation of executive and administrative activities (public administration), in the course of which the public administration performs public execution of the legislation throughout the State (executive activities) and in accordance with the prescribed competences issues for this purpose by-laws normative legal acts on the basis of laws for their implementation through detailing and clar-

ifying (administrative activities) (Halunko, Dikhtiiivskyi, Kuzmenko, 2001).

With regard to the dynamics of the problem under consideration, it should be noted that administrative and legal protection is an institution of administrative law, consisting of homogeneous provisions, aimed at the prevention of offences (prevention of crimes) and restoration of violated rights, freedoms and lawful interests of natural and legal persons by administrative remedies, that is, forms of administrative activity of public administration, administrative coercion measures and administrative procedures. Administrative and legal protection is provided through the administrative and legal provisions, but from the perspective of the gnoseology of law, it cannot exist within such a narrow framework defined by the State, it reflects objective public relations, protects the most important values which, at some point in time, may not yet be formalised in the sources of administrative law, is governed by administrative and legal provisions and at the same time by administrative law, which is not established by the State alone, although by it primarily (Pravotorova, 2019).

The next dynamic category of our research is "support," according to the dictionary of the Ukrainian language means to supply something in sufficient quantity, to meet someone's needs; to provide someone with sufficient material means of subsistence, create a secure environment for doing something; guarantee something; protect someone, protect something from danger (Bilodid, 1972). A. Ivanyshchuk determined that administrative and legal support is a purposeful regulatory influence of the provisions of administrative law, which develop and clarify the constitutional provisions that determine the theoretical and legal administrative and legal framework for the functioning of public authority with a view to creating appropriate conditions for judges to ensure the rights, freedoms and legitimate interests of natural and legal persons, the public interest of the State and entire society. According to its content, the administrative and legal support of the judicial branch is a system of provisions of administrative law, fundamentals (concepts, doctrines and principles of the legal and regulatory framework), administrative and legal rela-

tions and administrative instruments (forms and methods of administrative activities and administrative procedures), which together form a comprehensive institution of administrative law, filled with numerous vertical and horizontal ties, homogeneous social relations (Ivanyshchuk, 2015).

Furthermore, the boundaries of the content of the comparative legal analysis of Ukraine, EU Member States and North America on the administrative and legal support for intellectual property and investment protection are: 1) Starting points, sources of research: legislation, empirical material, case law and other interpretation of the legal provisions, scientific, financial and legal doctrines of Ukraine, EU Member States and North America; 2) Results of research: a) foundations: concepts, principles, doctrines, theories of the administrative and legal support for intellectual property and investment protections of Ukraine, EU Member States and North America; b) public administration tools of the administrative and legal support for intellectual property and investment protections of Ukraine, EU Member States and North America; c) administrative procedures of the administrative and legal support for intellectual property and investment protections of Ukraine, EU Member States and North America; d) improvement of areas and legislation of the administrative and legal support for protection of intellectual property and investments in Ukraine.

4. Conclusions

Therefore, the subject-matter of the comparative legal analysis of Ukraine, the EU Member States and North America regarding the administrative and legal support for intellectual property and investment protection are interrelated in many aspects by material goods in the form of intellectual property and investments, which are usually updated by actors of administrative law virtually and digitally. They represent the content of administrative service and executive administrative activities of public administrators through the comparative and legal analysis of legislation, empirical material, case law and other interpretation of the provisions of law, scientific, financial and legal doctrines in Ukraine, EU Member States and North America.

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ПРЕДМЕТ ПОРІВНЯЛЬНО-ПРАВОВОГО АНАЛІЗУ УКРАЇНИ, КРАЇН-УЧАСНИЦЬ ЄС ТА ПІВНІЧНОЇ АМЕРИКИ ЩОДО АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ОХОРОНИ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ ТА ІНВЕСТИЦІЙ

Анотація. Мета. Мета статті полягає у здійсненні порівняльно-правового аналізу України, країн-учасниць ЄС та Північної Америки щодо адміністративно-правового забезпечення охорони інтелектуальної власності та інвестицій. **Результати.** У статті з'ясовано зміст предмета порівняльно-правового аналізу України, країн-учасниць ЄС та Північної Америки щодо адміністративно-правового забезпечення охорони інтелектуальної власності та інвестицій. Доведено, що вони взаємопов'язані в багатьох аспектах матеріальними благами у формі інтелектуальної власності та інвестицій, які актуалізуються суб'єктами адміністративного права, як правило, у віртуальному цифровому форматі. Вони становлять зміст адміністративно-сервісної та виконавчо-розпорядчої діяльності суб'єктів публічної адміністрації через здійснення порівняльного та правового аналізу законодавства, емпіричного матеріалу, судової практики й іншого тлумачення норм права, наукових, фінансових і правових доктрин в Україні, країнах-учасницях ЄС та Північної Америки. Правове забезпечення охорони інтелектуальної власності та інвестицій об'єднує таке: 1) з погляду статистики, інтелектуальна власність та інвестиції відносяться до різних форм власності (інвестиції – це матеріальна власність, а об'єкти інтелектуальності власності – інтелектуальна власність), однак вони актуалізуються для споживачів, як правило, у віртуальному цифровому просторі (форматі); 2) існує взаємна необхідність їх належної специфікації, щоб виключити доступ до них сторонніх осіб; 3) це призводить до багатьох спільних засад і засобів їх правової охорони; 4) належний рівень охорони права інтелектуальної власності прямо впливає на інвестиційний клімат у державі і навпаки. **Висновки.** Зроблено висновок, що предметом порівняльно-правового аналізу України, країн-учасниць ЄС і Північної Америки щодо адміністративно-правового забезпечення охорони інтелектуальної власності та інвестицій є взаємопов'язані в багатьох аспектах матеріальні блага у формі інтелектуальної власності та інвестиції як матеріальні цінності, які актуалізуються суб'єктами адміністративного права, як правило, у віртуальному цифровому форматі. Вони становлять зміст адміністративно-сервісної та виконавчо-розпорядчої діяльності суб'єктів публічної адміністрації через здійснення порівняльного та правового аналізу законодавства, емпіричного матеріалу, судової практики та іншого тлумачення норм права, наукових, фінансових і правових доктрин в Україні, країнах-учасницях ЄС та Північної Америки.

Ключові слова: зміст, інвестицій, інтелектуальна власність, охорона, порівняльно-правовий аналіз, предмет, цифровий формат.

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