

UDC 342.9:364.1

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Sydorova, Elvira (2022). Foreign experience in administrative and legal framework for making humanitarian policy and ways of its application in Ukraine. *Entrepreneurship, Economy and Law*, 8, 49–55, doi: <https://doi.org/10.32849/2663-5313/2022.8.08>

FOREIGN EXPERIENCE IN ADMINISTRATIVE AND LEGAL FRAMEWORK FOR MAKING HUMANITARIAN POLICY AND WAYS OF ITS APPLICATION IN UKRAINE

Abstract. Purpose. The purpose of the article is to determine some features of foreign experience in administrative and legal framework for making humanitarian policy and ways of its application in Ukraine. **Results.** The study examines international legal regulations governing protection of public morality and its potential application in Ukraine, as well as the relevant experience of some foreign countries. It is noted that among the EU countries, the issue of social networks is almost not regulated at the legislative level, and the best practices of Germany are revealed, where in 2017 a federal law on social networks, called Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz – NetzDG), was adopted. It is indicated that this law applies to service providers who operate Internet platforms for profit, and these platforms for users to exchange, share content (text, video or audio), such social networks under German law are: Facebook, Google, YouTube, Snapchat, Instagram, Twitter, Telegram, TikTok and others. Instead, platforms designed for sales or online gaming, professional networks, specialised portals, email or messengers are not subject to the Law on Social Networks. **Conclusions.** It is proposed, on the basis of the German experience, to adopt in Ukraine the Law “On Compliance with Ukrainian Legislation in Social Networks”, in which the conceptual and categorical apparatus of the problem will be defined in separate sections, in particular, the concept of “social network”, “owner of a social network”, “illegal content”, “complaint about illegal content”, the target audience of its provisions (providers, i.e. owners who provide TV-media services and manage a social network, namely an Internet platform for profit, which are intended for distribution of information of any content between users and such platform is publicly available) the procedure for filing a complaint and its consideration by the owners and administrators of the social network, the rules on the executive body that will supervise compliance with Ukrainian legislation in social networks, etc.

Key words: foreign experience, international acts, social networks, provisions of law, control, monitoring.

1. Introduction

Humanitarian public policy covers a wide range of various social (first of all, public law) relations from education and science to information security. Moreover, world history knows many examples of building state systems that in civilisation terms belonged to the so-called “socialist camp” or “Western democracies”. For a number of reasons, including the unsustainability of the state system and the inefficiency of the distribution of social benefits, we will not consider the Soviet socialist example of humanitarian policy (although, of course, it can be

studied in the context of “how not to do”). Therefore, for the most part, firstly, the foreign experience is analysed among the states-representatives of the so-called Western world, and secondly, the experience of these states will relate to a certain sector of humanitarian policy such as social security, education and science, protection of public morality or strategic planning of human capital development.

The humanitarian sector of the country and the specificities of its proper administrative and legal framework have always been under focus by domestic legal scholars,

among whom the greatest basis for the formation of the conceptual foundations of public and legal framework for the humanitarian development of Ukrainian society was made by Yu.V. Klymchuk, V.I. Diachenko, I.V. Chekhovska, O.V. Zakharova, N.B. Novytska, V.O. Morozova, V.V. Karlova, O.A. Zadykhailo, I.H. Ihnatchenko, Yu.V. Yaky-mets, V.S. Shestak, Yu.L. Yurynets and other scientists. Despite the significant theoretical and practical contribution of scientific works, their fragmentation and incomplete analysis of the consistency and integrity in the formulation of the conceptual framework for humanitarian public policy of Ukraine made it impossible to cover all the features of administrative and legal framework for its formation and implementation.

The purpose of the article is to determine some features of foreign experience in administrative and legal framework for making humanitarian policy and ways of its application in Ukraine.

2. International legal regulatory framework for the protection of public morality

A rather specific but important aspect of foreign experience in humanitarian policy is the protection of public morality. The world community has developed many legal regulations concerning the norms of public morality. The Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, defined that the following acts shall be a punishable offence: for purposes of or by way of trade or for distribution or public exhibition to make or produce or have in possession obscene objects; for the purposes abovementioned, to import, convey or export any of the said obscene matters or things, or in any manner whatsoever to put them into circulation; to sell, or to deal in them in any manner whatsoever, or to distribute them or to exhibit them publicly or to make a business of lending them; to advertise or make known by any means whatsoever the said obscene matters or things in order to encourage their circulation or trade (Zakharova, 2019, pp. 118–120).

Some regulations in this field are recommendatory, defining measures to protect children from dangerous and harmful information: Recommendation No. R (87) 7 of the Committee of Ministers of the Council of Europe concerning principles on the distribution of videograms having a violent, brutal or pornographic content of 22 April 1989 (Recommendation No. R (89) 7 of the Committee of Ministers of the Council of Europe “On principles on the distribution of videograms having a violent, brutal or pornographic content adopted by the Committee of Ministers at the 425th meeting of deputy

ministers, 1989), Recommendation No. R (97) 19 of the Committee of Ministers of the Council of Europe on the portrayal of violence in the electronic media of 30 October 1997 (Recommendation No. R (97) 19 of the Committee of Ministers of the Council of Europe “On the portrayal of violence in the electronic media”: adopted by the Committee of Ministers at the 607th meeting of the Deputy Ministers, 1997).

Furthermore, these regulations contain recommendations on the development of a national policy framework to prevent the spread of harmful information in the electronic media, to establish independent regulatory bodies for electronic media in states, with proper rights and opportunities to regulate the portrayal of violence at the national level, to enable citizens to lodge complaints about unacceptable (from their point of view) content with the relevant authorities; to include among licensing conditions for broadcasters certain obligations concerning the portrayal of violence, accompanied by dissuasive measures of an administrative nature, such as non-renewal of the licence when these obligations are not respected) (Recommendation No. R (97) 19 of the Committee of Ministers of the Council of Europe “On the portrayal of violence in the electronic media”: adopted by the Committee of Ministers at the 607th meeting of the Deputy Ministers, 1997). In Ukraine, the National Council of Ukraine on Television and Radio Broadcasting are responsible for similar issues, empowered to supervise the observance of legislation on the protection of public morality by television and radio organisations (Law of Ukraine On the National Council of Ukraine on Television and Radio Broadcasting, 1997). It should be noted that the issue of regulation and control over the activities of the media, any electronic sources, is specific and requires special care, because in the case of granting certain public administration significant powers, such an institution will become an instrument of censorship of any information that goes against the ideology, for example, the “Russian world”. It should also be noted that the development of the Internet, technologies related to the Internet and the exchange of information between people is going on at a frantic pace, and the acts of 1997, especially 1989 on the dissemination of information on the Internet and in general in the media. In Recommendation No. R (87) 7 of the Committee of Ministers of the Council of Europe on the principles of distribution of videograms having a violent, brutal or pornographic content of 22 April 1989, governments are invited to create classification and control systems for videograms through the professional sectors

or public authorities, or to institute systems that combine self-regulatory with classification and control systems or any other systems compatible with national legislation (Recommendation No. R (89) 7 of the Committee of Ministers of the Council of Europe “On principles on the distribution of videogames having a violent, brutal or pornographic content adopted by the Committee of Ministers at the 425th meeting of deputy ministers, 1989). Now billions of people are registered in social networks, which include functions of viewing, storing and sharing videos, photos, etc. mostly they are regulated at the level of content moderation by the administrators-owners of the resources themselves, that is, social networks such as Facebook, Instagram or TikTok (that is, some users mark certain material as unacceptable or cruel by sending a complaint about a particular content, and such content can be deleted or restricted in viewing rights).

In the context of the issue of regulating the dissemination of inappropriate information on the Internet, and especially in social networks, the obsolescence of some international acts, another question arises: are there any provisions in national laws or by-laws that regulate such social relations? Analysis of Ukrainian national legislation shows that such relations are almost not regulated. The legislation does not contain, especially in the field of protection of public morality and monitoring and supervision of compliance with the legislation in the field of protection of public morality, such concepts as social networks, account, content of social networks, inappropriate content, etc. The concept of a social network can be “tied” to the concept of a “website”, and an account to a “web page”, which is contained in the Law of Ukraine “On Copyright and Related Rights”.

For example, “a website is a set of data, electronic (digital) information, other objects of copyright and (or) related rights, etc., interconnected and structured within the website address and (or) account of the owner of this website, accessed through the Internet address, which may consist of a domain name, directory or call records and (or) a numerical address according to the Internet protocol; a web page is a component of a website that may contain data, electronic (digital) information, other objects of copyright and (or) related rights, etc.” (On copyright and related rights: Law of Ukraine, 1993). V. Prokopenko asks a reasonable question: who is responsible for the content posted in the account, and notes that the legislator separately distinguishes the owner of the website (in our case, a social network) and the owner of the web page (account), and this also applies

to the responsibility for posting information on social networks. For example, in November 2018, one prosecutor was found liable and subject to disciplinary sanction in the form of dismissal from the prosecutor's office for activity and information on her own page in the social network “Odnoklassniki”. The Grand Chamber of the Supreme Court by its Resolution in case No. 9901/998/18 of June 19, 2019 upheld the complaint of the dismissed prosecutor against the said disciplinary sanction. The court found that the sole subject of the publications and marks excludes their accidentality and indicates their deliberate placement on the page, and also rejected the dismissed prosecutor's reference to the hacking of the page, given that the plaintiff did not change her login and password and did not delete the relevant publications and marks from the web page” (Prokopenko, 2021, p. 13).

The phrase “social network” is also mentioned in the Law “On ensuring the functioning of the Ukrainian language as the state language”, where Article 27 states that user interfaces of computer programs and websites (including websites, pages on social networks), that are used as online representations of state authorities, local self-government bodies, enterprises, institutions and organisations of state and communal forms of ownership, mass media registered in Ukraine, as well as business entities, registered in Ukraine, that sells products in Ukraine including informational Internet resources, shall be in Ukrainian. Along with the Ukrainian-language version of online representations (including websites, pages on social networks), there may be versions in other languages. The version of the Internet representation in the state language should have no less information than the foreign language versions and be loaded by default for users in Ukraine (Law of Ukraine On ensuring the functioning of the Ukrainian language as a state language, 2019). However, it does not define the content of the concept of social network, only mentions the need to use the state language in social networks by official institutions, etc. (which is also a progressive legal novelty). Therefore, no authority is responsible for supervising the observance of legislation in the field of protection of public morality in social networks (of course, allowing for the activities of law enforcement bodies, their departments for combating crimes against public morality, which detect the facts of criminal offenses on the Internet), while millions of Ukrainians now spend most of their lives in social networks, legal provisions do not provide for the concepts of social network, account, unacceptable content, etc.

3. German experience in the administrative and legal framework for making humanitarian public policy

Among the EU countries, the issue of social networks is almost not regulated at the legislative level, and the best practices of Germany are revealed, where in 2017 a federal law on social networks, called Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz – NetzDG), was adopted. (Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken, 2017). This law applies to service providers who operate Internet platforms for profit and these platforms allow users to exchange, share content (text, video or audio). According to German law, such social networks include: Facebook, Google, YouTube, Snapchat, Instagram, Twitter, Telegram, TikTok and others. Instead, platforms designed for sales or online gaming, professional networks, specialised portals, email or messengers are not subject to the Law on Social Networks (Opryshko, 2021).

According to Article 2 of the Law, if social network providers receive more than 100 complaints about illegal content during a calendar year, they are obliged to report on the handling of complaints every six months. The report is prepared in German and published in an official German periodical (such as *The Government Gazette*). The report shall contain the following information: general information on the efforts made by the social network provider to prevent criminal offenses on the platforms; mechanisms for filing complaints about illegal content and the criteria provided for deciding on the removal and blocking of illegal content; the number of complaints about illegal content received during the reporting period; the organisation, staffing, technical and linguistic competence of the working units responsible for handling complaints, training and support of persons responsible for handling complaints; the number of complaints for which consultations with an external body (consultant) were held in order to prepare a decision; the number of complaints that led to the removal or blocking of the disputed content during the reporting period; the time between the social network's receipt of the complaint and the removal or blocking of the illegal content, with distributing complaints from complaint handling bodies and users, by the reason for the complaint, and according to the periods "within 24 hours"/"within 48 hours"/"within a week"/"later"; measures to inform the complainant and the user for whom the disputed information is stored about the decision con-

cerning the complaint (Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken, 2017). In addition, the Law defines the procedure for filing complaints, establishes what constitutes illegal content, obliges social network providers to remove illegal content. The law also defines the executive authority responsible for supervising compliance with the law by providers (owners) of social networks.

Relying on German experience, we consider it expedient to adopt in Ukraine the Law "On Compliance with Ukrainian Legislation in Social Networks" to determine the conceptual and categorical apparatus of the problem in separate sections, in particular, the concept of "social network", "owner of a social network", "illegal content", "complaint about illegal content", the target audience of its provisions (providers, i.e. owners who provide TV-media services and manage a social network, namely an Internet platform for profit, which are intended for distribution of information of any content between users and such platform is publicly available), the procedure for filing a complaint and its consideration by the owners and administrators of the social network, the provisions on the executive authority responsible for supervising compliance with the provisions of Ukrainian legislation in social networks, etc.

In addition, the powers of the National Council of Ukraine on Television and Radio Broadcasting shall be expanded as follows:

First, to add to the supervisory powers of the National Council in Article 13 of the Law of Ukraine "On the National Council of Ukraine on Television and Radio Broadcasting" (Law of Ukraine On the National Council of Ukraine on Television and Radio Broadcasting, 1997) the paragraph "*supervision over the observance of legislation in the field of protection of public morality by the owners of social networks*";

Second, to enable the National Council of Ukraine on Television and Radio Broadcasting to submit requests to owners to respond to violations of the law. Alternatively, a separate executive body can be created and the Law "On Compliance with Ukrainian Legislation in Social Networks" shall provide for its powers and tasks to supervise compliance with Ukrainian legislation in social networks.

Furthermore, the review of international acts reveals that international legal standards regarding the observance of public morality should be considered in two aspects: firstly, these are certain requirements formed by the civilised world through the sources of international law

to ensure the moral foundations of society; secondly, these are a system of principles and provisions with binding requirements for states to apply coercion to violators of public morality. Moreover, public morality is a complex issue and local civilisation and regional peculiarities should be taken into account when adapting international legislation.

Therefore, in general, a systematic analysis and a comprehensive sociological study of strategic trends in effective public administration of the humanitarian sphere from among foreign strategies that would be effective for their implementation in Ukraine, enables to outline several promising European strategies with an emphasis on a particular sphere of public life, and hence on a corresponding aspect of humanitarian policy, for example:

1. Polish Social Capital Development Strategy 2020 (based on the assertion that social capital is an important factor in the development of the country and needs to be strengthened, so measures should contribute to increasing mutual trust between Poles and strengthening trust in institutions and public authorities) – 73,5%.

2. French Strategy for International Cooperation in the field of health care (intensification of efforts aimed at combating the emergence and spread of infectious and non-communicable diseases, which will lead to the balance of the country's health care system) – 64,7%.

3. German Strategy for Internationalisation of Education, Science and Research (aimed at responding to global challenges not only in Germany, but also beyond its borders, and the solution of these issues is possible only through cross-border cooperation in these areas) – 51,7%.

4. Czech National Youth Strategy 2014-2020 (improving the quality of life of young people, in particular through the development of each individual in order to adequately respond to the constantly changing situation, to realise their creative and innovative potential) – 41,6%.

5. Turkish Information Society Strategy and Action Plan 2015-2018 (communication and information component of the huma-

nitarian sector in the international arena) – 30,9%.

6. Irish Culture Strategy 2017-2020 (overall mission, strategy and priorities of culture) – 19,1%.

7. Equally important in making humanitarian policy is international cooperation and international cooperation of Ukraine with other states, which is supported by many respondents – 46.1%.

4. Conclusions

The scientific analysis of foreign experience of administrative and legal framework for making humanitarian public policy enables to find ways of its application in Ukraine, in particular in terms of: – improvement of the provisions of the Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages”; – allowing for the state's interests in the activities of international organisations as much as possible based on the recognised status of a country with a market economy; – adoption of agreements on cooperation between educational institutions of different countries in matters of humanitarian policy; – stimulating the attraction of investments to Ukraine to solve humanitarian problems; – fulfilment of obligations regarding Ukraine's membership in international organisations and participation in international treaties; – in the context of the Association Agreement with the EU to ensure the implementation of tasks on the adoption of a number of laws on the recognition of non-formal education, modernisation of social services, improvement of legislation in the field of access to public information, harmonisation of legislation in the field of prevention and combating discrimination with EU law; – application of German experience in regulating the issues of enforcement of German legislation in social networks and the need to develop and adopt the Law of Ukraine “On compliance with Ukrainian legislation in social networks”, to legislate the definition of social networks, owners of such networks, illegal content, etc., the extension of the law, the procedure for filing and reviewing complaints about content that violates Ukrainian legislation on public morality, etc.

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ЗАРУБІЖНИЙ ДОСВІД АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ РЕАЛІЗАЦІЇ ГУМАНІТАРНОЇ ПОЛІТИКИ ТА ШЛЯХИ ЙОГО ЗАПОЗИЧЕННЯ ДЛЯ УКРАЇНИ

Анотація. Мета. Метою статті є визначення деяких особливостей зарубіжного досвіду адміністративно-правового забезпечення реалізації гуманітарної політики та шляхів його запозичення в Україні. **Результати.** В дослідженні розглянуто міжнародні правові акти, що стосуються норм захисту суспільної моралі та можливість його запозичення в Україні, також відповідний досвід висвітлюється щодо окремих зарубіжних країн. Зазначається, що серед країн ЄС майже не врегульовано також питання соціальних мереж на законодавчому рівні, наводиться передовий досвід Німеччині, де у 2017 р. було прийнято федеральний закон про соціальні мережі, що має назву «Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz – NetzDG)». Вказано, що цей закон поширюється на провайдерів послуг, які керують інтернет-платформами з метою отримання прибутку, й ці платформи дозволяють користувачам обмінюватися, ділитися контентом (текстовим, відео або аудіо, до таких соціальних мереж належать згідно німецького законодавства: Facebook, Google, YouTube, Snapchat, Instagram, Twitter, Telegram, TikTok та інші. Натомість платформи, призначені для продажів або для онлайн-ігор, професійні мережі, спеціалізовані портали, електронна пошта чи месенджери не підпадають під дію Закону про соціальні мережі. **Conclusions.** Запропоновано на основі німецького досвіду прийняття в Україні Закону «Про дотримання українського законодавства в соціальних мережах», в якому окремими розділами пропонується визначити понятійно-категоріальний апарат проблеми, зокрема поняття «соціальна мережа», «власник соціальної мережі», «незаконний контент», «скарга на незаконний контент», цільову аудиторію поширення його норм (на провайдерів, себто власників,

які надають телемедійні послуги і керують соціальною мережею, а саме інтернет-платформою з метою отримання прибутку, які призначені для розповсюдження між користувачами будь-якого змісту інформацією, й така платформа знаходиться в публічному доступі), процедуру подання скарги та її розгляду власниками і адміністраторами соціальної мережі, норми про орган виконавчої влади, що буде здійснювати нагляд за дотриманням норм українського законодавства в соціальних мережах тощо.

Ключові слова: зарубіжний досвід, міжнародні акти, соціальні мережі, норми права, контроль, моніторинг.

The article was submitted 19.07.2022

The article was revised 09.08.2022

The article was accepted 30.08.2022