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FORMALIZATION OF CONTENT REQUIREMENTS FOR A NORMATIVE LEGAL ACT

Abstract. Purpose. The article aims to elucidate the formalization of content requirements for normative legal acts and their significance in legislative drafting activities. **Results.** The author has analyzed the main doctrinal approaches to understanding the system of legislative drafting techniques. An examination of the draft laws “On Laws and Legislative Activities” and “On Normative Legal Acts” is conducted. The role of methodological recommendations in normative regulation is highlighted, which for a long time were the only acts that statutorily consolidated the tools of legislative drafting techniques. The importance of adopting the Law of Ukraine “On Law-Making Activities” is noted in the context of the normative consolidation of legislative drafting tools. **Conclusions.** The normative consolidation of legislative drafting tools is crucial for creating an effective domestic legal system. It is observed that there have been numerous attempts in the Ukrainian legal environment to adopt a law regulating law-making activities. The initial versions of draft laws established only formal requirements for normative legal acts (structural and requisite rules). Special emphasis is placed on content requirements. The Law of Ukraine “On Law-Making Activities” establishes (in Article 34) content requirements for normative legal acts. These can be divided into four groups: the first group—requirements concerning legal norms; the second group—terminological rules; the third group—rules for writing numerals; the fourth group—requirements regarding the content criteria that a normative legal act should meet overall. A positive aspect is the establishment of a Unified Glossary of Legal Terms. All this will contribute to enhancing the quality of normative legal acts, which will have a positive effect on the legal system as a whole.

Key words: lawmaking, normative legal act, law, legal certainty, content of a normative legal act.

1. Introduction. Normative legal acts (hereinafter – NLA) are crucial for an efficient domestic legal system, and their quality will always be the center of doctrinal discussion among rulemaking developers. Adopting new draft laws has caused a great demand for changes in various spheres of public life (social, economic, anti-corruption, etc.). The request for harmonization of the domestic legal system with the law of the European Union (hereinafter referred to as the EU) is also crucial. An essential factor affecting the drafting of a high-quality NLA is the legislative drafting technique. For more than 30 years (since gaining independence and till the present), doctrinal works discuss the issue of improving legislative drafting tools.

There are several reasons for such improvement: firstly, developing NLAs of the highest quality (or other law sources, depending on the legal system) will always be the focus of lawyers, regardless of the legal system’s perfection. The adoption of a poor-quality NLA necessitates repeated amendments or even replacing it with another NLA that creates an additional burden

on the parliament; secondly, the harmonization of national legislation to *acquis communautaire* (“acquired by the community”), which covers EU legislative acts, international agreements, declarations, resolutions, etc.; thirdly, high-quality NLAs improve law enforcement, ensuring their practical effectiveness.

One of the ways to determine the tools of legislative drafting methodology includes a division into requirements for the content and forms of a normative legal act. As for the requirements for the NLA form, a certain consensus was reached (requirements for the structure, details), and the situation with core requirements for the NLA content is different. Thus, I.V. Mishchuk attributes to the latter systemic coherence, compliance with public needs and relevance, validity, unambiguity of provisions, and logical nature (Mishchuk, 2021, p. 94). S. Pohrebniak, analyzing the principle of legal certainty, divides the requirements for NLA into content-related and procedural. He considers the following content-related: acts should be comprehensible (accessible) and con-

sistent and offer a complete settlement of public relations, preventing gaps. Such acts should also prohibit ample discretionary powers of state bodies (Pohrebniak, 2005, p. 46). Taking into account the above classifications, it can be concluded that the problem of pluralism becomes particularly relevant in the context of the normative consolidation of content requirements.

2. The trend of normative consolidation of content requirements. The separation of content requirements can be traced back to the early 1990s. Undoubtedly, the driving force was the transformation of the domestic legal system, which required changes in many legal institutions. The above led to the adoption of many new NLAs and amendments to existing ones. In order to unify the rules for NLA formulation, a kind of “law on laws” was needed, which would regulate law-making activities. Realizing that each convocation of the parliament tried to offer its version of the specific law. The relevant periods can be divided into three stages of attempts to adopt a “law on laws”:

The first stage – 1991–2000. At that time, a draft Law of Ukraine “On Laws and Legislative Activity” (Draft Law of Ukraine “On Laws and Legislative Activity, 1994) was submitted, which had a rather narrow subject of regulation since it covered only activities related to the law as the main NLA in Ukraine. As for rulemaking tools, it is possible to specify only Art. 28 “Basic requirements for the law. The language of the law”. Content requirements can be attributed to Part 2 of the relevant article, which states that the law shall not have provisions contradicting the Constitution. The formal requirements are rendered somewhat better in this draft law. Thus, Art. 28 contains a set of requirements related to the draft law’s structure: title; division into structural units (articles and sections). And as for the language requirements, it declares that the draft law should be in the state language. At the same time, there are no remarks about the terminology and speech style. In addition, the draft law was also criticized at the doctrinal level. Thus, referring to the fact that the draft law was vetoed by the President and one of the reasons was its “non-compliance with the requirements of legal drafting methodology”, O.I. Yushchuk, (Yushchuk, 2005, p. 48) believed that the relevant comment was not due to the status of the President. Following the article by O.I. Yushchuk, the draft law tried to focus on such a classification of laws that would be based on legal force (division into constitutional and ordinary, adopted in an all-Ukrainian referendum).

The second stage–2001–2010. During that period, a draft Law of Ukraine “On Normative Legal Acts” (Proekt Zakonu Ukrainy “Pro nor-

matyvno-pravovi akty” No. 1343, 2008) was submitted on the legislative initiative of MP R.M. Zvarych and an alternative draft Law of Ukraine “On Normative Legal Acts” (Proekt Zakonu Ukrainy “Pro normativno-pravovi akty” No. 1343-1, 2008) – on the legislative initiative of MP O.M. Lavrynovych. In addition, in 2010 Yu.R. Miroshnychenko also submitted a draft Law “On Normative Legal Acts” (Proekt Zakonu Ukrainy “Pro normativno-pravovi akty” No. 7409, 2010). It is essential to note that the draft Law No. 1343-1 had a fairly progressive, at that time, component of content requirements for NLAs. Thus, Part 3 of Art. 9 of the draft Law indicates the general requirements for a normative legal act: to meet the scope of the subject of legal regulation; not to duplicate the rules of law contained in other normative legal acts, etc. It is also worth mentioning the extensive system of formal requirements: Art. 10 “Structure of the law”, Art. 12 “Structure of the subordinate legal act”, Art. 13 “Details of the normative legal act”, Art. 14 “Title of the normative legal act”, Art. 15 “Preamble of the normative legal act”, etc. The draft Law “On Normative Legal Acts” No. 7409 proposed a similar system of content requirements with a slight difference: it was supplemented by para. 6 in Part 3 of Art. 9, which states that a normative legal shall be clear, precise, comprehensible, concise, brief, and consistent. The relevant provision is well-correlated with legal certainty as an element of the rule of law (Bidzilia, 2022, pp. 80–81). Formal requirements are enshrined under a similar principle as in the previous law: Art. 10 “Structure of the law”, Art. 12 “Structure of the subordinate legal act”, etc. According to V.M. Kosovych, the legislation on normative legal acts should comprise norms that lay the groundwork for the content of normative documents, namely in terms of general and logical requirements for NLAs, principles of law, legal definitions, legal constructions, legal presumptions, fictions, and axioms (Kosovych, 2016, p. 43). Despite the positive trends enshrined in the law in Section 3 “Legal drafting methodology”, the content requirements take a back-scratcher compared to the formal requirements.

The third stage – the adoption of the 2023 Law of Ukraine “On Law-Making Activities” (Zakon Ukrainy “Pro pravotvorchu diialnist”, 2023) – marked a fresh start in the development of legal drafting techniques. In addition to the formal rules of legal drafting methodology, which are provided in Art. 32 “Structure of a normative legal act”, Art. 33 “Designation of structural elements of a normative legal act”, Art. 35 “Language and style of a normative legal act”, Art. 36 “Details of a normative legal

act”, Art. 37 “Title of a normative legal act”, Art. 38 “Preamble of a normative legal act”, etc., the Law contains a specialized article devoted to the content of NLAs: Art. 34 “Requirements for the content of a normative legal act”. Unlike the previous acts, which remained drafts, the already adopted Law enshrined content requirements at the regulatory level. It is worthwhile to mention that although the Law is valid, it will come into force one year after the termination or cancellation of martial law in Ukraine – para. 4 of Transitional provisions of the Law.

3. Normative consolidation of content requirements: general theoretical analysis. Even before the adoption of the Law “On Law-Making Activities” (2023), the requirements of legislative drafting techniques were specified in the methodological recommendations. Thus, in “Methodological recommendations for the development of draft laws and compliance with the requirements of legislative drafting techniques” (Metodychni rekomendatsii, 2000), content requirements are available in section 1 “General provisions”: para. 2 p. 2, which states that laws shall comply with the Constitution; not directly, but indirectly, p. 4 highlights the importance of harmonizing the draft with existing laws; para. 1 p. 5 focuses on the need to take into account the norms of existing international treaties. Cases from other guidelines can be given. For example: “Methodological recommendations for the development of draft laws and compliance with the requirements of legislative drafting techniques” approved by the order of the State Water Management Service of Ukraine dated January 12, 2004, No. 4 (Methodological recommendations, 2004); “Methodological recommendations for the preparation and execution of draft laws of Ukraine, normative legal acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, the Ministry of Emergency Situations and compliance with the rules of legislative drafting techniques” approved by the order of the Ministry of Emergency Situations dated December 10, 2007, No. 851 (Methodical recommendations, 2007); “Requirements for legislative drafting techniques in the development of orders in the Ministry of Health of Ukraine” approved by the order of the Ministry of Health of Ukraine dated February 2, 2010, No. 68 (Requirements for legislative drafting techniques, 2010).

The presence of many methodological recommendations of various relevant ministries may indicate that there was a necessity for regulatory consolidation of the requirements of legislative drafting techniques at the legislative level. In this context, the experience of Azer-

baijan, where the Law on Normative Legal Acts was adopted at the level of a constitutional act, sparks interest (see: Draft opinion of Venice Commission, 2009, p. 2). But whether the profile law regulating law-making activities must have constitutional status is still in doubt.

The situation has changed in the domestic legal system when the draft law “On Law-Making Activities” was submitted to the Verkhovna Rada. It is important to note that when the relevant Law was the draft law, the set of content requirements was sufficiently narrowed compared to the adopted Law. Content requirements that were provided for in Art. 26 of the draft law concerned only the requirements for legal norms. At the same time, the tools related to legal norms were not sufficiently specified. It just stated that the norms should meet the following requirements: content clarity, unambiguous understanding, predictability of the consequences of implementation; consistency with other norms of law. In the current Law, the article regulating content requirements is significantly expanded. Thus, Art. 34 of the Law “On Legislative Activity” establishes a set of rules (requirements) that can be divided into four groups: the first group refers to the rules of law; the second group – the rules of terminology; the third group – the rules for writing numerals; the fourth group – the content criteria to be met by the regulatory legal act.

Content requirements for legal rules. A legal rule is the smallest and holistic entity in the system of law. At the doctrinal level, theory of law has never had problems with the concept, general features, and the structure of legal rules, but the Law “On Law-Making Activities” enshrined the following concept at the normative level: “a legal rule is a generally binding formally defined rule of conduct governing public relations, which is protected and provided by the State” (Art. 8). In the context of legislative drafting techniques, it is essential to note that according to p. 1 of Art. 34 of the Law, the norms of law contained in NLAs shall meet such requirements as: unambiguity of understanding (clarity, accuracy, accessibility for understanding and implementation); predictability of the results of their implementation; their compliance with normative legal acts of higher legal force and consistency with normative legal acts of equal legal force; uniformity of the terminology used; affinity and logical sequence of presentation. These requirements for legal rules are consistent with the rule of law, namely its element of legal (juridical) certainty.

Analyzing legal certainty, O. Tomkina holds that legal rules set forth in NLA should be clear and comprehensible, avoid different interpretations, have mechanisms for their implementa-

tion, as well as allow legal entities to foresee legal consequences of the implementation of legal rules (Tomkina, 2022, p. 117). The Constitutional Court of Ukraine (hereinafter referred to as the CCU) often expresses its position on the relevant issue in its decisions. Therefore, the CCU in its decision as of February 27, 2018 (sub-item 4.3 of p. 4) states that legal certainty provides that norms should be comprehensible and accurate, as well as aimed at ensuring constant predictability of situations and legal relations. It is marked that after the introduction of taxation of pensions in the legislation of Ukraine since July 1, 2014, the Verkhovna Rada of Ukraine made three amendments within two years, because of which citizens did not have certainty about their legitimate expectations and the stability of legal regulation in this area (Rishennia KSU, February 27, 2018). In general, such requirements for norms are well-consistent with the principle of the rule of law. Violation of these requirements degrades the norm's quality, which spawns the instability of a normative legal act and the need to amend it, or even replace it with a new NLA. It is also important to refer to the practice of the European Court of Human Rights (hereinafter referred to as the ECHR). Thus, in the decision in the case of *Amuur v. France* of 25 June 1996, the ECtHR holds that legislation must be sufficiently accessible and precise in order to avoid any risk of arbitrariness (*Case of Amuur v. France*, 1996). It is difficult to disagree as the implementation of accessibility and accuracy of legislation will directly depend on the criterion of accessibility and accuracy of the norms. As you can see, the requirements regulated by the legislator in the Law "On Law-Making Activities" correspond to the legal certainty and practice of the CCU and the ECHR.

Terminology rules. The Law "On Law-Making Activities" (Art. 34) includes an individual part devoted to terminology. There is no doubt that a good deal of human activity necessitates the elaboration of regulations that would govern various areas, and the use of terms is indispensable. The definition is intended to render content of the relevant term or concept. V.M. Kosovych reckons that legal definitions are used by rule makers to interpret terms, a certain understanding of which determines the relevant legal effects (Kosovych, 2015, pp. 153–154). In the above mentioned "Methodological recommendations for the development of draft laws and compliance with the requirements of legislative drafting techniques" (2000), terms and language tools hold a separate place. As for terms, it is established that the definition of terms shall meet the meaning intended by literary critics, scientists and lawyers attach and shall be uni-

fied throughout the text of the law. It is appropriate to follow the principle of "one concept – one term", at least within one institution.

In the context of the Law "On Law-Making Activities", there is as a positive aspect of the creation of a Unified Glossary of Legal Terms, which is provided for in p. 5 of Art. 35 of the Law. The relevant provision of the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU) "On the Functioning of the Unified Glossary of Legal Terms" No. 577 dated May 17, 2024 (Postanova KМУ, 17.05.2024) is already in force. This will contribute to the unity of legal terminology that will improve the effectiveness of the legal system as a whole.

Rules for writing numerals. Part 3 of Art. 34 of the Law "On Law-Making Activities" presents the rules concerning the uniformity of writing numerals. It appears the most dubious part of the article that deals with content requirements. These rules are rather technical. In general, the nature of content requirements is determined by their direct impact on the application and implementation of legal rules, and the relevant provision is designed to improve the formal side of a legal act.

Content criteria to be met by a normative legal act. Part 4 of Art. 34 of the Law "On Law-Making Activities" specifies the content qualities a normative legal act must comply with: to cover its scope; to be free of legal norms that contradict the Constitution of Ukraine and normative legal acts of higher legal force and (or) do not comply with the legal rules of normative legal acts of equal legal force; to be free of redundant legal norms, as well as not to repeat the norms of other normative legal acts; to be free of legal norms that are not consistent with each other.

However, the above provision of the Law raises many questions because there is a repetition of para. 3 of p. 1 and para. 2 of p. 4 of this Article. Thus, in para. 3 p. 1, the requirements for norms establish that they shall comply with acts of higher legal force and be consistent with normative legal acts of equal legal force, and a similar provision in para. 2 of p. 4 of the same article (Art. 34) stipulates that a normative legal act shall not contain norms that contradict the Constitution and normative legal acts of higher legal force and (or) are not consistent with the rules of normative legal acts of equal legal force. In fact, the provision enshrined in para. 3 of p. 1 is sufficient. It would be logical to set out the provisions of para. 3 and para. 4 of p. 4 of this Article in p. 1 (but without duplication). The provision provided for in para. 1 of p. 4 of Art. 34 of the Law "On Law-Making Activities" – a normative legal act shall cover its scope – seems the most appropri-

ate. The corresponding requirement will minimize legal gaps that will improve predictability in law enforcement. Therefore, the full coverage of the regulatory legal act's scope will reduce the potential abuses of legal entities.

4. Conclusions. The formalization of content requirements for normative legal acts passed its evolutionary path. Certain trends were evident in the draft Law of Ukraine "On Laws and Legislative Activity". Positive aspects in the context of content requirements were available in many draft Laws of Ukraine "On Regulatory Acts", which consolidated a separate section of legal drafting techniques. However, the legislator focused on requirements for the form of a normative legal act (structural and requisite rules).

The normative consolidation of legal drafting techniques has long remained at the level of methodological recommendations of some executive bodies. Such recommendations did not have the legal force that could regulate law-making activities at the proper level.

The adoption of the Law of Ukraine "On Law-Making Activities" became a new stage in the normative consolidation of content requirements. The Law consolidated the content requirements for a normative legal act in Art. 34. In fact, the article names clear requirements for legal rules (that, undoubtedly, is a positive aspect): the unambiguity of their understanding (clarity, accuracy, accessibility for understanding and implementation); predictability of the results of their implementation; their compliance with normative legal acts of higher legal force and consistency with normative legal acts of equal legal force, etc. These requirements for legal rules are well-harmonized with the element of the rule of law – legal certainty. Terminological rules are well-regulated: unification of terminology; consistency of terminology. As for the article's shortage: Part 3 establishes the rules for writing numerals, which (rules) are rather more technical; p. 4 contains some duplication with p. 1 on the compliance of norms. Therefore, these provisions require further doctrinal study.

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Бідзіля Віктор,

аспірант кафедри теорії та філософії права, Львівський національний університет імені Івана Франка, вулиця Січових Стрільців, 14, Львів, Україна, індекс 79000, bidziliaviktor@gmail.com
ORCID: orcid.org/0000-0001-8712-808X

НОРМАТИВНЕ ЗАКРІПЛЕННЯ ЗМІСТОВИХ ВИМОГ ДО НОРМАТИВНО-ПРАВОВОГО АКТА

Анотація. Мета. Метою статті є висвітлення нормативного закріплення змістових вимог до нормативно-правового акта та їх значення в нормопроектній діяльності. **Результати.** Проаналізовано основні доктринальні підходи для розуміння системи засобів нормопроектної техніки. Здійснено аналіз законопроектів «Про закони і законодавчу діяльність», «Про нормативно-правові акти». Висвітлено роль методичних рекомендацій у нормативному регулюванні, які тривалий час були єдиними актами, які нормативно закріплювали інструментарій нормопроектної техніки. Констатовано важливість ухвалення Закону України «Про правотворчу діяльність» у контексті нормативного закріплення засобів нормопроектної техніки. **Висновки.** Нормативне закріплення інструментарію нормопроектної техніки має важливе значення для створення ефективної вітчизняної правової системи. Зауважено, що в українському правовому середовищі було чимало спроб прийняти закон, який регулював би правотворчу діяльність. Перші редакції проектів законів закріплювали хіба формальні вимоги до нормативно-правового акта (структурні і реквізитні правила). А особлива роль належить саме змістовим вимогам. Так, Законом України «Про правотворчу діяльність» закріплено (у ст. 34) змістові вимоги до нормативно-правового акта. Їх можна поділити на чотири групи: перша група – вимоги, що стосуються норм права; друга група – термінологічні правила; третя група – правила написання числівників; четверта група – вимоги щодо того, яким змістовим критеріям повинен відповідати нормативно-правовий акт загалом. Позитивним аспектом є закріплення Єдиного глосарія правових термінів. Усе це сприятиме підвищенню якості нормативно-правового акта, що позначиться на правовій системі загалом.

Ключові слова: правотворчість, нормативно-правовий акт, закон, юридична визначеність, зміст нормативно-правового акта.

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