

Formation of the System of Legal Protection of Intellectual Property in Ukraine and Modern Problems of Its Development

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The article consistently identifies the stages of formation of legislation in the field of intellectual property and provides a general description of them. The impact on its formation of EU legislation, the TRIPSS Agreement and the Association Agreement between Ukraine and the EU is determined. Theoretical approaches to determining the essence of codification of legislation as a legal phenomenon are analyzed. The features of codification as an activity and as a result are distinguished. The experience of foreign countries in the codification of legislation in the field of intellectual property and different approaches to determining the type of codification act are analyzed. The stages of codification of legislation in the field of intellectual property are singled out and their content is determined.

Keywords: intellectual property, codification, legislation, doctrine of intellectual property law, codification act.

Intelektinės nuosavybės teisinės apsaugos sistemos kūrimas Ukrainoje ir moderniosios jos plėtojimo problemos

Straipsnyje nuosekliai atskleidžiami intelektinės nuosavybės srities teisės aktų kodifikavimo etapai ir pateikiamas bendras jų apibūdinimas. Nustatyta, kokią įtaką šiai sistemai kurti turės ES teisės aktai, TRIPSS sutartis ir Ukrainos bei ES asociacijos sutartis. Nagrinėjami teoriniai teisės aktų kodifikavimo, kaip teisinio reiškinio, esmės nustatymo būdai. Išskiriami kodifikavimo, kaip veiklos ir rezultato, bruožai. Nagrinėjama užsienio šalių patirtis kodifikuojant teisės aktus intelektinės nuosavybės srityje bei skirtingi požiūriai į kodifikacijos aktų rūšis. Išskiriami intelektinės nuosavybės srities teisės aktų kodifikavimo etapai ir apibrėžiamas jų turinys.

Pagrindiniai žodžiai: intelektinė nuosavybė, kodifikavimas, teisėkūra, intelektinės nuosavybės teisės doktrina, kodifikuojamasis aktas.

Received: 30/04/2022. Accepted: 22/06/2022

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Introduction

The purpose is to identify and characterize the stages of formation of Ukrainian legislation in the field of intellectual property and to justify that its further development is associated with the implementation of codification based on updated doctrinal approaches to the development of its form and content.

The purpose of the study determines the onset of the **task**:

- to determine the stages of formation of the legislation of Ukraine in the field of intellectual property;
- to analyze the existing theoretical approaches to understanding the essence of codification as a legal phenomenon;
- identify the features that characterize codification as an activity and the codification act as a result of this activity;
- to study the practice of codification of legislation in the field of intellectual activity in foreign countries, to determine the types of codification acts;
- show the existing approaches to the codification of Ukrainian legislation in the field of intellectual property;
- identify and characterize the stages of codification of legislation in the field of intellectual property.

The object of research is public relations arising in the field of intellectual property, legal doctrine and regulations of Ukraine.

The methodological basis of the study is based on a system of philosophical, general scientific and special legal methods. The general scientific dialectical method of cognition was the main in this system and allowed to perform scientific tasks, in the unity of their social content and legal form.

Legislation of Ukraine in the field of intellectual property is represented by a significant array of regulations that have different legal force, so its implementation systematization, choice of its specific forms, determination of sequence, methods and object-component component of systematization should be based on conceptual approaches to understanding incorporation and codification of legislation in this area.

Based on the needs of modern society and given that codification is a legal phenomenon, the features of which are to update the intellectual property law system, there is a need to rethink the role and place of IP law in the legal system of Ukraine, as well as improved principles, methods and forms conditions of the information society, ensuring the balance of interests and rights of all interacting entities, implementation of European standards as a strategic task of Ukraine and the basis for improving the legislation in the field of intellectual property.

Codification in the field of IP is aimed not only at improving the field of legislation, but also at the development of Ukrainian law in general, which is why the system is a study of means and definition of goals and objectives codification of legislation in the field of intellectual property.

Codification of legislation is a functionally valuable, unique and at the same time insufficiently studied phenomenon of modern legal doctrine. Codification, in contrast to incorporation, should provide a new quality of generalization of normative material, building a holistic system of regulation. An important role in this belongs to the study of the experience of foreign countries in the systematization of legislation in the field of IP, the existing doctrinal approaches to this process. This will determine the expediency of codification of Ukrainian legislation in the field of IP within the existing doctrine of Ukrainian law.

Despite the fact that the problems of codification at the general theoretical level are devoted to many scientific studies and today it is necessary to state the lack of codification methodology, and fragmen-

tary coverage of some aspects of this problem does not form a holistic theory of codification and does not provide algorithm, trends in the development of legislation in the field of intellectual property and theoretical and methodological problems of codification of this legislation is relevant and timely.

Presentation of the main material

1. Stages of formation of Ukrainian legislation in the field of intellectual property

The development of the national system of protection and defense of intellectual property began with the proclamation of Ukraine as an independent sovereign state. At that time, the Civil Code of the Ukrainian SSR was in force in Ukraine, combining 57 articles. It is clear that this state of legislative regulation could not meet the needs of economics, science and technology, and literary and artistic creativity.

Today Ukraine has a developed system of legislation in the field of intellectual property, which took shape in a separate industry, and its formation began with the adoption by the Verkhovna Rada of Ukraine of the Declaration of State Sovereignty of Ukraine from 16.02.1990. created on the territory of Ukraine, is the property of the people, the material basis of the sovereignty of Ukraine. These provisions the declarations were confirmed in the Law of Ukraine “On the Economic Independence of the Ukrainian SSR” of August 3, 1990 and in the Act of Proclamation of Independence of Ukraine and the Establishment of an Independent State of Ukraine of August 24, 1991. including national legislation on intellectual property.

The next few years were years of active legislation in Ukraine: the term “intellectual property” was legalized at the legislative level in the Law of Ukraine “On Property” of February 7, 1991; the results of scientific and technical activities were recognized as objects of property of creators (developers) of scientific and technical products by the Law of Ukraine “On Fundamentals of State Policy in Science and Scientific and Technical Activities” of December 13, 1991; legislation on industrial property, approved by the Decree of the President of Ukraine “Interim Regulations on Legal Protection of Industrial Property and Innovation Proposals in Ukraine” of September 18, 1992; scientific and technical information was recognized as a commodity and object of intellectual property rights by the Law of Ukraine “On Scientific and Technical Information” of June 25, 1993.

The next step in the development of intellectual property law was the adoption in 1993 of a package of special laws: “On protection of rights to inventions and utility models”, “On protection of rights to industrial designs” and “On protection of trademarks for goods and services”. “On the protection of plant variety rights”, “On copyright and related rights”.

Subsequently, the Verkhovna Rada of Ukraine, by its resolution of January 19, 1995, approved the Regulations on the Procedure for Registration and Use of Rights to Inventions, Utility Models and Industrial Designs, which constitute a state secret. In addition to these special laws in the field of intellectual property at this time came into force a number of regulations that to some extent affect issues of intellectual property. These include the Laws of Ukraine “On Foreign Economic Activity”, “On Protection of Economic Competition”, “On Protection against Unfair Competition”, “On Protection of Atmospheric Air”, “On Television and Radio Broadcasting”, Decree Of the Cabinet of Ministers “On State Duty”, the resolution of the Cabinet of Ministers of Ukraine, which approved the Provisional Regulation “On minimum rates of royalties and royalties for films produced by state order in film studios of Ukraine”, the resolution of the Cabinet of Ministers of Ukraine “On approval of minimum rates of remuneration (royalties) for the use of objects of copyright and related rights” and “On state registration” Of the Cabinet of Ministers “On State Duty”, the resolution of the Cabinet of Ministers of

Ukraine, which approved the Provisional Regulation “On minimum rates of royalties and royalties for films produced by state order in film studios of Ukraine”, the resolution of the Cabinet of Ministers of Ukraine “On approval of minimum rates of remuneration (royalties) for the use of objects of copyright and related rights” and “On state registration”.

A new stage in the development of legislation in this area is associated with the adoption of the Constitution of Ukraine, which in Art. 54 enshrined legal guarantees of freedom of literary, artistic, scientific and technical creativity. This gave a new impetus to improve legislation and develop the doctrine of intellectual property.

The accumulation of a significant array of regulations was accompanied by certain problems of their quality and effectiveness, so the tool to solve them was chosen to codify the legislation in the field of intellectual property governing private law relations. With the entry into force of the Civil Code of Ukraine on January 1, 2004, a new stage of development of both legislation and theory in the field of intellectual property began. This was preceded by significant discussions, which covered not only scientific circles, but took place with the involvement of certain state institutions and international organizations in the role of experts. The main controversial issue was the ratio of special legislation in the field of intellectual property and the Civil Code. Civilist elite in the person of Shevchenko YM, Dovgerta AA, Kuznetsova NS tended to the theory of absorption of special legislation by the Civil Code. Representatives of the theory of intellectual property law, developers of special legislation in the field of intellectual property, representatives of the State Patent Office, profile committees of the Verkhovna Rada of Ukraine defended the position that together with the Civil Code of Ukraine, intellectual property relations regulated by special legislation. The latter position was supported by international experts and found its embodiment in the legislation of Ukraine.

Further development of the legislation of Ukraine was carried out in the context of the implementation of the provisions of the Law of Ukraine «On the National Program for Adaptation of the Legislation of Ukraine to the Legislation of the European Union» (2004), TRIPSS Agreements, Association Agreements between Ukraine and the EU.

Over the past 15 years, Ukrainian legislation has been brought into line with most EU Directives, the TRIPSS Agreement, the EU–Ukraine Association Agreement, which is fully in line with the strategic course chosen by Ukraine as a participant in active European integration processes. An illustrative example is the successful reform of legislation in the field of industrial property. Together with the legislation, reference and information systems of Ukraine were created as a basis for examination of applications on the merits, as a result of which the acquisition of industrial property rights was carried out, the organizational structure of the intellectual property management system was developed.

2. Theoretical approaches to determining the essence of codification of legislation

The best expert on the effectiveness of intellectual property law is law enforcement practice. It is she, despite the significant results of Ukraine in the creation of the National Intellectual Property System, identified a number of practical problems, the solution of which requires appropriate scientific support and the adoption of certain political decisions.

Updating legislation in the field of intellectual property, as evidenced by the practice of recent years, is not always systematic, systematic, and the development of draft legislation often pursues not the goal of improving it, but to meet narrow corporate interests. An example is the almost simultaneous development of five bills to update the legislation on copyright and related peacocks, which differ significantly from each other, prepared from different initial legal provisions.

This is another indication that the current state of intellectual property law requires updating doctrinal approaches to the development of its form and content in accordance with the processes taking place under the influence of the digital environment and the need to balance public and private interests in this area.

First of all, we are talking about the codification of legislation in the field of intellectual property, the implementation of which is objectively ripe and requires a rethinking of some approaches to understanding this legal phenomenon.

From the general theoretical legal positions, a lot of research has been devoted to the problems of codification as a form of systematization. A significant contribution to the development of theoretical provisions for understanding the nature, features and types of codification has been made by Yu. S. Shemshuchenko, V. N. Khropanyuk, N. M. Onishchenko, N. M. Parkhomenko, V. V. Kopeychikov, E. A. Hetman and others. In turn, the problems of codification of legislation in the field of intellectual property at different times paid attention O. E. Blazhivska, Y. L. Boshytsky, Yu. M. Kapitsa, A. O. Kodynets, O. P. Orlyuk, O. O. Pidopryhora, L. I. Rabotyahova, R. O. Stefanchuk, O. I. Kharitonova, A. S. Stefan, O. O. Stefan, I. E. Yakubovsky and others.

Despite the sufficiently strong intellectual potential involved in the development of codification, unfortunately, it should be noted the lack of a comprehensive legal theory of codification, starting with the definition of categorical tools of the problem and ending with codification (legal) techniques.

The first question is a deeper understanding of the essence of codification. It is known that the history of codifications dates back more than four thousand years, starting with the Ur-Nammu Code, compiled around 2100 BC. The modern tradition of codification originates from the Code of Justinian (VI century), which codified Roman law, which, thanks to the reception for many centuries was the law in force in some Western European countries.

The term “codification” (from the Latin *codicem facere* – “to make a code”) in the HUS century was introduced into the theory of jurisprudence by British philosopher and jurist Jeremy Bentham (Chabanna, 2011, p. 55).

The history of scientific thought shows that there are different approaches to understanding the codification of legislation. In pre-revolutionary sources, attention was paid to the system-forming function of codification and to the unity of the principles underlying codification (Shershenevich, 1911, p. 442).

During the first and second discussions on the separation of criteria for the division of law in the field (discussion on the subject and method of legal regulation) and the formation of the legal system developed a theory of narrow and broad understanding of codification (Iodkovskij, 1948, p. 11), which was not supported in academia. Further development of the theory of codification is characterized by the formation of a view of codification not only as a kind of systematization of legislation, but also as a special kind of lawmaking. Among scientists of Ukraine, V. Kovalsky, M. Kravchuk, A. Oliynyk, O. Slyusarenko, P. Rabinovich, and O. Skakun consider codification as a form of systematization. This point of view was most fully and generalized reflected in O. Yushchuk’s research (*Kodifikacij zakonodavstva Ukraini...*, 2007, p. 81–82). O. Zaychuk, N. Onyschenko, and V. Nersesyants consider codification as one of the types of law-making. He most fully described codification as a form of lawmaking and Trush (Trush, 2000, p. 91–92).

Finally, there is another area in the theory of codification, which combines the first two approaches. According to representatives of this area of the theory of codification, it is a legal activity that combines both the features of lawmaking and the features of systematization (Borshhevs’kij, 2007, p. 31–36; Pogorelov, 2012, p. 48). This point of view on the essence of codification is based on an integrated approach and reflects most fully its content and form, its internal and external aspects. The content of

codification activities is a change of content legal standard of conduct of legal entities in a particular area of relations, which are united by one subject of regulation. Such a change may consist in the creation of new rules of conduct, the elimination of duplicate norms in which such rules are enshrined, consolidated and systematized existing norms that have justified themselves, revised their content, agreed. Such changes are aimed at ensuring the maximum completeness of regulation of a particular area of relations in accordance with social requirements and based on the prognostic function of law.

Despite the existence of different approaches to understanding the legal phenomenon of “codification of legislation”, all researchers are united in identifying the characteristic features of codification. Instead, if we analyze them, we can conclude that researchers mainly focus not on the characteristics of codification itself as an activity, but on its result, which is a codification act. This in fact leads to the identification of codification as an activity with its result, which is methodologically unjustified. To the signs that characterize codification as an activity should include the following features: it is the activity of public authorities, which is carried out in legal forms, as a result of which codification can be only official; has a planned systemic nature; carried out with the involvement of developers, consultants and experts who are experts in the relevant field of law at all stages of codification; should be carried out on the basis of legality, adherence to the priority of universal values, the balance of private and public interests.

The concepts of “codification of legislation” and “codification of legislation in the field of intellectual property” are correlated as general and special. Therefore, codification of legislation in the field of intellectual property has the same properties and characteristics as such a phenomenon as “codification of legislation”: it is a form of systematization of legislation and a special kind of lawmaking, carried out by competent state authorities, finds its embodiment in the codification act. Its difference from codification in other areas is characterized by the boundaries defined by the subject of regulation, covering a certain range of social relations, in this case those arising in connection with the creation, protection, use and protection of creative intellectual activity.

3. Codification of legislation in the field of intellectual property: theory and practice in Ukraine and abroad

The question of the expediency of codification of legislation in the field of intellectual property is debatable in Ukraine. Even among supporters of such codification.

An attempt to codify the legislation in the field of intellectual property outside the Civil Code of Ukraine was made in 2004, in fact after the adoption of Book 4 of the Civil Code of Ukraine (hereinafter – the Central Committee of Ukraine). This bill was an unsystematic compilation of the norms of the Central Committee of Ukraine, was reasonably criticized and remained at the level of only the draft. The negative experience in drafting a separate codification act in the field of intellectual property is to some extent explained by the lack of certain preconditions in Ukraine at that time.

Among them is the lack of theoretical developments at that time, which would be the scientific basis for the implementation of codification work in this area.

For most European countries, as today and for Ukraine, is characterized by the codification of intellectual property law within the framework of commercial or civil codified legislation.

The experience of foreign countries convincingly shows the tendency to codify the legislation in the field of intellectual property. The options for such codification are different. Thus, in Belgium, Bulgaria, the Czech Republic, Poland, Hungary, the Federal Republic of Germany, intellectual property rights are regulated mainly by only two pieces of legislation: “On Copyright and Related Rights”, “On Industrial Property”. By their legal nature, they are codification acts. In countries such as Sri Lanka,

the Philippines, and France, intellectual property law is fully codified. Work on the full codification of intellectual property law is under way in the Netherlands.

The type of codification act in the EU depends on the division of competences between the legislature and the executive. For example, the Italian Constitution gives the executive the right to issue laws and decrees that form the basis of intellectual property law. The situation is similar in Spain (Industrial Property Code. Decree..., 1995) and Portugal (Industrial Property Code, Royal Decree..., 1929). Codes of industrial property in these countries were adopted as decrees that have the force of law.

The tendency to adopt codification acts in the field of intellectual property in European countries is due to a number of factors: first, the expansion of intellectual property in need of legal protection; secondly, the complexity of legal regulation; thirdly, the desire to unify legal norms, given that the harmonization of legislation in the field of intellectual property is one of the conditions for EU membership.

Despite the fact that a considerable time has passed since the adoption of the Central Committee of Ukraine, in the science of intellectual property law there is no unity of position and unquestionable idea of how to codify the legislation in the field of intellectual property.

If we summarize all existing in Ukraine approaches to the codification of legislation in the field of intellectual property, we can state the existence of two main: 1) partial codification within the Central Committee of Ukraine in the presence of special legislation; 2) codification of legislation in a special codification act. Each of these areas has its supporters.

Thus, the representatives of the civilist concept of codification of legislation in the field of intellectual property proceed from the fact that intellectual property law regulates property and personal nonproperty relations related to the subject of regulation of civil law of Ukraine. Therefore, the allocation of a separate industry with similar legal regulation will lead to legal confusion and inconsistency with all legal dogmas (*Intelektual'navlasnist': navchal'nijposibnik...*, 2015; *Civil'nepravoUkraini. Zagal'nachastina...*, 2014). At the same time, no article of the Civil Code of Ukraine has a provision that would define the subject of intellectual property law as a branch of law or the field of legislation, as is the case in Part 1 of Article 1 of the Civil Code of Ukraine on the subject of civil law. In addition, this statement does not comply with the provisions of the law and the real set of relations, both private and public, arising in connection with the creation, acquisition of legal protection, use and protection of.

The codification of intellectual property law within the framework of civil law has its opponents, who are quite critical of the possibility of its further development within the framework of civil doctrine and civil law. Thus, E. A. Voynikanis notes that the codification of legislation in the field of intellectual property law within the Central Committee is an artificial obstacle to intersectoral cooperation and the formation of balanced legislative and doctrinal positions on issues related to intersectoral relations (Voynikanis, 2014). R. Kabryak also criticized the regulation of intellectual property rights within the Central Committee, calling this practice “legal pointillism”, i.e. an attempt to regulate all possible specific situations by abstract norms (Kabrijak, 2007, p. 406–412).

Proposals of supporters of codification of legislation in the field of intellectual property at the level of creating a special code, as is the case in France, but taking into account the domestic legal system, are not indisputable. This proposal cannot be implemented in practice, because the model of codification in France and Ukraine are fundamentally different: in France, there is an institutional system, in Ukraine – pandaktna; in France, the codification act is built on the following institutions – objects, subjects, relations; in Ukraine, the structure of the code provides for the presence of general and special parts; in France, the codification act is of a compilation nature and after its adoption other acts are not valid; in Ukraine, the codification act is a systemic law, the norms of which are organically combined, and other laws can be applied and specify the norms of the code.

As the experience of European countries shows, the most acceptable is the codification of legislation in the field of intellectual property not in one codification act, but the codification of legislation governing relations in the literary and artistic sphere and in the field of scientific and technical creativity. This approach allows to take into account the peculiarities of the principles of legal regulation copyright and industrial property principles, property determine the features of the legal regime of objects that acquire legal protection by copyright or industrial property rights. The author of this article is a supporter of this approach to the codification of legislation in the field of intellectual property.

4. Stages of codification of legislation in the field of intellectual property

The urgent need for codification of legislation in the field of intellectual property was emphasized in their research by V. Kryzhna (Krizhna, 2010, p. 110–115), R. Stefanchuk (Stefanchuk, 2016, p. 86–91), and Stefan O. O. (Shtefan, 2008, p. 30–33). When deciding on the appropriateness of codification, it is necessary to first determine its purpose. The degree of achievement of the goal is evidenced by the quality of the codification act, its ability to be the main act in the array of other normative acts that regulates a particular area of public relations, to perform a system-forming function. According to the author of this article, the goal is outside the codification activity itself but, of course, influences and determines its content. The goals of codification are discussed in the deepest and most detailed way in the fundamental work of the French jurist Remy Cabriac, who identified the main goals that are inherent in any codification: legal, technical, social and political. The first goal is aimed at ensuring legal certainty, the second one is to regulate new social relations, the third one is to establish the authority of a political leader or serve a particular political ideology (Kabrijak, 2007, p. 214, 234, 249).

The social goal of codifying intellectual property law is linked to the global purpose of law as a means of social regulation. This goal is achieved in the process of solving at least the following codification tasks: promoting the development of creative activity of the individual in the information society and digital economy; guaranteeing and ensuring the protection of individual creative freedom and intellectual property rights to its creative results in the information society, the development of the digital economy and creative industries; creation of favorable legal and economic conditions for the commercialization of the results of creative activity, objects of intellectual property law; ensuring the comprehensive development of the infrastructure of the market of intellectual property, taking into account the prospects for the introduction of new technical and technological advances.

In determining the political goal of codification of legislation in the field of intellectual property, it is necessary to proceed from the trends of globalization of the economy, integration of interstate relations, priority of universal values, building tolerant, good neighborly relations between states. Under the influence of these trends, the foreign and domestic policy of the state is formed. Foreign policy is aimed at building harmonious relations with the world political system, and the aim of domestic one is to direct the development of relations in the country in accordance with the chosen political course.

The strategic course chosen by Ukraine is European integration. In this regard, the main task is to build a mechanism of interaction between the legal system of Ukraine and the interstate European legal system at the level of basic principles of law – the rule of law, harmonization of Ukrainian law with EU law through the introduction of legal standards, mutual protection of human rights.

Instead, the main purpose of any codification is technical and legal. The priority of this goal is recognized in fact by both domestic and foreign researchers (*Teoreticheskievoprosysystematizacii...*, 1962, p. 11–13; *Sistemativizacij zakonodatel'stva v...*, 2003, p. 142–146; *Podgotovka i izdanie...*, 1969, p. 6–8; Kabrijak, 2007, p. 214, 234, 249; Mamutov, 2008, p. 3–8; Rogach, 2003; Kosovich, 2013, p. 40–50).

In the process of achieving the legal and technical goal, the following tasks must be solved: systematization of legislation in the field of intellectual property based on the creation of codification acts ensuring internal stability and unity of legislation in the field of intellectual property; harmonization with international and European legislation in the field of intellectual property and harmonious entry into the system of national legislation; exclusion of adoption of duplicating, conflicting and excessively regulating normative legal acts or legal norms; bridging gaps, unifying terminology, ensuring the principle of legal certainty; achieving a harmonious distribution of norms in the field of intellectual property between codified acts and other acts of special legislation in the field of intellectual property and legislation relating to in this area (legislation on theater, publishing, television and radio broadcasting, architectural activities, etc.); formation of a certain group of stable norms (core), in which the subject, method, principles of intellectual property law as a branch of law and its subsectors should be defined and fixed; formation of complete, consistent, sufficient legal regulation of relations in the field of intellectual property.

The next step in the codification process is to determine the subject of legal regulation. The prevailing view is on the complex nature of the field of intellectual property law. Assignment of legislation in the field of intellectual property to complex branches corresponds to general theoretical approaches to their definition. The idea of the existence of complex branches of law belongs to Reicher VK Back in 1947. He determined three features that must meet the complex branches of law: first, it is necessary that a certain set of rules had an independent subject of regulation, i.e. had its own core, was adequate to a certain range of social relations; secondly, this circle of social relations must be important for society; third, the regulatory material should be characterized by a significant amount (Rajher, 1947, p. 189–190). If we evaluate the legislation in the field of intellectual property from this point of view, there are grounds to conclude that it has all the above features, as well as the field of law.

According to the author, the most complete is the definition of the subject of regulation of intellectual property rights as a set of public relations of private law and public law nature, which arise in connection with the realization of human creative intellectual abilities in creating, acquiring legal protection, use and protection of the results of his creative activity” (Shtefan, 2021). Based on the fact that the objects of intellectual property rights in addition to the results of creative activity, the law includes other intellectual property objects that are not the result of creative, intellectual activity of a person, this should be reflected in certain subjects of legal regulation.

To realize the functional purpose of codification as a type of systematization, it must be based on a system of relevant principles. In this study, when determining the principles of codification, its dualistic nature is taken into account as a form of systematization and a variety of law-making activities; both the process itself and the result of such activities. Accordingly, the principles of activity and the principles to which the codification act must conform as a result of such activity are distinguished. The principles of codification as an activity are proposed to include the principles: planning, professionalism, timeliness, legality, humanism, scientific (doctrinal), objectivity, transparency, systematicity.

The principles to be met by the codification act should be divided into two groups: 1) affecting the form of the act – the principle of technical and legal excellence, completeness, implementation of the codification act in the legal system, language requirements, including conciseness, consistency of wording; 2) determine the content of the act – terminological consistency, legal certainty and relevant sectoral principles that affect the content codification act (Myronenko N/ Teoretichnipidhodi do viznachennjapriincipivkodifikacijakonodavstva u sferiintelektual’nojvlasnosti(2021). *Teorijaipr aktikaintektual’nojvlasnosti*, nr. 5.). Of particular importance in codification are sectoral principles that take into account the characteristics of individual branches of law and are, as a rule, enshrined

in the provisions of the general part of codification acts. Sectoral principles in combination with the subject of regulation will answer the question: is it appropriate and possible in one codification act to systematize the legislation of all institutions of intellectual property law?

Analysis of the doctrine of intellectual property law shows that the problem of principles is one of the undeveloped, and existing developments do not allow to present these principles in the system. At the level of international acts, the principles of intellectual property law are most systematically presented in the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. The principles of civil law have an impact on the regulation of private law relations arising in the field of intellectual property. In addition, each institution of intellectual property law establishes a specific regime for the relevant intellectual property, due to the peculiarities of the principles underlying its definition.

The principles of codification of legislation in the field of intellectual property are the main element of the codification methodology itself, as well as the process of codification work and the development of codification acts. The final result of codification depends on the extent to which the system of chosen principles corresponds to the laws of social reality.

The effectiveness of codification depends on the chosen methods.

From the point of view of methodology, it is noteworthy that R. Kabryak expressed his opinion on two methods of codification – codification compilation and codification reform. In the first case, the collection of existing rules in a generalized act. In the second, changes, sometimes radical, can be made to the collection of norms. Without objecting to the possibility of practical use of these methods, the most effective for the field of intellectual property would be a method that would combine the two: combining rules with the possibility of their processing.

The next stage is practical in contrast to the previous ones – the creation of a complete, scientifically sound, logically constructed system of legislation in the field of intellectual property by subsectors, institutes, sub-institutes.

The next stage of codification involves the study of the conceptual apparatus, identifying differences in the use of terms, their content load, identifying those that are not used, analysis of the degree of consistency in the use of terminology in areas related to intellectual property law. This issue has been repeatedly considered in the doctrine of intellectual property law and does not lose its relevance so far.

After determining the purpose, principles, subject of codification, system of legislation, formation of a consolidated conceptual apparatus, it is necessary to analyze the real state of legislation in the field of intellectual property on the basis of incorporation and consolidation. This will allow for a revision of the existing legal framework, to “cleanse” it of outdated, duplicative regulations, norms that have lost their regulatory impact. Completion of this stage should create a basis for the development of the actual codification act, which provides for the next stage – the development of the layout of the codification act.

The above allows us to formulate the following conclusions: further development of legislation in the field of intellectual property and the successful completion of the formation of intellectual property law as an independent complex branch of law, objectively related to the implementation of codification; features of the codification act – its type, subject and structure objectively determined by the peculiarity of the subject in combination with the sectoral principles of legal regulation; as a result of codification the theoretical and practical bases for system development of the special legislation will be created, unification of terminology and its unambiguous interpretation and application irrespective of spheres of a public life will be reached.

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Formation of the System of Legal Protection of Intellectual Property in Ukraine and Modern Problems of Its Development

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S u m m a r y

The purpose is to identify and characterize the stages of formation of Ukrainian legislation in the field of intellectual property and to justify that its further development is associated with the implementation of codification based on updated doctrinal approaches to the development of its form and content.

The object of research is public relations arising in the field of intellectual property, legal doctrine and regulations of Ukraine.

The article consistently identifies the stages of formation of legislation in the field of intellectual property and provides a general description of them. The impact on its formation of EU legislation, the TRIPSS Agreement and the Association Agreement between Ukraine and the EU is determined.

Theoretical approaches to determining the essence of codification of legislation as a legal phenomenon are analyzed. It turns out that the most complete content and form of codification, its internal and external aspects can be revealed on the basis of a comprehensive approach to the type of systematization and form of lawmaking.

The features of codification as an activity and as a result are distinguished. The experience of foreign countries in the codification of legislation in the field of intellectual property and different approaches to determining the type of codification act are analyzed. The stages of codification of legislation in the field of intellectual property are singled out and their content is determined.

Intelektinės nuosavybės teisinės apsaugos sistemos kūrimas Ukrainoje ir moderniosios jos plėtojimo problemos

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S a n t r a u k a

Tikslas – nustatyti ir apibūdinti Ukrainos teisės aktų intelektinės nuosavybės srityje formavimosi etapus ir pagrįsti, kad tolesnė jų raida yra susijusi su kodifikacijos įgyvendinimu remiantis naujausiais doktriniais požiūriais į jos formos ir turinio raidą.

Tyrimo objektas – visuomeniniai santykiai, kurių kyla intelektinės nuosavybės, Ukrainos teisės doktrinos ir reguliavimo srityje.

Straipsnyje nuosekliai identifikuojami intelektinės nuosavybės srities teisės aktų formavimo etapai ir pateikiamas bendras jų apibūdinimas. Nuosekliai identifikuojami intelektinės nuosavybės teisės srities teisės aktų formavimo etapai ir pateikiamas bendras jų apibūdinimas. Nustatyta, kokią įtaką šiai sistemai formuoti turės ES teisės aktai, TRIPS sutartis ir Ukrainos bei ES asociacijos sutartis. Nagrinėjami teoriniai teisės aktų kodifikavimo, kaip teisinio reiškinių, esmės nustatymo būdai.

Išskiriami kodifikavimo, kaip veiklos ir rezultato, bruožai. Nagrinėjama užsienio šalių patirtis kodifikuojant teisės aktus intelektinės nuosavybės srityje bei skirtingi požiūriai į kodifikacijos aktų rūšis. Apibūdinami intelektinės nuosavybės srities teisės aktų kodifikavimo etapai ir jų turinys.

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