УДК 347.152: 338.242

THE REGULATION OF ECONOMIC RELATIONS IN CIVIL SOCIETY: THE EUROPEAN PRIVATE LAW APPROACH

Kochyn V. V.,
Candidate of Science of Law, Head of Department of Methodology of Private Law Research of the Academician F. H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of NALS of Ukraine (Kyiv)

The article considers civil society as the basis for realization of market economic principles. It is established that when considering business-economic relations, it is expedient to allocate their main legal basis of legal regulation – freedom of entrepreneurship, which is considered as a set of private legal possibilities of realization of rights and fulfilment of duties for the purpose of profit and its subsequent distribution, as well as economic and legal order, which should be reduced to public constraints or advantages through the use of state regulation, as well as to the private legal limits of self-regulation and coordination within the civil about society Non-entrepreneurial economic relations are regulated on the basis of civil law, that is, they are deprived of public influence (lack of a regulator), as well as in cases established by law and order, states may supplement state regulation in the business sector. In a civil society, economic relations, according to their essence, can be subject to different legal regulation. We believe that state regulation of economic relations should be limited to ensuring subjective civil rights and interests of individuals, as well as guaranteeing legal economic order. Such a balance of interests is possible provided the social direction of the administrative and legal activity of the state is reduced, which is reduced by the privatization of social relations, in particular, in the production of public goods, subsidizing socially useful activities and increasing consumer control. Thus, civil society, having a private law nature, allows the realization of economic rights; instead, the state is gradually losing the role of a total regulator of these relations regarded as an instrument for safeguarding the stability of a market economy.

Key words: regulation, economic relations, entrepreneurship, non-commercial activity, third sector, self-regulation, deregulation.

INTRODUCTION

Legal regulation of social relations is an important process of streamlining public relations with the help of legal means in order to provide an appropriate set of social interests that require legal guarantees. It is characterized by such properties as: 1) state security; 2) universality; 3) unity (accuracy); 4) formalism; 5) systemic; 6) performance; and also differs from other phenomenon – legal influence, which in turn covers also other forms and directions of the right to consciousness and behaviour of persons [19. p. 207–212]. In this occasion, the question arises as to the need to regulate all social relations or the appropriateness of applying the appropriate legal influence on them. In particular, we aim to consider the principles of regulation of economic relations, taking into account the state of development of civil society in Ukraine as their determinant.

The economic relations are understood as totality of relations between people in the process of production of material and spiritual goods. Therefore, their appropriation in all spheres of social reproduction (direct production, distribution, exchange and consumption) and consist of:

1) the appropriation of objects of nature through the labour process;

2) relations of specialization, co-operation, combination of production, etc. within an individual enterprise, association, organization and between enterprises;

3) organizational and economic relations, which are formed and developed in the process of management of enterprise managers, marketing research, etc.;

4) relations between people on the assignment of labor, means of production, management of property in this area, control over production, etc.

In general, relations can be systematized into technical, economic, organizational, economic, and socio-economic [28, p. 471–472].

Obviously, not all of these relations can be "transferred" into the legal sphere, especially in view of the objectivity of economic laws of the development of society. That is why the legal regulation is subject to economic activity, adequate to the modern needs of the economy. The basis for legal influence and legal regulation should be considered the Law of the USSR “On Economic Independence of the Ukrainian SSR” (03.08.1990) regarding ensuring the management of economic processes in order to revive and fully develop the social and cultural sphere, to meet the needs of the citizens of the Ukrainian SSR in material, social and spiritual benefits, protection of the surrounding activity; as well as the living conditions of the people of Ukraine, worthy of modern civilization, satisfaction of its social and cultural demands. Secondly, the Constitution of Ukraine declared economic diversity as the basis of public life (Article 15), as well as the social orientation of the economy (Article 13). Thirdly, we describe the practical implementation of economic policy as rather dynamic and sectoral, since according to the Law of Ukraine “On State Forecasting and Development of Programs of Economic and Social Development of Ukraine” (March 23, 2000), the system of forecast and program documents is timely and relevant to particular branches or regions of the economy (Article 4).

GENERAL POSITIONS ON THE REGULATION OF THE ECONOMY IN UKRAINE

D. Zadykhaylo draws attention to the fact that currently, under the current legislation of Ukraine, the means and mechanisms of macroeconomic regulation are distributed according to their sectoral affiliation between economic, budgetary, tax, nature reserves, and agricultural legislation, which damages the systematic use of them [20, p. 28]. An illustration of this conclusion is the Medium-Term Plan of Priority Actions of the Government by 2020, approved by

the Cabinet of Ministers of Ukraine from April 3, 2017, No. 275-p, which aims to ensure an increase in the standard of living of citizens and improve its quality as a result of sustainable economic development by achieving such goals: economic growth; effective governance; development of human capital; rule of law and fight against corruption; security and defence. In turn, economic growth implies: a) the creation of a favourable investment climate; b) maintaining macroeconomic stability by continuing fiscal consolidation; c) providing job creation; d) increase of incomes; e) poverty reduction.

At the same time, the detailed definition of this goal is to bring about dynamic, sustainable and inclusive growth based on structural modernization of the economy, improvement of business conditions and efficiency of the public sector. The key to economic growth is the creation of equal, transparent and predictable business rules, the inclusion of Ukraine in regional and global value-added chains, creation of conditions for the development of high-tech industries, accelerating the attraction of investments into the Ukrainian economy and the development of export potential of Ukrainian producers.

We believe that such a goal seems to be declarative, therefore, the legal regulation falls within the scope of the concrete actions defined by the above-mentioned plan. In particular, it deals with public-law actions (for example, simplification of tax administration, customs reform as an instrument for improving the investment environment, reforming and developing the financial sector, etc.), economic and legal direction (e.g. deregulation and development of entrepreneurship and competition, state property management and privatization, development of public procurements, etc.), improvement of private law regulation (for example, development of innovations and reform in the field of intellectual property; I'm productive employment, labour market reform, land reform, etc.) and complex changes (e.g., development of housing and communal services, reform regulation of the transport sector, ensuring the quality and efficiency of transport services).

The direction of legal regulation and legal influence on economic relations in Ukraine should be in line with the principles of a market economy, which is observed from the Concept of the transition of the Ukrainian SSR to a market economy (November 1, 1990) and Ukraine's commitments to build a stable democracy and a market economy in accordance with the Agreement on association with the EU (27.06.2014). At the same time, there is no single legal act providing for the legal basis for the regulation of economic relations. In the theory of law, economic regulation is divided into regulation with general and individual goals, that is, such general objectives as antitrust measures, the prevention of the concentration of economic power in one hand, the prevention of unfair trading operations, etc., as well as specific specified tasks, such as support for priority sectors of the economy, participation in unprofitable production, support of small business, protection of agricultural production, fishing, development of new technologies, etc. [29, p. 60].

As a result, the subject of scientific discussion is still the methods of legal regulation and means of state influence on the economy of Ukraine. Thus, representatives of the School of Economic Law point out the success of the concept of economic law and order, which is formed on the basis of an optimal combination of market self-regulation of economic relations between economic entities and state regulation of macroeconomic processes, based on the constitutional requirement of the state's responsibility to man for his activities and the definition of Ukraine as a sovereign and independent, democratic, social, legal state (part 1 of Article 5 of the Civil Code of Ukraine) [34, p. 396].

Instead, representatives of the Civil Law School are turning to the unnecessary so-called "double" regulation and expediency of the perception of the private legal concept of civil and commercial law [25, p. 327].

The discussions proceeded under the conditions of creation of various codified acts in the conditions of the construction of a market economy and the emergence of a regular economic crisis. The arguments which proved in favour of one or another concept of regulation of economic relations, had their advantages in view of the variety of ways to address crisis phenomena, but whether they showed the regulatory legal direction of regulation to a market economy, because civil law formed the basic provisions for the regulation of social relations (the inadmissibility of deprivation of property, freedom of contract, freedom of business, etc.), while economic laws declared specific instruments of state regulation of economic activity (for example, licensing, patenting and quotas, technical regulation, regulation of prices and tariffs, etc.).

CIVIL SOCIETY AND ECONOMIC RELATIONS

The "pure" market economy ("pure" capitalism) implies the implementation of principles such as private property, freedom of choice and entrepreneurship, personal economic interest, competition, economic risks, pricing as the main coordination mechanism, and in general, the absence of a special governing body that would determine what to produce and where to take resources, that is, the minimum of state intervention [30, p. 62]. The absence of public influence leads to the need to find the appropriate regulator, which will fill the gap in the ordering of real social relations. Today, such a regulator is civil society (the "third" sector) – a phenomenon that from the ancient regulations about the civilized organization of people has become a very real indicator of the social effectiveness of law as a whole.

According to Christiana Cicoria, the importance of the "third sector" is due to the need for the development of civil society, democratization and European cohesion, and the strengthening of economic prosperity through the rapid advancement of goods and services of social value [3, p. 16].

Civil society is closely linked to a market economy, as it has such mutual principles as freedom of ownership and economic activity (entrepreneurship and non-commercial activities), develops according to objective laws, according to which the state can only regulate their existence in a framework. V. Selivanov correctly noted that for the economic system, civil society consists of associate producers, and the state has an organizational and regulatory role in ensuring their functioning [33, p. 22].

N. Kuznietsova refers to the general foundations (principles) of the functioning of civil society: economic freedom, polyform of property, market character of economic development; unconditional recognition and protection of natural human and civil rights; legitimacy and democratic character of power; equality of all before the law and justice, reliable legal protection of the individual; a rule of law, built on the principle of the division of power and the interaction of its separate branches; political and ideological pluralism, the presence of legal opposition; freedom of speech, opinion, independence of the media, non-interference of the state in the private life of citizens, their mutual rights, duties and responsibilities; class peace, partnership and national consensus; an effective social policy that ensures an adequate standard of living for people [26, p. 52]. Thus, the market economy and civil society are related phenomena that ensure mutual existence, and legal regulation, despite the generally declarative idea of these phenomena, should have a fairly realistic implementation in private legal economic relations.

O. Bezukh, referring to the discussion about the duality of the legal regulation of private economic relations, does not deny the inconsistency of the economic and legal regulation of these relations, but at the same time argues that the civil regulation, claiming exclusivity in regulating the investigated relations, draws Ukraine into the times of ancient Rome with its slave economy, and hence the construction of the oligarchic economy of modern Ukraine [17, p. 80]. We believe that such a position is somewhat premature, since domestic private law is based on the principles of classical Roman private, not public law, and socio-economic reality is a manifestation of appropriate enforcement, rather than the rule of law. In addition, the relevance of V. Kopieichykov and A. Oliinyk do not lose relevance, that the reason for the catastrophic state of the economy is, first of all, the uncompromising struggle of political forces [24, p. 46], that is, the circumstances that are found in the sphere of public law, and therefore can not be characterized exclusively as economic or civil preconditions.

THE STRUCTURE OF ECONOMIC RELATIONS

The economic system is currently viewed from the standpoint of its institutional sectors, that is, economic entities that are capable of owning assets, committing themselves, engage in economic activity, and engage in transactions with other units. As a result, in the economy of Ukraine there are: 1) the sector of non-financial corporations; 2) sector of financial corporations; 3) general government sector; 4) household sector; 5) the sector of non-profit organizations [23].

The division of legal regulation of economic relations is carried out somewhat in a different plane, in particular, on the basis of distinguishing civil and business (commercial) relations, which in modern conditions often have a complex private and public-legal character. The European approach to legal regulation of economic relations is to provide such fundamental freedoms as: 1) the freedom of movement of goods and services; 2) freedom of movement of workers; 3) freedom of establishment; 4) freedom of movement of services; 5) freedom of capital and payments [10, p. 762]. EU Member States, exercising their sovereignty in matters of public and private law, in accordance with the fundamental provisions of the EU acquis, predominantly distinguish between “civil and commercial matters”. Thus, the European Court of Justice does not perceive the distinction based on the subject structure, instead it refers precisely to the essence of the controversial relationship, reflecting the theory of interest proposed by Ulpian (D. 1.1.1.2) [4, p. 195–196].

Let us turn to the role of civil society in regulating the economic relations of an entrepreneurial (commercial) character. Jürgen Basedow states that the term “regulation” is used in the English-speaking countries in a formal or technical way to identify the boundaries of the general sphere of government, as opposed to parliamentary, executive power influence on general or special groups through the issuance of relevant acts [1, p. 2–3]. Continuing this position, Luke Nottage considers “economic regulation” as a restriction of competition and the stabilization of markets in banking, transport, telecommunication or other similar spheres [9. p. 163].

In general, the theory of regulation is reduced to the realization of public interests, in particular, in relation to economic relations – the formation of commercial law, followed by entrepreneurial law and entrepreneurial regulation. As a result, the mechanisms of non-market and market institutional implementation of the rules are considered in detail by Buthe Tim and Mattli Walter in the following examples: 1) public non-market regulation - the Kyoto Protocol and the norms of the International Labour Organization; 2) private non-

market regulation – standards of standardization ISO, IEC, IASB; 3) public market regulation – anti-trust legislation; 4) private economic regulation – standards used by companies (for example, Windows) or transnational companies (for example, CRS). The current stage of economic regulation is the transition from commercial regulation to corporate governance [9, p. 163–164].

The analysis of recent researches shows a gradual reduction of the role of public administration in the economy, which in fact implies its market model. Therefore, there are three legal regimes for the regulation of economic relations: 1) public regulation; 2) self-regulation; 3) private regulation. Thus, the certain sector of the economy may be subject exclusively to private law regulation (household sector), purely economic regulation (sector of financial corporations), administrative regulation (public administration sector) or mixed legal regulation, provided both public and private interests in the rest of the sectors.

However, the key issue of division is the possibility of a proper separation of regulatory powers and justice that may apply the appropriate legal regimes. Fabrizio Cafaggi in this regard considers self-regulation as a consequence of the implementation of freedom of contract and delegated self-organization, so it distinguishes between co-regulation, in which private regulators are involved in order to formulate a formal regulatory act. The result of such interaction is "ex post recognized regulation" – private regulation in the form of self-regulation, created by independent private parties in economic relations and recognized by the state as a rigid or soft right, that is, a private person acquires "public functions" [2, p. 12–33].

Such processes are not devoid of corresponding problems, in particular, with respect to normative and institutional pluralism of sources of legal regulation, fragmentation of the choice of subject of regulation, as well as conflicts and choice in the case of the parallel existence of different regulatory models in the state [12, p. 157–162]. In particular, it refers to the so-called privatization of social relations, according to which the state as a regulator loses influence on certain spheres of social relations, passing them to other participants – subjects of entrepreneurship or to civil society. However, this does not indicate the levelling of public interest and the transition to so-called "selfish" interests of private law subjects. In this regard, one should mention the impossibility of full implementation of the principles of a market economy, since world practice shows the need to implement the social functions of the state, so the total absence of its regulatory influence leads to a negative consequence of the concentration of significant capital, which results in violating other economic principles of resource allocation [30, p. 110–112].

The Economic Code of Ukraine should not be perceived solely as a public-law normative act, and the Civil Code of Ukraine – solely as private law act. In particular, we can talk about the peculiarities of protecting consumers' rights, because it is about the protection of a separate participant in private relations, which in general allows to protect the so-called "public goods"; or, on the contrary, the actions of one person to protect their subjective civil rights generates the so-called "endowment effect", that is, the accumulation of positive practices for others [8, p. 67–68, 135–136]. In view of this, attention is drawn to the conclusion on the direction of economic regulation in a market economy on the relationship between business entities and consumers as economic subjects [18, p. 34], separately only having noted that the purely "private" is a slightly narrower group of relations that are formed in relation to personal non-property and property rights and interests, which in the classical sense are a separate group of economic relations that are not related to entrepreneurship by their very nature.

COMMERCIAL SECTOR OF THE ECONOMY

The market economic relations should be ensured with proper legal regulation regarding the possibility of free realization of private property relations, freedom of choice and entrepreneurship, personal economic interest, competition, economic risks, and pricing as the main coordination mechanism. It should be noted that the principle of coordination is important both for a market economy, in particular to determine a possible market equilibrium [7, p. 4–5], as well as for civil society, which provides interaction between the government and the private sector. The relevant benchmarks for improving the legal regulation of economic relations are enshrined in the Association Agreement with the EU.

First, the basis of the relations between Ukraine and the EU is the principles of a free market economy (Article 3 of the Agreement), which are differentiated into economic and trade (c. "d" of p. 2 of Article 1 of the Agreement). Public influence on trade and issues related to trade are relations concerning duties, fees and other obligatory payments; non-tariff measures; as well as means of trade protection. At the same time, civil society institutions, in particular, counselling, involvement of experts, justification of the lawfulness of the introduction of certain procedures, as well as the possibility of delegating powers to non-governmental bodies, have a significant role.

An example of the last point is the separate regulation of the status of self-regulatory organizations in the field of financial services (Article 131 of the Agreement), which indicates the development of one of the key areas of optimization of state intervention. V. Makhinchuk on this subject determines the following positive features: 1) the expansion of the possibilities of choosing effective forms of market regulation; 2) creating opportunities for overcoming market failures; 3) creates a proper efficient infrastructure [27, p. 187].

Secondly, the role of the state in regulating economic relations can be estimated not by the number of means of regulation, but by their application and real influence on relations. Thus, in economic theory, the state can apply "minimal" influence, act within the limits of support of members of society, and provide general public benefit from their activities [16, p. 455–460]. We believe that despite this, the rule of law is essentially to fulfil its two main functions – the protection of subjective rights and interests of individuals, as well as the creation of general conditions for the realization of their freedom of business by detailed regulation of prohibitions and restrictions. In light of this, according to the assessment of economic development in accordance with the Plan of Priority Actions of the Government by 2020, there is a place in the Doing Business rating.

In view of this, we propose to refer to the analysis of the freedom of entrepreneurship, which is not prohibited by law – the norm-principle, which is a mandatory requirement, which is a concentrated expression of the most important nature of private law regulation of business relations. This principle derives from the constitutional right to engage in entrepreneurial activities (Article 42 of the Constitution of Ukraine) and is reflected in c. 4, p. 1, Art. 3 of the Civil Code of Ukraine and c. 2, p. 1 of Art. 6 of the Economic Code of Ukraine. Its feature is that in the future it is disclosed through the notion of freedom of business (Article 43 of the Economic Code of Ukraine), on the basis of the principles enshrined in Art. 44 the Economic Code of Ukraine.

The provisions which are reflected in this provision are list of subjective rights, in particular: free choice of entrepreneur types of entrepreneurial activity; the independent formation of an activity program by the entrepreneur, the choice of suppliers and consumers of manufactured products, the attraction of material,

technical, financial and other types of resources, the use of which is not restricted by law, the establishment of prices for products and services in accordance with the law; free hiring of a worker's employer; commercial calculation and own commercial risk; free disposal of profits remaining at the entrepreneur after payment of taxes, fees and other payments provided by law; self-realization by the entrepreneur of foreign economic activity, use of the entrepreneur's share of the currency earnings attributed to him at his own discretion.

At the same time, it should be noted that these powers could only be implemented by a special entity – an entrepreneur who does not comply with the provisions of the entity (Article 55 of the Economic Code of Ukraine). Despite such inconsistencies, we believe that these competencies are covered by the right to engage in business, which is characterized as subjective civil law, since it is based on a private interest that is a factor in the volitional behaviour of the subject of civil relations.

A person has the right to engage in entrepreneurial activity in a special order – by registering as a business entity (Part 2 of Article 50, Part 4 of Article 87 of the Civil Code of Ukraine). Exceptions to this right are non-business partnerships and institutions that are not business entities but have the right to engage in entrepreneurial activities unless otherwise provided by law and if this activity is consistent with the purpose for which they were created and contributes to its achievement (Article 86 of the Civil Code of Ukraine). Thus, the implementation of the principle of freedom of entrepreneurship generates the need for legislative regulation of the status of subjects of entrepreneurial activity.

Turning to the role of the state in regulating business relations, we again emphasize the need to establish minimum restrictions and prohibitions related to the real possibility of implementing the freedom of entrepreneurship. We believe that the participation of public bodies in economic relations is possible at the stage of protecting the rights and legitimate interests of their participants, which is quite problematic in view of the supervisory and supervisory practices of public authorities. Thus, on the example of the financial market, V. Poliukhovych proposes to use functional (target) principles by combining and balancing the means of imperative and dispositive methods of state regulation [32, p. 165].

NON-COMMERCIAL SECTOR OF THE ECONOMY

The next group of economic relations is the non-entrepreneurial (non-commercial) direction, i.e. the realization of which does not aim to distribute the founders of the profits. The need for third sector organizations to engage in civilian relations has provided them with such features as:

1) the outline of a formalized structure;

2) self-government and the absence of direct public influence on them;

3) in accordance with the economic nature of the prohibition of the distribution of profits, which provides, even in the case of profit organization, it is not distributed among founders or management bodies in the form of high wages;

4) self-interested managers are not involved in management, since they are not aimed at obtaining personal profit in accordance with the organization's activities;

5) they are not subject to reporting or control of potential investors;

6) they pursue a socially useful function, focusing on complementing the public's needs in public (social) goods and services [3, p. 13].

Such an understanding of non- entrepreneurial organizations came from an economic understanding of them, in particular after the introduction of market / government failure theory, trust / contract failure theory, donative

theory, the theory of the state of well-being (welfare state theory) and the theory of interdependence (interdependence theory) [3, 23–28].

At the same time, it is difficult to agree with the position that in each of the above theories contained rational grain and depending on which sphere of relations is represented by this or that non-entrepreneurial legal entity, a certain theory will have an advantage in its application [22, p. 53]. These economic theories not only explain the causes of occurrence, which are more intrinsic to historical sciences, but also substantiate the need for the existence of real social relations that arise within such a non- entrepreneurial organization.

Thus, economic theories primarily aimed at establishing the objective functions of non- entrepreneurial organizations; later their role in providing public goods and services, as well as the role in the situation with asymmetric information in the market, was substantiated; The third wave of ideas already concerned integration models.

According to Henry Hansmann, the research of non-profit organizations began in the early 1970s, since before that, there was only a study of philanthropic behaviour in the 1950s. These theories substantiate the basis for the creation and operation of these organizations in economic systems, in particular whether they are counter to the power and business organizations. As a result, the scientist divides the organization (firms) according to the source of income and the order of control. Therefore, both a mutual and an entrepreneurial organization can be donative and commercial [6, p. 4].

The theory of public goods (Burton Weisbrod, 1974, 1977) suggests that 1) it is possible to create benefits for many persons at the same price as to implement for one person, since satisfying the needs of one person does not hinder the satisfaction of the needs of others at the same time; 2) the production of goods for one person does not prevent the consumption of the same good by other persons. The contract failure theory, (Richard Nelson and Michael Krashinsky, 1973, 1977) suggests that it is difficult to find quality service offered on the market, therefore (for example, Kenneth Arrow, 1963), individual organizations are not profitable, since they are responsible for a large a group of people (for example, a hospital). Thus, it is necessary to reduce the cost of wage management organization in order to increase the cost of service quality. There is no need to return contributions to the charter capital of an organization or to pay dividends to participants, taking into account the fact that there is a need only for reasonable compensation of expenses for management services. As a result, non-profit organizations have their own peculiarities regarding contracts within the organization: 1) compensation to management; 2) compensation of expenses for the production of goods; 3) definition of the minimum level of payment (David Easley and Maureen O'Hara, 1983). In view of this, non-profit organizations have a greater advantage in balancing the price and quality of the goods they produce (Burton Weisbrod and Mark Schlesinger, 1986). The subsidy theories (Eugene Fama and Michael Jensen, 1983) refers to non- entrepreneurial organizations and their stage of emergence, that is, they have public-law aspects of subsidizing them in developing systems. The consumer control theory (Avner Ben-Ner, 1986) focuses on comparing non-profit-making organizations and consumer cooperatives that are controlled by consumers of the goods they produce [6, p. 5].

Thus, the third sector, on the one hand, is relations on the realization of freedom of association of persons with a view to jointly exercising subjective civil rights. On the other, it is a form of public organization of persons, which forms

a counterbalance to the state sector for the purpose of coordination and cooperation in the regulation of social relations. Such a phenomenon allows us to translate the rules of conduct from the scope of private regulation to the state in the event of their legitimation by a significant part of society (quite often, the scientific literature refers to the transformation of religious norms in law), or to provide the civil society organizations with delegated behaviour in regulating relations with the participation of their members.

The impact of private regulation is limited only to those involved in these relationships; is covered by private regulators that perform regulatory functions for the realization of public interests; characterized by co-regulation or delegated self-regulation, according to which private regulators interact with public entities, law-making bodies, which gives the opportunity to extend the legal influence to an indefinite circle of persons [2, p.35].

As a result, non-state regulation may take the forms of statutory regulation applicable in the field of professional regulation, contractual regulation inherent in multilateral and bilateral treaties, and the "unforeseen" form used in the event of unofficial recognition of "norms" of non-entrepreneurial organizations [11, p. 134–135].

The main difference between the private regulation of economic relations and state regulation is the fact that there is no public coercion in implementing the "norms", which results in the concept of private ordering that can be applied in all types of economic relations, including foreign economic ones. That is why state regulation can be reduced to mandatory regulation (which is generally based on privately-held principles that are uplifting to the rule of law) in certain areas of public relations, such as transport policy or competition law, or optional (selective) regulation that guarantees only framework rules on the choice of subjective law that has not undergone detailed public regulation [15, p. 219].

The peculiarity of regulation of economic relations in market conditions is the ability of legislation to implement objective economic laws in public life. In particular, the theory of games is very popular in economic research, which allows to correctly analyse and find out in the conflict situation the participants of the relevant relations. Due to its content, it is quite effective in civil society, since it provides for models of "coordination" and "cooperation". The realization of private interest in order to avoid a conflict affects the stability of all economic relations, creating a form of the Nash equilibrium, and therefore the corresponding public interest is realized. Nicolas L. Georgakopoulos, transferring into the legal plane the economic theory claimed that the proper exercise by private parties of their subjective rights and the proper performance of their duties leads to general social order, for example, the proper realization of ownership of natural resources lead to the improvement of the entire environment, and state guarantee of the private insurance system – to reduce social costs [5, p. 50–55].

Summing up, we draw attention to the fact that a market economy and civil society have common principles that allow each other to complement each other in order to properly exercise subjective private rights and fulfill their responsibilities with the prospect of achieving appropriate economic stability as a general public interest. At the same time, we consider public interest as the aggregate interest of a state or a territorial community as a society organization, because in the mechanism aspect, public education is only an institutional spectrum of the economy.

The analysis of the Medium-Term Plan of the Government's Priority Actions by 2020 is the guideline for improving the legal regulation of economic relations. So, it's about creating favourable conditions for business

development, attracting investments into the economy (both foreign and domestic), shadowing the economy of the country, creating favourable taxation conditions, optimal regulatory regime, functioning and development of fair competition, development of small and medium enterprises, activation privatization processes, changes in the management system of state enterprises, reform of the system of public procurement, protection of intellectual property and expansion of foreign economic s connections. At the same time, today there are no common legal principles for regulating economic relations, as there is a process of substantiation of legal regulation of economic relations according to the sectoral nature of the economy.

It is noteworthy that the principles laid down in the Concept of the transition of the Ukrainian SSR to the market economy of 1990 are still relevant, which suggests the declarative nature of economic and legal reforms, rather than their effectiveness. Thus, the Concept fully justified the need for such tasks as freedom of entrepreneurship, including pricing; execution of state orders on mutually beneficial terms, which will ensure realization of the solution of the main tasks of the structural adjustment of the economy on the basis of targeted programs; social protection of the population, especially its low-income groups.

CONCLUSIONS

Civil society has the necessary conditions for the implementation of market-based economic principles, in particular, in the process of privatization of social relations (transfer of regulation and implementation of socio-economic interests to "private" market participants), through coordination and cooperation in economic sectors (self-regulation and public discussion in law-making), as a result of the expansion of non-divisive methods of protecting rights and interests. The perception of economic relations in accordance with its institutional structure provides an opportunity to distinguish the principles of their legal regulation.

Thus, it is advisable to structure the institutional sectors in accordance with the administrative legal regulation (the sector of public administration that performs political functions, regulates the economy and provides economic services on a non-market basis), business regulation (sectors of financial and non-financial corporations created for the purpose of entrepreneurship), and civil regulation (sectors of households and non-profit organizations, which are aimed at the realization of personal non-property and property rights and interests without purpose to divide profits).

Considering entrepreneurial economic relations, it is advisable to highlight their main objective of legal regulation – the freedom of entrepreneurship, which is considered as a set of private legal opportunities for the implementation of rights and obligations for the purpose of profit and its subsequent distribution, as well as economic and legal order, which should be reduced to public constraints or benefits through the use of state regulation, and the private legal limits of self-regulation and coordination within civil society. In turn, non-entrepreneurial economic relations are regulated on the basis of civil law, that is, they are deprived of public influence (lack of a regulator), as well as in cases established by law and order, states may supplement state regulation in the business sector.

In a civil society, economic relations, according to their essence, can be subject to different legal regulation. We believe that state regulation of economic relations should be limited to ensuring subjective civil rights and interests of individuals, as well as guaranteeing legal economic order. Such a balance of interests is possible provided the social direction of the administrative and legal activity of the state is reduced, which is reduced by the privatization of social

relations, in particular, in the production of public goods, subsidizing socially useful activities and increasing consumer control.

Thus, civil society, having a private law nature, allows the realization of economic rights; instead, the state is gradually losing the role of a total regulator of these relations regarded as an instrument for safeguarding the stability of a market economy. It is in this interaction that, in our view, the proper implementation of private property, the gradual departure of its ineffective forms, the development of appropriate methods of managing objects of public interest, self-regulation of relations and the legitimacy of private regulators, the possibility of economic competition on the basis of freedom of choice, combination price mechanisms and state social support, expansion of corporate governance in the broad sense, and the possibility of coordinating the sectors of the economy.

REFERENCES:

1. *Basedow Jürgen*. Economic Regulation in Market Economics // Economic Regulation and Competition. Regulation of Services in the EU, Germany and Japan. Edited by Jürgen Basedow, Harald Baum, Klaus J. Hopt, Hidaki Kanda and Toshiyuki Kono. Kluwer Law International. The Hague / London / New York. 2002.
2. *Cafaggi Fabrizio*. Rethinking Private Regulation in the European Regulatory Space //Reframing Self-Regulation in European Private Law. Edited by Fabrizio Cafaggi. Kluwer Law International. 2006.
3. *Cicoria Cristiana*. Nonprofit Organizations Facing Competition. The Application of United States, European and German Competition Law to Not-for-Profit Entities. Frankfurt am Main. Peter Lang GmbH Europäischer Verlag der Wissenschaften. 2006.
4. *Dutta Anatol*. Civil and Commercial Matters // The Max Planck Encyclopedia of European Private Law. Volume I. Edited by Jürgen Basedow, Klaus J. Hopt, Reinhard Zimmermann with Andreas Stier. Oxford University Press. 2012.
5. *Georgakopoulos Nicolas L.* Principles and Methods of Law and Economics. Basic Tools for Normative Reasoning. Cambridge University Press. 2005.
6. *Hansmann Henry*. Economic Theories of Nonprofit Organization // The Economics of Nonprofit Enterprises. Edited by Richard Steinberg. Edward Elgar Publishing Limited. 2004.
7. *Kirzner Israel M.* The meaning of market process. Essays in the development of modern Austrian economics. Rotledge. London and New York. 1992.
8. *Leitzel Jim*. Concept in Law and Economics. A Guide for the Curious. Oxford University Press. 2015.
9. *Nottage Luke*. Commercial regulation // Elgar Encyclopedia of Comparative Law. Second Edition. Edited by Jan. M. Smith. Edward Elger. Chaltenham. UK, Northampton. MA. USA. 2012.
10. *Ramien Oliver*. Fundamental Freedoms (General Principles) // The Max Planck Encyclopedia of European Private Law. Volume I. Edited by Jürgen Basedow, Klaus J. Hopt, Reinhard Zimmermann with Andreas Stier. Oxford University Press. 2012.
11. *Scott Colin*. Self-Regulation and Meta-Regulatory State. // Reframing Self-Regulation in European Private Law. Edited by Fabrizio Cafaggi. Kluwer Law International. 2006.

12. *Svetiev Yane*. European Regulatory Private Law: From Conflicts to Platforms // Varieties of European Economic Law and Regulation. Liber Amicorum for Hans Micklitz. Editors Kai Purnhagen, Peter Rott. Springer. 2014.
13. *The Economics* of Nonprofit Enterprises. Edited by Richard Steinberg. Edward Elgar Publishing Limited. 2004.
15. *The Law* of Open Societies – Private Ordering and Public Regulation of International Relations. General Course on Private International Law by Jürgen Basedow. Recueil des Cours. Collected Courses of the Hague Academy of International Law. 2012. Tome 360 de la collection. Martimes Nijhoff Publishers. Leiden/Boston. 2013.
16. *Аткинсон Э. Б., Стиглиц Дж. Э.* Лекции по экономической теории государственного сектора: Учебник. Пер. с англ. под. Ред. Л. Л. Любимова. М.: Аспект Пресс, 1995.
17. *Безух О. В.* Приватні економічні відносини в умовах ринку: методологічні засади правового регулювання // Стабільність цивільного обороту в Україні: проблеми забезпечення. Збірник наукових праць. Випуск 5. Беляневич О. А., Безух О. В., Бакалінська О. О. та ін., за ред О. А. Беляневич. К. НДІ приватного права і підприємництва НАПрН України, 2017.
18. *Безух О. В.* Трансформація господарських правовідносин в умовах сучасного ринку // Правове забезпечення підприємництва в умовах сучасного ринку. Збірник наукових праць / Ред. кол. В. С. Щербина (голова), В. І. Полюхович та ін. К.: НДІ приватного права і підприємництва імені академіка Ф. Г. Бурчака НАПрН України, 2015.
19. *Загальна* теорія держави і права. Підручник. За заг. ред. М. В. Цвіка, О. В. Петришина. Харків. 2011.
20. *Задихайло Д. В.* Державне макроекономічне регулювання: питання систематизації правового забезпечення // Юрист України. № 2 (27) 2014.
21. *Знаменский Г. Л.* Хозяйственное право как отрасль национального законодательства // Правовая система Украины: история, состояние и перспективы: в 5 т. Т. 4.: Методологические основы развития экологического, земельного, аграрного и хозяйственного права / под общ. ред. Ю. С. Шемшученко. Харьков: Право. 2011.
22. *Зозуляк О. І.* Непідприємницькі юридичні особи як суб'єкти цивільного права: теоретичний та практичний аспекти: дис. … д-ра юрид. наук: 12.00.03. Київ, 2017.
23. *Класифікація* інституційних секторів економіки України, затверджена наказом Державної служби статистики України від 03.12.2014, № 378.
24. *Копейчиков В. В., Олійник А. Ю.* Питання формування громадянського суспільства в Україні // Громадянське суспільство і підприємництво в Україні: проблеми і шляхи створення. Збірник наукових праць. Київ: «Манускрипт», 1996.
25. *Кузнецова Н. С.* Предпринимательское законодательство в Украине и в странах Европы (частноправовые аспекты) // Проблемы гармонизации законодательства Украины и стран Европы / По общ. ред. Е. Б. Кубко, В. В. Цветкова. К.: Юринком Интер, 2003.
26. *Кузнєцова Н. С.* Розвиток громадянського суспільства та сучасне приватне право України // Приватне право. № 1. 2013.
27. *Махінчук В. М.* Приватноправове регулювання підприємницьких відносин в Україні. К.: Юрінком Інтер, 2013.
28. Мочений С. Економічні відносини // Економічна енциклопедія. Том 1. А–К. К.: Видавничий центр «Академія». 2000.

29. *Общая* теория государства и права. Академический курс в 3-х томах. Изд. 2-е, перераб. и доп.. Отв. ред. М. Н. Марченко. Том. 3. М.: ИКД «Зерцало-М». 2002.
30. *Основи* економічної теорії / За ред. С. В. Мочерного. К.: Видавничий центр «Академія», 1998.
31. *Основи* економічної теорії: підручник / О. О. Мамалуй, О. А. гриценко, Л. В. Гриценко, Г. Ю. Дарнопих та ін.; За заг. ред. О. О. Мамалуя. К.: Юрінком Інтер, 2005.
32. *Полюхович В. І.* Державне регулювання фондового ринку України: господарсько-правовий механізм: монографія. К. НДІ првиатного права і підприємництва НАПрН України, 2012.
33. *Селіванов В. М.* Громадянське суспільство в Україні: проблеми формування і взаємодії з державою // Громадянське суспільство і підприємництво в Україні: проблеми і шляхи створення. Збірник наукових праць. Київ: «Манускрипт», 1996.
34. *Щербина В. С.* Правовое регулирование хозяйственной деятельности в Украине // Проблемы гармонизации законодательства Украины и стран Европы / По общ. ред. Е. Б. Кубко, В. В. Цветкова. К.: Юринком Интер, 2003.

РЕГУЛЮВАННЯ ЕКОНОМІЧНИХ ВІДНОСИН У ГРОМАДЯНСЬКОМУ СУСПІЛЬСТВІ: ЄВРОПЕЙСЬКИЙ ПРИВАТНОПРАВОВИЙ ПІДХІД

Кочин В. В., кандидат юридичних наук,
завідувач відділу методології приватноправових
досліджень Науково-дослідного інституту
приватного права і підприємництва імені
академіка Ф. Г. Бурчака НАПрН України (Київ)

Ключові слова: регулювання, економічні відносини, підприємництво, некомерційна діяльність, третій сектор, саморегулювання, дерегулювання.

У статті розглядаються громадянське суспільство як основа для реалізації ринкових економічних принципів. Інституційні сектори доцільно структурувати відповідно до адміністративно-правового регулювання (сектор державного управління, що виконує політичні функції, регулювання економіки та надають економічні послуги на неринковій основі), підприємницького регулювання (сектори фінансових та нефінансових корпорацій, що створюються з метою здійснення підприємництва) та цивільне регулювання (сектори домашніх господарств та некомерційних організацій, що мають на меті реалізацію особистих немайнових та майнових прав та інтересів без мети розподілу отриманого прибутку). Встановлено, що розглядаючи підприємницькі економічні відносин, доцільно виділити їх головну засаду правового регулювання – свободу підприємництва, яка розглядається як сукупність приватноправових можливостей здійснення прав та виконання обов'язків з метою отримання прибутку та його наступного розподілу, а також як господарсько-правовий порядок, який має зводитися до публічних обмежень або переваг через застосування засобів державного регулювання, так і до приватноправових меж саморегулювання та координації в межах громадянського суспільства. У свою чергу непідприємницькі економічні відносини регулюються на засадах цивільного права, тобто позбавляються публічного впливу (відсутність регулятора), а також у випадках встановлених правопорядком держави можуть доповнювати державне регулювання у підприємницькій сфері. В умовах громадянського суспільства економічні відносини відповідно до їх сутності можуть піддаватися різному правовому регулюванню. Вважаємо, що державне регулювання економічних відносин має зводитися до забезпечення суб'єктивних цивільних прав та інтересів осіб, а також гарантування правового господарського порядку. Такий баланс інтересів можливий за умови соціального спрямування адміністративно-правової діяльності держави, яка зменшується за рахунок приватизації суспільних відносин, зокрема в частині виробництва суспільних благ, субсидіюванні суспільно корисних видів діяльності та підвищенню споживчого контролю. Таким чином, громадянське суспільство, маючи приватноправову природу, дозволяє реалізовувати економічні права, натомість держава поступово втрачаючи роль тотального регулятора цих відносин розглядається як інструмент захисту стабільності ринкової економіки.