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## **THE PROBLEM OF LEGAL STATE IN UKRAINE**

The term «legal state» is one of the most popular in the modern state building. This problem is an urgent in our country now, because since independence the complex processes of legal state creation and civil society formation take place in Ukraine.

Lots of prominent scientists and politicians were interested in issues of legal state and it was the subject of analysis for many researchers since the days of antiquity to these days. Cicero, Mol, John Locke, Jean Jacques Rousseau, W-L. Montesquieu, Kant formed the basis of modern approaches to the content of the concepts of legal state and civil society. Modern national scientists researching this question are V. Barkov, T. Rozova, O. Skakun, O. Batanov, Y. Barabash, S. Maksymov and many others.

The aim of this work is the analysis the concept of the general provisions of legal state, the prospects of establishing and enforcement of these ideas in the functioning of the Ukrainian state.

The content of the concept of «legal state» was changed with the historical conditions of the state functioning. Current understanding of the essence of legal state is related to the development of the legal system, the level of feasibility and protection of human rights and freedoms, the development of civil society, the principle of mutual responsibility of individuals and state, the rule of law in all spheres of public life, the mechanism of checks and balances in government power.

The meaning of «the legal state» is interpreted by Ukrainian researchers as the state in social and public life of which the laws are prevail enshrining fundamental rights of citizens which express the will of the majority or the entire population [4, p.10]. Another statement is also common: it is a state made up of citizens who have a high level of legal culture and form the state government, which is democratically-organized with the machinery of government, dependent on society by using effective law ensures the implementation sovereign rights and freedoms.

The most important principles of the legal state are: the state is based on the supremacy of national constitution and exercises coercion and guarantees the safety and constitutional rights of its citizens; civil society is an equal partner to the state; separation of powers, with the executive, legislative, and judiciary branches of government limiting one another's power and providing for checks and balances; the judicature and the executive are bound by law (not acting against the law), and the legislature is bound by constitutional principles; transparency of state acts and the requirement of providing a reason for all state acts; review of state decisions and state acts by independent organs, including an appeal process; hierarchy of laws and the requirement of clarity and definiteness; reliability of state actions,

protection of past dispositions made in good faith against later state actions, prohibition of retroactivity; principle of the proportionality of state action; monopoly of the legitimate use of force and so on [6].

Formation of the state of law in Ukraine is very complicated, multifaceted process that includes not only the formation of structures of power that can provide the rule of law and civil rights, but also the availability of a wide range of political parties and movements, social groups and sectors with specific interests, special legal, political, social, economic behavior.

According to the Article 1 of the Constitution of our country, Ukraine is a sovereign, independent, democratic, social, legal state [1, p.5]. But today's realities clearly indicate that this is only a declaration. Ukraine is not a legal state because it must overcome a number of problems that hinder her to be like this.

Analyzing the current political situation it can be defined such problems of the building of legal state in Ukraine as: all spheres of life are covered by systemic crisis, especially political, economic and social spheres, undeclared full-scale war is being waged in Ukraine; state leaders have not a holistic understanding of the ways out of the crisis, as each government offers its programs but they are not responsible for its failure; there is continuing confrontation between the legislative and executive branches of powers; state authorities is not politically structured, power struggle between a large number of political parties is often carried by illegal methods, elections are not always held fair; state apparatus from top to bottom is riddled with corruption, there is not decreasing overall crime; no proper mechanism to ensure implementation of the Constitution and laws; no formed decent political elite; political parties and civil groups anti-state, anti-Ukrainian orientation continue to function in society; laws are generally made in the interests of a small group of people; there are significant problems with freedom of information, opposition press is particularly affected; there is a massive violation of rights and freedoms, especially in the socio-economic sphere; there are positive developments to strengthen local government, decentralization reform, but further process is hampered by insufficient its financial base; the positive impact of the Constitutional Court of Ukraine and the Ombudsman not yet felt and many others.

It is impossible to declare a legal state - it should be formed as a result of reforms of economic, political, governmental and legal institutions, real change in the nature of the relationship between civil society, government and individual.

The foundation of prerequisite legal state is the formation of civil society, which would be provided free and full development of each individual, the society, which operated the democratic public institutions that guarantee freedom of expression and information, ensure the power of public opinion and public morality, free elections, the availability of legal opposition and multiparty and thereby make it impossible to usurp power. Unfortunately, the tradition of democracy in Ukraine is still quite weak. And it is interesting fact: when on the theoretical level many questions about the functioning of democratic institutions developed in some detail, the case with their practical implementation in the actions of state bodies is far behind.

Building a real state of law largely depends on the level of socio-economic development, the accumulation of wealth that would give the possibility of effective socio-economic policy, social and economic rights. However, the worsening socio-economic crisis in Ukraine does not give grounds for effective socio-economic

policy. Population is disappointed the inability of the state to provide certain social guarantees established on the constitutional level. So people are disappointed in reality of ensuring the principle of legality.

There is an urgent need for an effective and judicial control over the implementation of existing legislation. To build a civil society in Ukraine, it is necessary to provide a compromise between different political parties, direct the efforts of politicians and economists to unite society to find solutions to the economic crisis, solve the problem of interethnic and interfaith relations, vigorously carry out reform of national legislation with the requirements of international law.

One of the key features of the legal society is the level of legal culture, legal awareness and legal ideology. Legal culture is qualitative state of legal society, the reached level of legal activity, the degree of state and civil society security of human rights and freedoms, quality of legal acts, state legal awareness.

The major problem of the formation of the rule of law is not the lack of legal norms that would adequately ensure the rights and freedoms of man and citizen, and lack of proper mechanism for their implementation. The main key to the proper functioning of the government is the coherence of all its branches. Unfortunately, especially in recent years, this principle is pretty much broken.

Most features of Ukrainian legal state are formal and to build a legal state only for formal features is impossible. Without organic combination of legitimate authority with secured in society freedom, without the effective functioning of government with compliance it by individual branches of the law and ensure its rule in the acting of state and all aspects of life legal state is just formal slogan and unattainable dream [2, p.207].

So, in our opinion, the legal state is a sovereign state, acting in civil society and in what real protection of fundamental rights and freedoms of man and citizens is provided by legal means. For achieving a high level of legal state in Ukraine is necessary to ensure the achievement of established European standards and norms of the organization of political, economic, social and cultural spheres, to solve the issue of overcoming mass poverty as a permanent source of destabilization and deformation of society, reduce the bureaucracy of state and local governments, refocusing them on the implementation of public services, form the social thought as a social institution, its study and constant monitoring, ensure freedom of expression through the media, its consideration by state and local authorities in their work, maximally eliminate imperfections and contradictions in the current legislation, provide real mechanisms for implementing national legislation. Another important aspect is to ensure the realization of the basic principles enshrined in the Constitution of Ukraine such as the rule of law, a mechanism of checks and balances between branches of government, judicial independence and so on.

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## **INTELLECTUAL PROPERTY RIGHTS AS A CONTRIBUTION TO THE SHARE CAPITAL OF A COMPANY**

A huge number of legal entities is created in Ukraine today. According to the Unified State Register of Enterprises and Organizations of Ukraine they include, f.i. 30 696 - joint stock companies, 430,731 - limited liability companies etc.

In order to create these economic companies, its shareholders must possess significant financial or material resources. But they quite often happen to lack the necessary amount of funds to form the appropriate share capital. Fortunately, there is a possibility of forming the share capital by contributing intangible assets (with no additional funds). In their turn, intangible assets include, among others, intellectual property rights [2].

Thus, article 424 of the Civil Code (CC) of Ukraine provides that intellectual property rights can be a contribution to the share capital of a legal entity. Moreover, according to Article 41 of the Constitution of Ukraine everyone shall have the right to own, use, or dispose of the results of his intellectual or creative activities.

The list of intellectual property objects, the rights to which may be a contribution to the share capital, is rather large. The most common among them are industrial property objects, such as inventions, utility models, industrial designs and trademarks. They also might be the objects of copyright and related rights etc.

However, not all intellectual property rights may be a contribution to the share capital. This applies, in particular, to the right to scientific invention (as it is personal) and the right to the trade name, which according to Art. 490 of the CC is transferred to another person only with the integral property complex.

Besides, intellectual property rights can be a contribution to the share capital only in case they have a monetary valuation and may be alienated [3].

According to Article 424 of the CC intellectual property rights are the following:

1. The right to use the object of intellectual property;
2. The exclusive right to authorize the use of the object of intellectual property;