

SECTION I THEORETICAL AND METHODOLOGICAL FOUNDATIONS OF LAW-MAKING ACTIVITY AND SYSTEMATIZATION OF UKRAINIAN LEGISLATION

CHAPTER 1

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LAW-MAKING IN UKRAINE AND EUROPE: CONCEPT, ESSENCE AND FOUNDATIONS OF LEGAL REGULATION

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INTRODUCTION

When examining the principles of legal regulation of law-making activities in Ukraine and Europe, it is first and foremost necessary to analyse the fundamental (legal and non-legal) aspects of this issue, namely the understanding and interpretation of: 1) the concept and essence of law-making activities; 2) the principles of legal regulation of law-making activities in Ukraine; 3) the principles of legal regulation of law-making activities in Europe.

In doing so, we recognise that the principles of legal regulation of law-making activities in Ukraine and Europe should be considered by dividing them into the principles of legal regulation

of law-making activities in Ukraine and the principles of legal regulation of law-making activities in Europe.

The principles of legal regulation of law-making activities in Ukraine will be examined by analysing: 1) their foundations (main provisions and ideas); 2) fundamental rules of conduct; 3) the principles of law themselves; 4) the nature, forms and purpose of implementation, as the principles of legal regulation of law-making activities in Ukraine that best reflect them.

The principles of legal regulation of law-making activities in European countries will be examined, in accordance with the provisions mentioned in the preceding paragraph, through an analysis of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ratified by the Law of Ukraine 'On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 of 17 July 1997, with amendments made in accordance with the provisions of Protocols Nos. 11, 14 and 15 to Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, which entered into force for Ukraine on 11 September 1997; The consolidated versions of the Treaty on European Union of 7 February 1992 and the Treaty on the Functioning of the European Union of 25 March 1957; The Constitution of the Republic of Poland of 2 April 1997 and the Basic Law of the Federal Republic of Germany of 23 May 1949, which regulate in considerable detail the principles of legal regulation of law-making activities in Europe.

1. Concept and essence of law-making

When it comes to understanding law-making, it must be acknowledged that there are various, and sometimes conflicting,

viewpoints on this issue; this is certainly not a shortcoming of modern legal scholarship, but rather reflects the diversity, scope and multifaceted nature of the concept of law-making. In particular, law-making is understood as: ‘... a sphere of state activity connected with the official codification of legal norms through the formulation, amendment, supplementation and repeal of provisions’ [1, p. 721], or it is emphasised that ‘Law-making is understood as an organisationally regulated, specific form of activity of the state or directly of the people, as a result of which the needs of social development and the demands of justice take on a legal form, which finds its expression in a specific source of law (a normative act, precedent, custom, etc.)’ [2, p. 321].

Part One of Article 2 of the Law of Ukraine ‘On Law-Making Activity’ of 24 August 2023 № 3354-IX stipulates that law-making activity is an activity carried out by a body specified in Article 4 of the said Law, with the aim of: 1) planning the drafting and adoption (promulgation) of legislative acts; 2) drafting legislative acts; 3) adopting (promulgating) legislative acts; 4) maintaining a register of legislative acts; 5) carrying out legal monitoring [3].

With regard to the essence of law-making activity, it is worth noting that the Great Explanatory Dictionary of the Modern Ukrainian Language defines ‘essential’ as: ‘Constituting the very essence or substance of something; important, significant. That which constitutes the very essence, the content of something. Having great, special significance’ [4, p. 1218]. In view of the above, there is every reason to assert that essence is a philosophical concept that can be applied to the cognitive activity of various social aspects of the development and functioning of humanity, society, the state, and law, including law-making activity.

It can also be argued that the concept of ‘essence’ represents the profound, most essential characteristics, which are not formal but substantive and require deep reflection. ‘Essence (substance) – a philosophical category expressing the principal, fundamental, defining aspect of an object, which is determined by deep-seated, necessary, internal connections and trends of development and is apprehended at the level of theoretical thought’ [5]. When applying the category of ‘essence’ to legal phenomena, one must bear in mind that, ‘Since “essence” denotes the totality of the deepest, most enduring qualities of an object (in this case, law) that determine its origin, nature and directions of development, the subject of discussion was the causes of the emergence of law, its definition, role in society, qualitative characteristics, and so on. For some, the law is an instrument of justice and freedom, a means of protecting the individual from authority, and an achievement of human culture and reason; for others, it is merely a class-based regulator of social relations” [6, p. 286].

From the above, it becomes clear that the essence reveals the most fundamental and distinctive characteristics and qualities of a given subject, in our case, law-making activity. It reveals what this subject is, its origin, nature, functioning, prospects for development, and its place and role in the life of society, the state and the individual. In other words, essence, as a socially integrated system, encompasses certain interrelated features and elements of the subject, which constitute its inner nature.

Based on the above, it can also be argued that the nature of law-making is multifaceted and therefore requires the use of comprehensive approaches and methods to understand it. It is also worth acknowledging that the understanding of the essence of law-making activity is influenced by the historical and political

circumstances in which it is conceived, the prevailing legal doctrine, the political regime and form of government prevailing in the state, and even the aims and objectives of scientific research, etc. Thus, the above gives us every reason to assert that the essence of law-making activity lies in the planning, drafting and adoption (enactment) of legislation, the drafting of bills, the adoption (enactment) of legislation, record-keeping, and the legal monitoring of normative-legal acts.

Taking the above into account, one may conclude that the most optimal approach would be to study the essence of law-making activity by analysing its principles, for 'PRINCIPLE. 1. The foundation of something; that which is fundamental, upon which something is based. 2. A fundamental, main proposition, principle; the basis of a worldview, a rule of conduct. 3. A way, method of carrying out something' [4, p. 419].

Legal academic sources emphasise that 'THE PRINCIPLES OF LAW, the foundations of law (English: foundations of law) – the defining, fundamental conditions of law, the determinants of its content, upon which the law is based and which constitute its foundation. The problem of the foundations of law arises because its existence, firstly, is not self-evident; that is, law is not something that can be perceived by the senses. It requires confirmation of its existence through justification – derivation from principles which, strictly speaking, are not law; secondly, it cannot lack principles, for then it would be arbitrary' [7, pp. 273–277].

Law-making activity extends to any socially significant, conscious and volitional social phenomenon regulated and protected by law, with the exception of certain types of social

relations. The regulation and protection of certain social relations by law is referred to as legal regulation. 'LEGAL REGULATION – (from the Latin *regulare* – to direct, to organise) – one of the primary means by which the state influences social relations with the aim of organising them in the interests of the individual, society and the state. It is a form of social regulation. The subject of legal regulation is legal, political, economic and other social relations, the organisation of which is impossible without the use of legal norms" [8, p. 40]. Throughout this, 'LEGAL REGULATION – the organisation of social relations by means of legal instruments (legal norms, normative-legal acts, acts of application of the law, acts of realisation of rights and obligations, etc.). Legal regulation is a type of social regulation (from the Latin *regulo* – a standard, a rule), that is, the organisation of human activity in society through the development and social acceptance of rules governing such behaviour" [9, pp. 516–522]. Legal regulation is characterised by its own subject matter, method, means, types, mechanism, elements of the mechanism, stages, subjects and objects, and a certain level of effectiveness.

There is therefore every reason to assert that the foundations of the legal regulation of law-making activity in Ukraine consist of the fundamental (basic, principal) provisions, ideas and rules of conduct set out in the principles and norms of law; these constitute an independent legal institution which exerts a legal influence on social relations with a view to regulating them in the interests of the individual, the state and society; as a result of which the needs of social development and the requirements of justice take on a legal form, finding expression in a specific legislative act.

2. Principles of legal regulation of law-making activity in Ukraine

Based on the foregoing, it can be stated with complete confidence that the foundations of the legal regulation of law-making activity in Ukraine encompass: 1) its foundations (main provisions, ideas); 2) fundamental rules of conduct; 3) the principles of law themselves; 4) the essence, forms and purpose of its implementation, etc. At the same time, the foundations of the legal regulation of law-making activity in Ukraine may be either directly enshrined in the principles and norms of law, coinciding with their content, or logically derived from the general context, the content of a range of legal principles and norms, and the spirit of the law of a particular country. The foundations of the legal regulation of law-making activities in Ukraine must be aimed at regulating social relations with a view to organising them in the interests of the individual, society and the state. They must find expression in a specific source of law (a statutory instrument, a precedent, custom, etc.).

That is why, in this section, the principles of legal regulation of law-making activities in Ukraine will be examined by highlighting:

1. Foundations (main provisions, ideas) as the basis for the legal regulation of law-making activities in Ukraine. In this context, 'FOUNDATION, n. That upon which something is based, rests, or is founded. // The main constituent part of something; the core, the essence. // The most important part of the content of something. // The main principles, foundations of something (morality, behaviour, etc.). // The guiding principles, rules by which someone is constantly guided in life and activity. // The source, basis for the emergence and development of something.

The most important, fundamental tenets of something (science, theory, etc.). The foundations of legislation. The main condition, guarantee of something. // A defining feature, characteristic of something' [4, p. 861].

In view of the above, it can be stated with complete certainty that the following categorical and conceptual theories and doctrines should be recognised as the key principles and most significant ideas underpinning law-making activity: law formation; law-making; legislative activity; rule-making; popular law-making; popular law-making initiatives; popular veto; public discussion of regulatory legal acts; public scrutiny of regulatory legal acts; public, state and municipal law-making activity; democracy; popular sovereignty; civil society; the priority of social order over the state; the primacy of law over regulatory legal acts; the primacy of the legal system over the system of regulatory legal acts and the legislative system; the rule of law; a democratic, legal and social state; the supremacy of the Constitution of Ukraine within the system of regulatory legal acts; the primacy of international treaties over domestic regulatory legal acts; social justice; humanism; liberalism; pluralism; equality and equal rights; the inalienability of human rights; the theory of natural law; sociological jurisprudence, etc.

The foundations, main provisions and ideas mentioned in the previous paragraph form the methodological basis for the implementation and understanding of the principles of law-making. It is therefore necessary to distinguish between the foundations for the implementation of law-making and the foundations, main provisions and ideas underlying its understanding.

2. Fundamental rules of conduct, as the basis for the legal regulation of law-making activities in Ukraine. In this context, 'FUNDAMENTAL, adj., lit. Defining the basic

principles of something, providing the basis for something; fundamental' [10]. The Law of Ukraine "On Law-Making Activity" of 24 August 2023 № 3354-IX sets out the fundamental rules of conduct in Article 2, entitled "Law-Making Activity and its Legal Foundations" [3]. Firstly, Part One provides that law-making activity is an activity carried out by a specific entity, i.e. the institutional basis of law-making activity is established. Part two of Article 4 of the Law of Ukraine "On Law-Making Activity" of 24 August 2023 № 3354-IX elaborates on this principle [3].

Part 2 of Article 2 of the Law of Ukraine 'On Law-Making Activities' № 3354-IX of 24 August 2023 sets out the legal framework for law-making activities, as it is stipulated that law-making activity in Ukraine is regulated by the Constitution of Ukraine, the Law of Ukraine "On Law-Making Activity" of 24 August 2023 № 3354-IX, other laws of Ukraine and subordinate regulatory legal acts adopted in accordance with them [3]. Other laws include, for example, the Laws of Ukraine 'On the All-Ukrainian Referendum' of 26 January 2021 № 1135-IX, 'On the Rules of Procedure of the Verkhovna Rada of Ukraine' of 10 February 2010 №1861-VI, 'On the Cabinet of Ministers of Ukraine' of 27 February 2014 № 794-VII, etc., whilst subordinate regulatory legal acts governing legislative activity include the 'Regulations on the Procedure for the Preparation and Submission of Draft Acts of the President of Ukraine', approved by Decree of the President of Ukraine № 970/2006 of 15 November 2006, the 'Rules of Procedure of the Cabinet of Ministers of Ukraine', approved by Resolution of the Cabinet of Ministers of Ukraine № 950 of 18 July 2007 (as amended by the Resolution of the Cabinet of Ministers of Ukraine of 9 November 2011), etc.

Part 3 of Article 2 of the Law of Ukraine ‘On Law-Making Activities’ № 3354-IX of 24 August 2023 sets out the principles governing the relationship between Ukraine’s international treaties and the said Law of Ukraine. In particular, it states that if an international treaty of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, establishes rules other than those provided for by the said Law, the rules of the international treaty of Ukraine shall apply [3]. Without disputing the primacy of international treaties over national legislative acts, I would like to draw attention to the indisputable fact that the aforementioned provision is not entirely consistent with Part 1 of Article 9 of the Constitution of Ukraine, which recognises existing international treaties, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, merely as part of Ukraine’s national legislation.

Parts four and five of Article 2 of the Law of Ukraine ‘On Law-Making Activities’ № 3354-IX of 24 August 2023 are aimed at ensuring the principles of stability, legal continuity, durability and the inviolability of legislation on law-making activities, as it is stipulated that amendments to the Law of Ukraine “On Law-Making Activities” of 24 August 2023 № 3354-IX may be made exclusively by a law amending the Law of Ukraine “On Law-Making Activities”. And if a body with the right of legislative initiative submits to the Verkhovna Rada of Ukraine a draft law regulating social relations in the sphere of law-making in a manner other than that provided for by the Law of Ukraine “On Law-Making” of 24 August 2023 № 3354-IX, it is obliged to simultaneously submit a draft law amending the said Law of Ukraine. The submitted draft law shall be considered by the Verkhovna Rada of Ukraine simultaneously with the corresponding

draft law amending the Law of Ukraine “On Law-Making Activities” of 24 August 2023 № 3354-IX [3].

3. The principles of law as the foundations of the legal regulation of law-making activities in Ukraine. The principles, as a component of the foundations of the legal regulation of law-making activity in Ukraine, are set out, first and foremost, in the Law of Ukraine “On Law-Making Activity” of 24 August 2023 № 3354-IX [3]. Article 3 of the said Law of Ukraine stipulates that law-making activity shall be carried out in accordance with the following principles:

1) the rule of law, which includes, but is not limited to, the following principles: a) legality; b) legal certainty; c) the prevention of abuse of power; d) equality before the law and non-discrimination; e) access to justice. It is immediately apparent that the rule of law is understood in an extremely broad sense, as it encompasses other principles, and this list is by no means exhaustive.

Therefore, first and foremost, it should be noted that the rule of law is generally understood as a concept or principle that entails ‘... the primacy of law in the life of civil society and the functioning of the rule of law state. This concept has been interpreted in its broadest sense, that is, as the recognition of the necessity to subordinate ‘positive’ (state-established or sanctioned) law to ‘non-positive’ law (natural human rights, the needs of human nature, the demands of reason, morality, etc.)’ [11, p. 341].

Considering this and other definitions of the rule of law, it can be argued that its characteristics should be regarded as follows: 1) in legal scholarship it is treated as a concept, whilst in the fields of law and legislation it is treated as a principle; 2) it entails the primacy of law in the life of civil society and the functioning

of the rule of law; 3) its essence lies in the recognition of the necessity for 'positive' law to be subordinate to 'non-positive' law; 4) it entails the subordination of the state and its institutions to human rights; 5) it requires the recognition of the primacy of law over other social norms (morals, customs, etc.); 5) originated within the Anglo-Saxon legal tradition; 6) some of its elements are already found in the works of ancient Greek and Roman thinkers, as well as religious figures and philosophers of the Middle Ages, meaning it has a long history; 7) may be regarded, in a broad sense, as the principle of the legal organisation of state power in society and, in a narrower context, as the relationship between law and legislation in the regulation of social relations;

a) legality is a general legal principle, the essence of which lies in the precise and strict implementation of the Constitution and laws of Ukraine, as well as other regulatory legal acts adopted in accordance with them, by all state bodies, local self-government bodies, their officials and civil servants, public associations, legal entities and natural persons, and all other social actors.

It is worth emphasising that legality is a fundamental, multifaceted, complex, social and legal concept that reflects the system of intricate interrelationships between society, the state and the law; consequently, it can be regarded not only as a general legal principle (although it must be acknowledged that this is the most common understanding of it), but also as having other meanings. Namely:

- as a regime of socio-political life – this is a political and legal requirement for the precise and strict enforcement of laws and other regulatory acts adopted in accordance with them by all subjects of law;

- as a principle of the exercise of public authority – this is a public-law regime under which the bodies exercising public authority (state and local government bodies) exercise it in strict accordance with the grounds provided for by law, their own competence, and the procedures for its exercise;

- as the basis of the legal status of the individual and the citizen – this is the fundamental principle of the legal position of the individual and the citizen in society and the state, according to which the legal status of the individual and the citizen (legal personality, principles of legal status, citizenship, the system of rights, freedoms and duties, and guarantees for their realisation) must be enshrined and guaranteed by acts of the highest legal force, primarily the constitution and laws of the country. This principle is confirmed in Article 3 and paragraphs 1 and 2 of Part One of Article 92 of the Constitution of Ukraine [12];

b) legal certainty. The principle of legal certainty, as a component of the rule of law, is ‘... one of the fundamental principles setting out the requirements for legislative acts. It is an integral part of the rule of law, ensuring the predictability of legislative acts in terms of the consequences of their application. They must also be formulated clearly and comprehensibly enough to ensure lawful conduct on the part of legal subjects. This is required by the principle of the rule of law, since a legal subject, before planning their actions, must clearly understand what the legal consequences will be’ [9, pp. 616–619].

In view of the above, it can be stated with complete certainty that the criteria for legal certainty in law-making activity are the following characteristics: the clarity of the formulation of legal norms in legislative acts (interconnectedness, consistency); the definiteness, clarity and unambiguity of the legal norm;

the ability of an individual to distinguish lawful conduct from unlawful conduct and to foresee the legal consequences of their conduct; the conformity of legal norms with norms of higher legal force, primarily constitutional norms and those set out in international treaties; the existence of a fully-fledged enforcement mechanism, that is, their actual implementation in social relations; ensuring the predictability of the application of legal norms; the stability of legal norms, that is, their immutability over a relatively long period of time; the guarantee of the authentic elaboration of legal norms in other, primarily subordinate, regulatory legal acts, etc.;

c) the prevention of abuse of power. The principle of preventing the abuse of power, as a component of the principle of the rule of law, is primarily enshrined in the second part of Article 19 of the Constitution of Ukraine, which states: 'State authorities and local self-government bodies, and their officials shall act solely on the basis of, within the limits of, and in the manner prescribed by the Constitution and the laws of Ukraine' [12]. In this context, prevention refers to the implementation of measures to prevent, avert or avert the occurrence, realisation or impact of a negative phenomenon, act (whether an action or omission) or behaviour. Abuse of rights is the legal conduct of a person who possesses a specific subjective right, the exercise of which, whilst within the bounds of the law but contrary to its fundamental purpose, causes harm to third parties or creates a real threat of such harm, thereby entailing negative legal consequences [13, pp. 47–52]. And authority is '... the set of rights and duties of state bodies and public organisations, as well as officials and other persons, vested in them in accordance with the procedure established by law for

the performance of the functions assigned to them' [14, p. 590]. To summarise, 'ABUSE OF AUTHORITY (English: abuse of authority) – the deliberate use, for the purpose of obtaining an unlawful benefit for oneself or others, contrary to the interests of a private-law legal entity, regardless of its organisational and legal form, by an official of such a legal entity of their powers, if this has caused substantial harm to the rights or interests of individual citizens protected by law, or to state or public interests, or to the interests of legal entities" [15, p. 282]. In other words, the prevention of abuse of power as a component of the rule of law in legislative activity entails the establishment of powers in a manner that precludes unjust, unfounded, unlawful, and, even more so, arbitrary and totalitarian decisions;

d) equality before the law and non-discrimination, as an integral part of the principle of the rule of law, as provided for in Article 24 of the Constitution of Ukraine, which stipulates that 'Citizens shall have equal constitutional rights and freedoms and shall be equal before the law. There shall be no privileges or restrictions on grounds of race, skin colour, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other grounds' [12].

In general, the principle of equality means that: firstly, citizens are equal in rights and freedoms; secondly, legislative and regulatory acts are applied equally to different natural and legal persons, and social communities; thirdly, when cases are considered by the competent authorities, it is prohibited to treat identical situations differently, or to treat different situations identically; and, fourthly, all social actors have equal rights in the process of defending their rights and freedoms before the competent authorities.

When drafting legislation, it is essential to bear in mind that the Law of Ukraine 'On the Principles of Preventing and Combating Discrimination in Ukraine' of 6 September 2012 № 5207-VI, in Article 1, declares that discrimination is a situation in which a person and/or a group of persons, on the grounds of their race, skin colour, political, religious or other beliefs, gender, age, disability, ethnic or social origin, citizenship, family or property status, place of residence, language or other characteristics that were, are, or may be, real or presumed, is subject to restrictions in the recognition, exercise or enjoyment of rights and freedoms in any form established by the said Act, except where such restrictions have a legitimate, objectively justified aim, the means of achieving which are appropriate and necessary, and indirect discrimination is a situation in which, as a result of the implementation or application of formally neutral legal provisions, evaluation criteria, rules, requirements or practices, a person and/or group of persons, on the basis of their specific characteristics, are placed in a less favourable position or situation compared to other persons and/or groups of persons, except where their implementation or application has a legitimate, objectively justified aim, the means of achieving which are appropriate and necessary [16];

e) access to justice, as a component of the principle of the rule of law in legislative activity, means that, in accordance with paragraphs 1 and 2 of Article 55 of the Constitution of Ukraine, 'The rights and freedoms of the individual and the citizen shall be protected by the courts. Everyone is guaranteed the right to appeal in court against decisions, actions or omissions of state authorities, local self-government bodies, officials and civil servants' [12].

It was precisely on this matter that the Decision of the Constitutional Court of Ukraine was issued in the case concerning

the constitutional appeal lodged by Mr Sergei Vladimirovich Osetrov regarding the official interpretation of the provisions of Article 55(2) of the Constitution of Ukraine, Article 2(2) and Article 17(3)(2) of the Code of Administrative Procedure of Ukraine, Article 110(3), Part 2 of Article 236 of the Code of Criminal Procedure of Ukraine, and the constitutional submission by the High Specialised Court of Ukraine for Civil and Criminal Cases regarding the official interpretation of the provisions of Articles 97, 110, 234, 236 of the Code of Criminal Procedure of Ukraine, Articles 3, fourth and 17 of the Code of Administrative Procedure of Ukraine in the context of Article 55 of the Constitution of Ukraine (case concerning an appeal against the inaction of public authorities regarding reports of crimes) of 14 December 2011 № 19-rp/2011 states: 'In the context of a constitutional appeal, the provisions of the second part of Article 55 of the Constitution of Ukraine must be understood to mean that the constitutional right to challenge in court any decisions, actions or inaction of all state authorities, local self-government bodies, officials and civil servants is guaranteed to everyone. The exercise of this right is ensured in the relevant form of judicial proceedings and in the manner prescribed by procedural law' [17];

2) the priority of upholding and safeguarding human rights and freedoms, and compliance with international human rights standards. This principle is enshrined in the second part of Article 3 of the Constitution of Ukraine, which states that 'The upholding and safeguarding of human rights and freedoms is the primary duty of the state' [12].

At the same time, it is worth emphasising that the constitutional and legal institution of safeguarding human and civil rights and freedoms is being firmly enshrined in legislative acts. First and

foremost, in Article 2(2) of the International Covenant on Civil and Political Rights of 16 December 1966, which was ratified by Ukraine on 19 October 1973 and entered into force on 23 March 1976, and which stipulates that 'Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in this Covenant, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' [18, p. 38].

Compliance with international human rights standards, as referred to in the second part of this principle of law-making, entails bringing the law and legislation into line with certain universally recognised legal standards. Such compliance involves establishing uniform, minimum, model requirements for legal regulation in the field of human rights. In this context, a distinction is made between international universal and regional human rights standards. International universal standards include: The Charter of the United Nations and the Statute of the International Court of Justice of the United Nations, signed on 26 June 1945 and entered into force on 24 October 1945 [19]; The Universal Declaration of Human Rights, adopted and proclaimed by Resolution 217 A (III) of the United Nations General Assembly on 10 December 1948 [20]; The International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations at its twenty-first session (Resolution 2200 A/XXI/ of 16 December 1966), ratified by Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR № 2148-VIII of 19 October 1973, entered into force on 23 March 1976 [21, pp. 36–58]; The International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations at its 21st session

(Resolution 2200 A/XXI of 16 December 1966), ratified by Decree № 2148-VIII of the Presidium of the Supreme Soviet of the Ukrainian SSR of 19 October 1973, which entered into force on 3 January 1976 [18, pp. 59–68], and many other legal acts.

International regional instruments include: the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ratified by the Law of Ukraine ‘On the Ratification of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms’ of 17 July 1997, with amendments made in accordance with the provisions of Protocols Nos. 11, 14 and 15, together with Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, which entered into force for Ukraine on 11 September 1997 [22]; the American Convention on Human Rights, adopted by the Inter-American Conference on Human Rights on 22 November 1969 in San José, entered into force on 18 July 1978 [23]; The African Charter on Human and Peoples’ Rights, adopted at the meeting of the Heads of State of the Organisation of African Unity on 26 June 1981 in Nairobi, entered into force on 21 October 1986 [24]; The Asia-Pacific Declaration on the Human Rights of Individuals and Peoples, adopted on 15 February 1988 at the Second Conference of Lawyers of the Region on Legal Issues of Peace, Development and Human Rights [25] and many other legal instruments;

3) democracy. ‘DEMOCRACY [Greek *democratsa* – rule by the people, from *demos* – people + *cratos* – power] – rule by the people, the exercise of power by the people directly (direct democracy: elections, referendums, etc.) or through state authorities and local self-government bodies (representative democracy)’ [26, p. 84]. Democracy requires that power belong entirely to the people. It exercises this power directly through

direct participation in the resolution of state and public affairs (referendums, plebiscites, demonstrations, rallies, citizens' assemblies, popular initiatives, etc.) or through representatives (deputies) elected by the people to representative bodies of state authority and local self-government.

Accordingly, the principle of democracy in law-making requires the enshrinement of the Ukrainian people's powers to: adopt legislative acts of varying legal force through all-Ukrainian and local referendums; launch popular initiatives (popular legislative and popular referendum initiatives); launch local initiatives; exercise a popular veto; public consultation on draft legislative acts; public opinion polls regarding legislative acts; public review of legislative acts and draft legislative acts;

4) proportionality, which aims to strike a reasonable balance between instances of human rights restrictions in a democratic society and the legitimate purpose of such restrictions. In support of this, it is worth mentioning authors who consider that 'In the course of long-standing practice, international judicial bodies, in particular the ECtHR, and national courts, primarily constitutional courts, have formulated a series of requirements of the principle of proportionality, which can be summarised as follows:

- any restrictions on fundamental rights and freedoms are permissible only on the basis of law, for purposes provided for by the constitution (or acts of international law), and only to the extent necessary for the proper functioning of a democratic society;
- such restrictions must be applied only where there are no less onerous measures (means and methods) to prevent infringements of the rights and freedoms of others and to safeguard the public interest;

– the consequences of measures restricting the exercise of rights and freedoms must not be excessive and must be strictly proportionate to the aim pursued' [27, p. 87];

5) necessity and justification. Necessity is an intrinsic, essential, and inherent connection between objects and phenomena of objective reality, which determines their very existence. Necessity is inevitable; under certain circumstances, it occurs unavoidably [28, pp. 168–169]. 'JUSTIFICATION – In logic and the methodology of science – the process of evaluating various forms of knowledge (statements, hypotheses, theories). In the development of philosophical thought, two lines of understanding of justification have emerged: justification as the establishment of the correspondence of elements of a system of theoretical knowledge to conditions external to the system, and justification as the establishment of the correspondence of a specific logical element of the system to the system as a whole, determining its place and functions within the logical system" [29, p. 438].

Based on the above, there is every reason to assert that the principle of necessity and justification, in law-making activity, entails the drafting and adoption of normative-legal acts that are relevant, significant, objectively determined, consistent with actual social relations, and designed for their contemporary regulation and protection;

6) systematicity. 'SYSTEMICITY (connection, formation): 1) a term (concept) that reveals a defining (fundamental) property of the world in which people live and demonstrates that the surrounding world (material and spiritual) consists not of phenomena and processes isolated from one another, but a set of interrelated and interacting components at all stages and levels of their development as systemic, holistic formations;

2) a fundamental principle of scientific knowledge and social practice, the essence of which lies in the application of a systemic (holistic) approach to the study of complex objects (systems) and directs research towards revealing their integrity and identifying all types of relationships within them, bringing them together into a single system of knowledge. The main characteristics of a system are: a) the presence of elements that constitute it; b) the presence of subsystems as a result of the interaction of elements; c) the presence of components as a result of the interaction of subsystems; d) the presence of relationships between subsystems and components; e) the presence of a certain level of integrity, characterised by the fact that the system, through the interaction of its components, produces an integrated result; f) connections with other systems in the external environment' [30]. Consequently, this principle implies that, to ensure the quality and effectiveness of law-making activities, it is necessary to take into account the entire body of legislative acts regulating and protecting homogeneous or similar social relations, and consequently to coordinate measures for their implementation. The isolated adoption of an individual legislative act undermines the quality and effectiveness of legal regulation as a whole;

7) scientific support – this implies the need to acquire objective scientific knowledge regarding law-making activities, the legal system and legislation, their nature and outcomes, and therefore, trained academic staff must be utilised in the process of drafting any legislative act, and particularly in the conceptualisation of concepts and characteristics, sources, determinants, types, functions, principles, objects and subjects, methodology and the process of law-making activity and its outcome – the legislative act;

8) resource provision. 'Resources – natural, raw material, material, labour and financial assets. Which may be used, where necessary, to create products, provide services or generate added value' [31, p. 226]. In view of this, there is every reason to conclude that law-making activity will be of high quality, effective and fruitful if it is supported by the necessary material, financial, organisational, scientific, human resources and other measures.

4. Essence, forms and objectives of implementation as the foundations of the legal regulation of law-making activities in Ukraine. With regard to essence as the foundation of the legal regulation of law-making activities, I would like, once again, to draw attention to the etymological understanding of the concept of 'essence'. Thus, 'ESSENCE, -ness, n. 1. The most important, fundamental, essential aspect of someone or something; the essence, the substance. 2. In philosophy – the principal, defining aspect of an object, determined by deep-seated connections and trends of development and apprehended at the level of theoretical thought' [32, p. 485].

Taking the above into account, one may conclude that the most optimal approach would be to study the essence of law-making activity through an analysis of its functions, since in legal science the term 'functions' is used to denote the essence, social purpose, and social role of a particular legal phenomenon in society, the state, the law, and so on. In this context, scholars assert that 'the functions of law are the main directions of the legal impact of law on existing social relations, which actually determine the essence and social purpose of law in the life of society' [33, p. 167].

In light of the above, it should be noted that the functions of law-making constitute the main areas of its implementation,

reflecting the essence and social purpose of law-making. There are good reasons to identify the following functions:

1) regulatory, since law-making activity is primarily intended to create legislative acts necessary for regulating social relations in all spheres of public life;

2) protective, since the normative-legal acts created in the course of law-making establish not only regulatory norms but also legal norms aimed at protecting socially significant relations in various spheres of social life;

3) predictive, the essence of which lies in forecasting the future development of legislative acts, legal regulation and the legal system of Ukraine, and the ability to draw conclusions as to what their future state will be in the near or distant future. Undoubtedly, forecasting must be based on verified facts, have proper scientific backing and may take the form of a hypothesis, assumption or concept;

4) system-forming, since law-making activity initiates the formation of any legal system and brings together a great many legal institutions. To be convinced of this, one need only note that the Law of Ukraine 'On Law-Making Activity' of 24 August 2023 № 3354-IX amends a large number of other regulatory acts; at the same time, it sets out a whole range of tasks addressed to: the Verkhovna Rada of Ukraine; the Cabinet of Ministers of Ukraine; the Constitutional Court of Ukraine; the National Academy of Sciences of Ukraine; and many other bodies. In view of the above, it can be stated with complete certainty that this Law of Ukraine, by its very nature and content, constitutes a regulatory framework and provides for the reform of Ukraine's legal system, the improvement, systematization, and optimisation, first and

foremost, of such subsystems as law-making, legislative activity, and rule-making, etc.;

5) planning, which becomes clearer when one considers that the essence of the planning function of law-making activity lies in the logical sequence of its implementation, the current and prospective planning of the process of preparing and adopting (issuing) regulatory legal acts, the optimal allocation and use of methods and means, and the forecasting of final and desired outcomes. Undoubtedly, other functions of law-making activity can also be identified as its foundations.

When considering the forms of legislative activity as its foundations, it is worth noting that in legal scholarship, 'FORM – latin forma – appearance, form, structure, variety) – The outward appearance, outline of a thing, action, etc., or the external expression of a particular content. 2) The structure, type, form, or organisation of relevant social (social, economic, legal, organisational, etc.) entities or processes (e.g., administration, judicial proceedings, payment, exchange), as well as the order of something" [34, p. 294].

It is precisely with this in mind that Article 9 of the Law of Ukraine 'On Law-Making Activities' of 24 August 2023 № 3354-IX regulates the forms of law-making activities, establishing that the legislation of Ukraine is an interrelated and organised system of normative-legal acts of Ukraine and applicable international treaties. Ukrainian legislation is structured from acts of higher legal force to acts of lower legal force. Consequently, a system of normative-legal acts is envisaged [3].

As regards the purpose of law-making activity as its legal basis, it is worth noting that the aforementioned first part of Article 2 of the Law of Ukraine 'On Law-Making Activity' of 24 August 2023

№ 3354-IX sets out the purpose of law-making activity as its legal basis, namely establishing that it is carried out with the aim of:

1) planning the drafting and adoption (promulgation) of regulatory and legal acts [3]. In general, ‘planning is the process of drawing up plans, one of the functions of management, which consists in determining the sequence of implementation of a programme of action (development) for a specific object (phenomenon, subject, collective, enterprise, etc.) for a specific (medium- and long-term) period, specifying its purpose, content, scope, methods and means, deadlines for implementation, etc.’ [14, pp. 565–567].

In view of this, Article 24, ‘Principles of Planning Law-Making Activities’, of the Law of Ukraine ‘On Law-Making Activities’ of 24 August 2023 № 3354-IX stipulates that, with a view to ensuring the predictable development of public policy, unity and continuity in the process of preparing and adopting (issuance) of regulatory legal acts, and coordinated law-making activities, entities engaged in law-making activities shall carry out such planning by adopting the following documents: 1) short-term planning (for a period of up to one year); 2) long-term planning (for a period of more than one year). The planning of law-making activities itself is carried out taking into account: 1) Ukraine’s international legal obligations, as well as the directions, priorities and objectives set out in policy documents; 2) public policy documents provided for in Articles 23 and 27 of the Law of Ukraine ‘On Law-Making Activities’ of 24 August 2023 № 3354-IX [3];

2) the drafting of legislative acts. This principle is governed by Articles 27–30 of the Law of Ukraine ‘On Law-Making Activities’ № 3354-IX of 24 August 2023. They define the formulation of the concept for a draft regulatory act, legislative

initiatives, the drafting of a regulatory act, and the assessment of the impact of a draft regulatory act on social relations [3];

3) the adoption (enactment) of regulatory acts. With regard to this point of Part 1 of Article 2 of the Law of Ukraine ‘On Law-Making Activities’ of 24 August 2023 № 3354-IX, it is worth noting that the first paragraph of Part 1 of Article 46 of the Law of Ukraine ‘On Law-Making Activities’ of 24 August 2023 № 3354-IX provides that entities engaged in law-making activities shall consider a draft regulatory act and adopt (issue) a regulatory act in accordance with the procedure established by the Constitution of Ukraine and/or the law, or other regulatory acts [3], and the second paragraph of Part One of Article 46 of the Law of Ukraine “On Law-Making Activities” of 24 August 2023 № 3354-IX accordingly establishes that the procedure for considering draft laws and adopting laws is determined by the Constitution of Ukraine and the Rules of Procedure of the Verkhovna Rada of Ukraine [3]. The third paragraph of Part 1 of Article 46 of the Law of Ukraine ‘On Law-Making Activities’ № 3354-IX of 24 August 2023 stipulates those specific procedures for the consideration of draft subordinate legislative acts may be determined by subordinate legislative acts adopted in accordance with the law [3];

4) keeping records of regulatory legal acts. In accordance with Article 55 of the Law of Ukraine “On Law-Making Activities” of 24 August 2023 № 3354-IX, records of regulatory legal acts shall be kept by: a) the law-making entity; b) the ministry responsible for the formulation of state legal policy. The law-making body keeps records of the regulatory legal acts adopted (issued) by it and ensures the safekeeping of their originals, whilst the ministry responsible for formulating state legal policy maintains a state register of regulatory legal acts adopted by law-making bodies by

including them in the Unified State Register of Regulatory Legal Acts [3];

5) conducting legal monitoring. Article 67 of the Law of Ukraine 'On Law-Making Activities' № 3354-IX of 24 August 2023 stipulates that legal monitoring is a systematic and comprehensive monitoring activity aimed at tracking, analysing and evaluating the implementation of adopted legislative acts with regard to: 1) their full entry into force (the coming into force of legislative acts, the implementation of legal provisions set out in their transitional provisions, the adoption (issuance) of subordinate legislative acts aimed at implementing the legislative acts subject to legal monitoring); 2) the achievement of the planned objectives of regulatory control, their impact on society and/or on specific social groups, sectors or industries, as well as the identification of social, legal, political, economic, environmental, administrative and/or other possible planned consequences or the identification of unintended consequences [3].

3. Principles of legal regulation of law-making activity in Europe

When studying the principles of legal regulation of law-making activity in Europe, it is worth, first of all, paying attention to part one of Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, ratified by the Law of Ukraine "On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950" of July 17, 1997, with amendments made in accordance with the provisions of Protocols № 11, 14 and 15 with Protocols № 1, 4, 6, 7, 12, 13 and 16, which

entered into force for Ukraine on September 11, 1997, which stipulates that the contracting parties undertake to comply with the final decisions of the European Court of Human Rights in any cases to which they are parties [22] and which corresponds to this provision part one of Article 2 of the Law of Ukraine “On the Execution of Decisions and Application of the Practice of the European Court of Human Rights” of February 23, 2006 № 3477-IV, which regulates that the decision of the European Court of Human Rights is binding for Ukraine in accordance with Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. Moreover, Article 17 of the above-mentioned Law of Ukraine declares that “Courts shall apply the Convention and the case-law of the Court as a source of law when considering cases,” and Part One of Article 19 states that “The representative body shall conduct a legal examination of all draft laws, as well as subordinate regulatory acts subject to the requirement of state registration, and shall prepare a special opinion on their compliance with the Convention based on the results of which” [35].

In this way, the institutional basis, which is composed of the contracting parties, the normative basis, under which the decisions of the European Court of Human Rights should be understood, the principles of the correlation of national and European legislation are determined, since it is stated that the representative body carries out a legal examination of all draft laws, as well as subordinate regulatory acts, which are subject to the state registration requirement, for compliance with the Convention.

It is undeniable that the basic regulatory acts that, in the most detailed way, regulate the law-making activities of the countries of the European Union are the Consolidated Versions of the Treaty

on European Union of February 7, 1992 and the Treaty on the Functioning of the European Union of March 25, 1957.

In particular, the Consolidated Version of the Treaty on European Union of February 7, 1992, in Part One of Article 15, Section III, establishes that “The European Council shall provide the Union with the necessary impetus for its development and shall define its general political guidelines and priorities. It shall not exercise legislative functions”, and in part four of the said article, that “Unless otherwise provided in the Treaties, the European Council shall act by consensus”. In the course of the above-mentioned part one of Article 16 of Title III, it is provided that the European Council, together with the European Parliament, shall exercise legislative and budgetary functions, and in part 8 of the same article, that “When the Council is considering and voting on legislative acts, its meetings shall be held in public. To this end, each meeting of the Council shall be divided into two parts, devoted, respectively, to the consideration of legislative acts of the Union and to non-legislative activities [36]. That is, the institutional, procedural and functional principles of the activities of the European Council and the European Parliament are determined.

Part two of Article 17 of Section III is also devoted to the legal regulation of law-making activity, as it establishes the provision according to which “The adoption of legislative acts of the Union is possible only on the basis of a proposal from the Commission, unless otherwise provided for in the Treaties. The adoption of other acts shall be based on proposals from the Commission in cases provided for in the Treaties” [36]. In this connection, it would be appropriate to note that the institutions of the European Union are: the European

Parliament; the European Council; the Council; the European Commission; the Court of Justice of the European Union; the European Central Bank; the Court of Auditors. From this it can be argued that we are talking about the institutional principles of the law-making activity of the European Union. The most detailed regulation of the law-making activity of the countries of the European Union is the Treaty on the Functioning of the European Union of 25 March 1957, in which Chapter 2 of Section 1 of Part Six is entitled “Legal acts of the Union, adoption procedures and other provisions”. In particular, Article 288 provides that “In order to exercise the Union’s powers, the institutions shall adopt regulations, directives, decisions, recommendations and conclusions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision is binding in its entirety. If a decision specifies those to whom it is addressed, it is binding only on them.

Recommendations and conclusions are not binding” [36].

It is undeniable that the cited article defines the normative and hierarchical principles of the law-making activity of the European Union.

The following articles 289–299 regulate that the ordinary legislative procedure consists in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. That is, we are talking about the institutional principles of the law-making activity of the European Union.

In certain cases, provided for in the Treaties, the adoption of regulations, directives or decisions by the European Parliament with the participation of the Council or by the Council with the participation of the European Parliament is a special legislative procedure. Legal acts adopted in accordance with the legislative procedure are legislative acts. In certain cases, provided for in the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

Legislative acts may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act. The objectives, content, scope and duration of the delegation of power shall be clearly defined in the legislative acts. The essential elements of the scope shall be reserved to the legislative acts and shall therefore not be the subject of the delegation of power. Legislative acts shall clearly lay down the conditions governing the delegation, which may be as follows:

- a) the European Parliament or the Council may decide to revoke the delegation;
- b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of the above, the European Parliament shall act by a majority of its component members and the Council by a qualified majority.

Member States shall adopt all measures of national law necessary to implement Union acts which are binding. Where

uniform conditions are needed for the implementation of Union acts which are binding, such acts shall confer implementing powers on the Commission and, in duly justified individual cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

The Council shall adopt recommendations. It shall act on a proposal from the Commission in all cases where the Treaties provide for the adoption of acts on a proposal from the Commission. The Council shall act unanimously in those areas where unanimity is required for the adoption of a Union act. The Commission and the European Central Bank shall adopt recommendations in the specific cases provided for in the Treaties.

In regulating the procedure for the adoption of acts and other provisions, the Treaty on the Functioning of the European Union of 25 March 1957 provides that where, in accordance with the Treaties, the Council is to act on a proposal from the Commission, it may amend such a proposal only by acting unanimously, save in certain specified cases. Until the Council has acted, the Commission may amend its proposal at any time during the procedure for the adoption of a Union act. Where the Treaties refer to the ordinary legislative procedure, that procedure shall apply for the adoption of the act. The Commission shall submit a proposal to the European Parliament and to the Council. The European Parliament shall adopt its position at first reading and communicate

it to the Council. If the Council approves the position of the European Parliament, the act in question shall be adopted in the wording which corresponds to the position of the European Parliament. If the Council does not approve the position of the European Parliament, it shall adopt its position at first reading and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament: (a) approves the Council's position at first reading or takes no action, the act in question shall be deemed to have been adopted in the wording which corresponds to the Council's position; (b) rejects the Council's position at first reading by a majority of its component members, the proposed act shall be deemed not to have been adopted; (c) proposes amendments to the Council's position at first reading by a majority of its component members, the text thus amended shall be forwarded to the Council and the Commission, which shall deliver an opinion on those amendments.

If, within three months of receipt of the amendments from the European Parliament, the Council, acting by a qualified majority: (a) approves all those amendments, the act shall be deemed to have been adopted; (b) does not approve all those amendments, the President of the Council shall, with the agreement of the President of the European Parliament, convene a meeting of the Conciliation Committee within six weeks. The Council shall act unanimously on amendments on which the Commission has delivered a negative opinion.

The Conciliation Committee, composed of the members of the Council or their representatives and an equal number of members

representing the European Parliament, shall have the task of reaching agreement on a joint text by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament, within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.

The Commission shall take part in the Conciliation Committee and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. If, within six weeks of the date on which the Conciliation Committee is convened, it has not approved the joint text, the proposed act shall be deemed not to have been adopted. If, within that period, the Conciliation Committee approves the joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall have six weeks from the date of approval to adopt the act in question in accordance with the agreed text. If they fail to do so, the proposed act shall be deemed not to have been adopted. The three-month and six-week periods shall be extended by a maximum of one month or two weeks respectively at the initiative of the European Parliament or the Council.

Where, in the cases provided for in the Treaties, on the initiative of a group of Member States, on a recommendation from the European Central Bank or at the request of the Court of Justice of the European Union, a legislative act is not applicable under the ordinary legislative procedure, it shall not apply. In that case, the European Parliament and the Council shall forward the proposed act to the Commission, setting out their positions at first and second readings. The European Parliament or the Council may, throughout the procedure, request an opinion from the Commission, which the Commission may also issue on its own

initiative. The Commission may, if it considers it necessary, take part in the meeting of the Conciliation Committee.

The European Parliament, the Council and the Commission may consult each other and, by common accord, lay down the arrangements for their cooperation. To this end, they may conclude interinstitutional agreements, which may be binding, in accordance with the Treaties.

Where the Treaties do not specify the type of act to be adopted, the institutions shall choose the type of act to be adopted on a case-by-case basis in accordance with the procedures applicable and in accordance with the principle of proportionality. Legal acts shall state the reasons on which they are based and shall contain a reference to any proposals, initiatives, recommendations, requests or opinions required by the Treaties.

When examining draft legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for in the relevant legislative procedure in the area in question.

Legislative acts adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and the President of the Council. Legislative acts adopted under a special legislative procedure shall be signed by the President of the institution which adopted them. Legislative acts shall be published in the Official Journal of the European Union. They shall enter into force on the date stated therein or, in the absence thereof, on the twentieth day following that of their publication.

Non-legislative acts adopted in the form of regulations, directives or decisions, where such do not state to whom they are addressed, shall be signed by the President of the institution which adopted them.

Regulations and directives which are addressed to all Member States, and decisions which do not state to whom they are addressed, shall be published in the Official Journal of the European Union. They shall enter into force on the date stated therein or, in the absence of such a date, on the twentieth day following their publication. Other directives and decisions which specify to whom they are addressed shall be notified to those to whom they are addressed and shall enter into force upon such notification.

In carrying out their tasks, the institutions, bodies, offices and agencies of the Union shall be supported by an open, efficient and independent European administration. In accordance with the Staff Regulations and Conditions of Employment adopted on the basis of Article 336 of the Treaty on the Functioning of the European Union of 25 March 1957, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down the relevant provisions for the purpose.

Acts of the Council, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States shall be enforceable. Enforcement shall be governed by the rules of civil procedure in force in the State in whose territory it is sought. The order for enforcement shall be attached to the decision without any further formality than the establishment of the authenticity of the decision by the national authority designated for that purpose by the government of each Member State and notified to the Commission and the Court of Justice of the European Union.

When these formalities have been completed, on application by the interested party, that party may proceed to enforcement in

accordance with national law by bringing the matter directly before the competent authority. Enforcement may be suspended only by decision of the Court. The courts of the country concerned shall have jurisdiction over complaints that enforcement has not been carried out in an appropriate manner [36].

It can be stated with full certainty that the provisions referred to above concern, first of all, the procedural and functional framework for the law-making activities of the countries of the European Union.

It is undeniable that the principles of legal regulation of law-making activity are also provided for in the national legislation of European countries. Thus, the Constitution of the Republic of Poland of April 2, 1997 contains Section III “Sources of Law” in parts one and two of Article 87, which states that the sources of generally binding law of the Republic of Poland are: the Constitution, laws, ratified international treaties, as well as regulations. The sources of generally binding law of the Republic of Poland in the territory of the bodies that established them are acts of local law.

Further, Articles 88–94 specify: the conditions for the entry into force of laws, regulations, as well as acts of local law; the principles and procedure for the publication of regulatory acts; the procedure for the ratification, denunciation and publication of international treaties; the grounds and procedure for the transfer of competence to an international organization or international body; the legal force of an international treaty; the place of a regulation in the system of regulatory acts; hierarchy of resolutions of the Council of Ministers, orders of the Chairman of the Council of Ministers and ministers in the system of regulatory legal acts; principles and procedure for adopting acts of local law [37].

The Basic Law of the Federal Republic of Germany of May 23, 1949 provides for Chapter VII “Legislation of the Federation”, which contains the following articles: 70 “Distribution of legislative powers between the Federation and the Länder”; 71 “Exclusive legislative competence of the Federation”; 72 “Concurrent legislative competence”; 73 “Areas of exclusive legislative competence of the Federation”; 74 “Areas of concurrent legislative competence”; 76 “Bills”; 77 “Legislative process – Conciliation Committee”; 78 “Procedure for adopting laws”; 79 “Amendments to the Basic Law”; 80 “Adoption of legal acts”; 80 a “Crisis situation”; 81 “State of legislative necessity”; 82 “Formulation – Publication – Entry into force” [38].

Analysis of the above provisions of the Constitution of the Republic of Poland of April 2, 1997 and the Basic Law of the Federal Republic of Germany of May 23, 1949 shows that they enshrine the normative, procedural, functional, competitive, hierarchical principles of legal regulation of law-making activity in these countries.

CONCLUSIONS

The provisions of this section are the basis for formulating the following conclusions:

1. Regarding the understanding of law-making activity, it is worth recognizing that there are different, sometimes opposing points of view on this problem, and this is certainly not a shortcoming of modern legal science, but rather indicates the diversity, scale and multi-vector nature of the concept of law-making.

2. The essence of law-making activity is planning the development and adoption (publication), development of projects, adoption (publication), record-keeping, and legal monitoring

of regulatory legal acts. The most optimal would be to study the essence of law-making activity by analyzing its principles.

3. The principles of legal regulation of law-making activity in Ukraine are the main (fundamental, main) provisions, ideas, rules of conduct set forth in the principles and norms of law, which is an independent legal institution that provides legal influence on social relations in order to regulate them in the interests of man, the state and society, as a result of which the needs of social development and the requirements of justice acquire a legal form, which is reflected in a certain regulatory legal act.

4. The principles of legal regulation of law-making activity in Ukraine include its: 1) foundations (main provisions, ideas); 2) fundamental rules of conduct; 3) the principles of law itself; 4) the essence, forms and purpose of implementation, etc. At the same time, the principles of legal regulation of law-making activity in Ukraine can be either directly enshrined in the principles and norms of law, coincide with their content, or logically follow from the general context, the content of a number of legal principles and norms and the spirit of the law of a particular country. The principles of legal regulation of law-making activity in Ukraine should be aimed at regulating social relations in order to organize them in the interests of man, society and the state. They should find their expression in a certain source of law (normative act, precedent, custom, etc.).

5. The Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, ratified by the Law of Ukraine "On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950" of July 17, 1997, with amendments made in accordance with the provisions of Protocols № 11, 14 and 15 with Protocols № 1, 4, 6, 7, 12, 13 and 16, entered into force for Ukraine on September 11, 1997; Consolidated versions of the Treaty on European

Union of February 7, 1992 and the Treaty on the Functioning of the European Union of March 25, 1957; The Constitution of the Republic of Poland of April 2, 1997 and the Basic Law of the Federal Republic of Germany of May 23, 1949 establish the following principles of legal regulation of law-making activity in European countries: institutional; normative; correlation (correlation of national and European legislation); procedural; functional; hierarchical; competitive.

SUMMARY. Legal regulation of law-making activity is an important component of the functioning of the modern legal system, since it is in the process of law-making that the normative principles of regulation and protection of social relations are formed, the directions of development of regulatory legal acts are determined, and the implementation of public, state and personal interests is ensured. The purpose of the study is to identify the concept and essence of law-making activity, to clarify and interpret the principles of legal regulation of law-making activity in Ukraine and Europe. The solution of the specified research goal determined the logic of presenting the material and formulating research tasks. According to which the understanding of law-making activity, the essence of law-making activity, a general understanding of the principles of legal regulation of law-making activity, the principles of legal regulation of law-making activity in Ukraine and the principles of legal regulation of law-making activity in European countries were worked out. The research methodology is based on a combination of philosophical approaches: cultural; anthropological; phenomenological; axiological (value); systemic, (systemic-structural and system-functional); activity; methodological principles: scientificity; historicism; comprehensiveness; objectivity; pluralism; general

scientific methods: dialectical; metaphysical; hermeneutic; historical; functional; synergistic; special methods: sociological; modeling; idealization; proper legal methods: historical-legal; comparative-legal; formal-legal. It is concluded that the principles of legal regulation of law-making activity in Ukraine include its: 1) foundations (main provisions, ideas); 2) fundamental rules of behavior; 3) the principles of law itself; 4) the essence, forms and purpose of implementation, etc. The principles of legal regulation of law-making activity in Europe also encompass the above-mentioned elements, in connection with which institutional, normative, correlational (correlation of national and European legislation), procedural, functional, hierarchical, and competitive principles are distinguished.

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