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LOCAL CONCRETIZATION OF LAW

The article studies concretization of law. The main attention is focused on local concretization of law. The paper gives definition of such concretization, studies its basic properties and features of the procedure. The author describes main types of concretization: organizational concretization of law, territorial concretization of law, departmental concretization of law. On the example of legal acts realization of these types of local concretization of law by law-making subjects was analyzed.

It was concluded that local concretization of law helps to regulate legal relations that are not regulated at state level and should be agreed at local level, to increase accuracy of legal regulation, to start the transition from abstract content of legal norms to more specific level through the limitation of concepts, which result is fixed in legal acts.

Key words: concretization of law, local concretization of law, organizational concretization of law, territorial concretization of law, departmental concretization of law, local normative-legal acts.

Statement of the problem. Researches of concretization of law through local normative-legal acts acquire new features in modern jurisprudence. It is associated primarily with recontextualization of nature of local normativity and reconsideration of problems concerning results of application of local normative-legal acts. Concretization of law in local legal regulation clearly demonstrates the tendency of law to self-sufficiency when norms created at the local level are supported and executed on the basis of corporate ethics, self-discipline or self-governmental principles.

We may affirm the appearance of theoretical need to form new approaches for understanding of concretization of law with the use of local normative-legal acts, i.e. local concretization of law. It should be noted, however, that local normative-legal acts are commonly studied at the level of specialized legal science and that stresses the necessity to develop general theoretical understanding of local acts.

Level of exploration. Concretization of law with the use of local normative-legal acts was considered in works of V. Formaniuk, O. Leist, K. Horobets, G. Shmelieva, Y. Tikhomirov.

The purpose of this article is to explore local concretization of law, to analyze problems arising from the lack of concretization on the local level, to formulate recommendations to overcome insufficient concretization of law by general norms and to resolve this dilemma by local regulations.

Presentation of the basic material. Local normative-legal acts belong to a certain type of concretization of law which regulate that legal relations that is not regulated at a state level and need specification at local level; local acts increase certainty of regulation accuracy, beget transition of abstract content of legal norms to a specific level through the process of concepts limitation, which result is fixed in legal acts¹.

The system of normative-legal acts is complex and branched. It includes a hierarchical system of legal documents, the top of which is the Constitution of Ukraine, which sets legal guidelines for the state. Legal acts – both normative and individual – being a "cell of normative-legal area"² constitute an integral mechanism of legal regulation, provide concretization of law in real social relations.

Legal acts may vary depending on position of a subject of perception and its scope as well as in connection with the embodiment of public and private interests. Local legal acts occupy special place in the structure of legal regulators that operate in a legal system. In fact, being one of the lowest hierarchical steps of legal documents, they contribute to the optimal concretization and balance between centralized and decentralized management.

Axiological characteristics of legal phenomena, as S. Aliexsieiev timely noted, aims to identify those properties in which focuses social and personal value of law. Thus, for normative-legal acts such properties are: compulsory character, formality, special nature of adoption and implementation, support by state coercion, etc. Meanwhile, local normative-legal acts have special characteristics in general system of

¹ Шмелева, Г.Г. (1998). *Конкретизация юридических норм в правовом регулировании*. Львів: Вища школа, 24.

² Тихомиров, Ю.А. (2007). *Управление на основе права*. Москва: Формула права, 39.

normative-legal acts. It is worth of noting that from philological standpoint a noun "locality" derived from the adjective "local", which, being Latin by origin, has two basic meanings:

- 1) limited to a certain place, such that is within certain bounds;
- 2) inherent to a certain place, to a particular area;

So, if to understand locality as a property for concretization of local normative-legal acts, it may be, in our opinion, territorial, organizational and departmental. Territorial locality is reflected in limited nature of a local normative-legal act defined by spatial bounds of a city, administrative unit and so on. Organizational locality is considered as limited action of a normative-legal act within a specific organization or enterprise. Departmental locality is characterized by a system of normative-legal acts obligatory within one vertical of executive bodies (e.g. departmental acts of the Ministry of Internal Affairs, Ministry of taxes and duties, etc.)¹.

Despite of the fact that locality as a property of local normative-legal acts determines their limited effect, it does not reduce social value of such acts. On the contrary, locality is such characteristic of normative-legal act which helps to declare its demand and, as a rule, stability. Firstly, locality provides narrow orientation of normative-legal act, and therefore its concretization.

In case of territorial locality, this concretization should be considered as situational, connected with features of a particular town, village, and administrative unit. In modern jurisprudence "situational" component is considered as a key characteristic of modern law, which focuses on the effectiveness of decision-making at casual level, which increases the effectiveness of regulation².

If we are talking about organizational locality of a normative-legal act, in this case concretization is expressed in the effect of this normative-legal act that will reflect specific orientation of an enterprise or organization, which adopted or approved that act. Here locality also appears in the context of values, as it enables to confirm professionalism and functional specificity of preparation and implementation of such act.

Departmental locality is characterized by its axiological specific because it allows using the system of prescriptions that is highly specialized in its content and requires professional training for providing of concretization. Localization of such norms within the vertical of executive power enables to unify the practice of local and regional authorities.

Apparently, locality as a characteristic of normative-legal acts determines their value in one more perspective, namely in terms of their effectiveness. In this context, the most illustrative is territorial locality; because at the level of local self-government is possible to resolve effectively those questions that practically may not be solved at national level. That is why concretization with use of local normative-legal acts in the legal system of Ukraine is closely linked with the development of local self-government.

Any legal system is productive only when all its components work and interact closely. In this sense, exactly the entire legal system in unity of all its components provides organizing and stabilizing influence on public life and concretizes public relations. Local norms of law, as a structural element of a legal system, play very significant role. The main impact of local norms of law at other forms of law and legal system as a whole may be reduced to two progressive factors: dynamism and advance of legislation.

Inherent characteristic of normative-legal acts is certain static character. Adopted normative-legal acts are in force until cancellation or change. Of course, if at the initial phase of adoption a normative-legal act reflects the trends of social development, after some time it no longer meet the needs of society. Thus, legal acts, if they are not promptly respond to the needs of contemporary reality, from an effective instrument of social development may become a hindrance and a deterrent for society. Concretization of legislation befalls occasionally, with the growth of contradictions between changing social relations and existing legal norms. This feature of a legal system led to the appearance of special set of tools such as analogy from codes and statutes and analogy of law, that contribute to its support. Therefore we mat not talk about the inherent dynamism of modern legislation, but such dynamism exists in local legal regulation.

Generally, dynamism of law in legal science is understood as a property that lies in dialectical unity of stability and variability of law and ensures its ability to respond quickly to changes and emergence of new social relations³. But the concept of dynamism is given here only in a temporal understanding, but

¹ Форманюк, В.В. (2013). *Локальність як ціннісна характеристика нормативно-правових актів*. Одеса: Фенікс, 102-104.

² Горобець, К.В. (2013). *Аксиосфера права: філософський и юридический дискурс*. Одеса: Фенікс, 73.

³ Христич, Е.В. (1997). *Динамичность советского права и восполнение пробелов в законодательстве*. Свердловск: Юрист, 5.

directivity of legal norms and its regulation occurs not only in time but also in space. Therefore, in order to concretize such relations more effectively, the peculiarities of their manifestation should be maximally taken into account. In this aspect, of course, local regulation is an important factor to ensure dynamism of law, as far as it is intended to provide dynamism of law in space, adapt it to regulation of relations within separate organizations.

As the experience of local regulation shows in the past decade it takes place without special permits. We analyze regulation that is called "outstripping", as originally it is made at the discretion of a collective, and then this experience gets approval of the competent state bodies that select necessary legal basis for it, taking appropriate normative-legal act. Outstripping regulation is begot by the needs of production, which for various reasons become apparent at separate enterprises. These enterprises have to look for problem solving at local level, seeking permission to certain innovations in the field of legal regulation. The result is either special norms-exemption, concretized for an enterprise in a centralized manner, or local norms, established by this enterprise, which after a period of verifiability, not only on this but on many other businesses become a prototype for national standards. L. Ginsburg was one of the first who drew attention to such cases¹.

Concretization of law through local norms elevates legal regulation to a new level, making it adequate to actual stage of social development and in this sense makes a constructive influence on it. Outstripping concretization serves as way to resolve contradictions in the development of a legal form. This concretization shows the need to change or to cancel legal norms that came into a conflict with the needs of life, with adoption of new norms, reflecting trends of social development. Concretization at local level shows flaws of legislation, acts as a form of criticism of existing legal acts. Local norms capable, therefore, act as a kind of barometer, showing the inadequacy of law to modern challenges.

Local concretization largely acts as a natural consequence of inevitable discreteness of legislation. It is a means for bringing the entire system of normative regulators into appropriateness with continuity of social development. Experience of local concretization, generalized and accepted by legislation, laid the foundation of centralized regulation. By this the transition from local to national concretization is made at a qualitatively new level, most appropriate to modern realities.

The implementation of local normative-legal acts is closely related to the subject of ensuring the effectiveness of legal system, because within the Roman legal family transiency of legal relations causes inefficiency of legislation². Therefore, the peculiarity of local concretization within a legal system may be a sharp increase in law-making, in order promptly to detect contradictions that accumulate between the dynamics of social development and stability of legislation, to eliminate them as soon as possible, and to reinforce prognostic role of legislation that should be focused on capturing of new trends in the needs of society at a particular historical stage and some "outstripping" of the moment.

Compared with the Western systems, Ukrainian legal system is very specific and Ukrainian law differs by large proportion of national-traditional, sacred element of legal regulation. In efforts to adjust domestic law to foreign samples it was deprived of important social identity. Probably, in order to intensify social mechanisms of reproduction of local law, great attention should be drawn to integration of the legal system with existing traditional, customary and sacred regulations: both at procedural and material-legal levels.

One of directions to reach balance of a legal system, to reach cultural and social completeness and harmony should be formation and implementation of complete, unconventional sources of legal system of Ukraine. In this regard, we note that any source of law in the mechanism of legal regulation performs inherent functions that, ultimately, determine its place among the sources. At present, the role of local concretization of law in regulation of intra-organizational relations is stipulated by its characteristic as an auxiliary controller. This is reflected, firstly, in fact that local acts may not be used independently from state regulators, as far as they do not provide completeness of regulation of intra-organizational relations. Secondly, their content is closely linked with norms of statutory law: local acts supplement, specify and develop provisions of normative legal acts³.

The close relationship between state and local acts and the need of their simultaneous, parallel application are the features of local concretization of law. Thus, a kind of succession of legal regulation occurs, when acts that occupy a lower position in the hierarchy of laws aimed not only to exercise primary

¹ Гинзбург, Л.Я.(1997). *Социалистическое трудовое правоотношение*. Москва: Юрид. литература, 120-121.

² Луць, Л.А. (2002). *Структура правової системи суспільства: загальнотеоретичні аспекти*. Київ: Право України, 7-9.

³ Халкина, Р.О. (1988). *Право как средство социального управления*. Москва: Наука, 57.

control, but also on concretization of legal provisions contained in the normative-legal acts adopted by state authorities.

V. Formaniuk analyzes the following three types of local concretization: organizational concretization, territorial concretization and departmental concretization¹.

Organizational concretization has the property of its norms to detail, to supplement general norms concerning the terms of certain economy on the basis of available features and specific, and in exceptional cases, to fill gaps in the centralized regulation. In other words, the majority of local norms belong to secondary and their content is stipulated by the content of general norms².

Organizational local acts occupy the lowest rung in the hierarchy of legal acts, which concretization may be divided to individual types for the following reasons. This concretization may be provided independently by management of the organization, legal norms may be adopted by joint rulemaking of management and collective within the social partnership (collective agreement), or may be exercised by management of the organization with the advice of elected body of the staff.

Local concretization of organizational-legal acts may be divided into one that concretize legal norms of current Ukrainian legislation and one that concretize legal norms not prescribed by law but elaborated by practice of local law-making.

An example of concretization of norms not prescribed by Ukrainian legislation is concretization of standards for legal clinics in Ukraine. The rules for legal clinics are fixed by the Ministry of Education and Science: "On approval of Model Regulations about legal clinic of higher educational institutions in Ukraine". But this edict approves only general provisions, a purpose, objectives and basic principles of activities. Therefore there is a need to concretize legal activity of legal clinics at the level of particular university.

So at the National University "Odesa Law Academy" activity of Legal Clinic of the University was concretized with the next acts: " The operating procedure of the Legal Clinic of the National University "Odessa Law Academy", Job Description for Head of the Legal Clinic of the National University "Odessa Law Academy", Job Description for laboratory assistant of the Legal Clinic of the National University "Odessa Law Academy"³. In these acts operational procedure, powers and responsibilities of students-clinicians, consultants, supervisors, lawyers, a head of the clinic were much more clearly defined. Also, participation of postgraduates in activity of legal clinic is regulated that allows setting tasks of theoretical, practical and pedagogical nature.

In case of organizational concretization the basic principle of subordination of legal sources must be followed: local acts must not contain legal norms which worsen legal status of employees compared with the general acts throughout the organization. There are three reasons for organizational local concretization, which are conducted according the opportunities provided by law:

- as a result of gaps in law;
- as a result of direct prescription of law;
- as a result of detailing of a general norm.

Concretization by corporate acts stipulated by presence of gaps in law is quite common. A striking example of such concretization is the requirement of Article 41 of the Law of Ukraine "On Business Associations"⁴ which action for a long time has caused confusions concerning approval of transactions that exceed the amount specified in a statute of a company by general meeting of shareholders. In this case approval of contracts may be considered as their endorsement, which takes place after the adoption. Therefore, at the moment of contracting for an amount that exceeds the amount specified in a statute, prior consent of general meeting or other body of a company is not required. And since general meeting shall be convened once a year, concretization of rights and obligations by normative-legal contracts may take place a year earlier than general meeting was held; of course that is a gap in legislation.

Concretization by corporate acts adopted as a result of direct legal prescription. As a rule, the law does not impose imperatives concerning regulation of any questions at a local level, and only provides this opportunity. So, the article 13 of the Law "On Joint Stock Companies" prescribes an opportunity to place provisions that do not contradict legislation and not mentioned in this article into a statute of a company;

¹ Форманюк, В.В. (2014). *Локальні нормативно-правові акти*. Херсон: Грінь, 33.

² Кондратьєв, Р.А. (2002). *Локальні норми і прогалини в праві*. Хмельницьк: Часопис, 17-21.

³ Ківалов, С.В., Оборотов, Ю.М., Пашковський, М.І., Лоджук, М.Т. (2014). *Юридична клініка. Збірка нормативно-правових актів з організації діяльності*. Одеса: Фенікс, 124.

⁴ *Закон про господарські товариства 1991* (Верховна рада України). *Відомості Верховної Ради України*, 32.

the article 29 of the Law prescribes an opportunity to fix other obligations of shareholders. But in the article 12 of this Law is stated that information about obligations of founders should be reflected in a statute of a company. So, the law may provide both optional and obligatory concretization of law.

Concretization by corporate acts stipulated by a need of detailing of a general norm. Thus, the article 55 of the Law "On Joint Stock Companies" states that statute or regulation on a supervisory board may provide a procedure for adoption of a decision by a supervisory board by means of absentee voting; the article 57 of this Law fixes additional grounds for termination of powers of a supervisory board. However, the article 59 of the Law does not disclose competence of executive body of a company, which administers its current activities. That is why these issues require concretization, so as the decision-making process of a collegial executive body. The abovementioned is also applied to activity of a supervisory board. But, of course, joint stock companies have the greatest need in regulation of convening and activity of a general meeting of shareholders. Although, the Law covers these issues more detailed in comparison with other organs of a company, still this is not enough.

Territorial local concretization of law details and concretizes legislative provisions, but a significant part of them make up acts of primary nature, taken on the issues of local community that may not be subject to national legal regulation¹. Territorial concretization of law is one of the foundations of modern local self-government, and therefore the interest of theorist of law and also specialists in constitutional law is obvious and natural. This concretization of law regulates social relations arising during activities of territorial communities, carried out by an authorized subject of local self-government, has an official character and binding force. The acts on concretization of law of local authorities have local nature and by legal force belong to subordinate legislation. Their scope is limited by political unit and range of subjects residing in its territory.

Thus, according to the Constitution, local governments exercise solving of local problems and issue acts in accordance with the procedure established by law; these acts are: regulations, instructions, and rules. But the peculiarities of publication of these acts were concretized, for example, para. 5, article 28 of Standing order of Kharkiv City Council, defines the following types of local acts:

- a) regulations as a normative-legal act which establishes structure and functions of a certain body or establishes forms and conditions of certain activities;
- b) an order as a normative-legal act which establishes a procedure of application for legislative or local acts, or determines forms and terms of certain activities;
- c) an instruction as normative-legal act which establishes a procedure for application of legislative or local acts or functions, rights and responsibilities of individual departments, officials of a city council;
- d) rules as normative-legal act which contains a coordinated combination of rules of behavior for officials, citizens and institutions in a particular field².

Territorial local concretization occupies a significant place in the system of legal acts of modern Ukraine, so long as identifies entire range of issues important in terms of real operation of local communities: starting with adoption of a statute of a territorial community and ending with organization of representative bodies of municipal authority.

Departmental local concretization is characterized by specific features; in some cases it is similar to organizational concretization of law, because is linked to a subject composition of a certain body as a legal entity. However, the specific of departmental concretization is expressed in the fact that its norms extend not to one body, but at their network, i.e. departmental local concretization extends the application of its law at all vertical of executive power. Most clearly departmental local concretization reveals itself in activity of the Ministry of Internal Affairs, Ministry of Finance, National Bank of Ukraine and others.

Thus, in accordance with paragraph 8 of Standing order "On the Ministry of Internal Affairs of Ukraine", MIA of Ukraine within its powers concretizes orders on the basis and for execution of legislative acts, organizes and supervises their implementation. This order also provides the right of Ukrainian MIA to issue joint acts along with other central and local executive bodies.

Legal literature emphasizes that departmental secondary legislation typically governs interdepartmental relations. However, some ministries, including MIA, in a strictly limited area are authorized to adopt acts of external action, which content essentially concretizes rights and freedoms of citizens. Thus, according to part 3, paragraph 8, of Standing order "On the Ministry of Internal Affairs of

¹ Білик, П.П. (2005). Територіальні громади як суб'єкти локального правового регулювання. *Вісник Одеського інституту внутрішніх справ*, 13-18.

² Регламент Харківської міської ради 2006 (Харківська міська рада). *Офіційний сайт верховної ради України*. <<http://www.city.kharkov.ua>> (2015, March, 15).

Ukraine" in cases provided by law, the decision of MIA is obligatory for central and local executive bodies, local authorities, enterprises, institutions, organizations and citizens.

In accordance with abovementioned, concretization activity of the Ministry of Internal Affairs of Ukraine in ensuring the realization of constitutional rights and freedoms may be carried out using normative-legal acts of next types. For example, the first group includes orders of MIA issued under and pursuant to implementation of the current legislation. They are aimed to provide general conditions and promote concretization of all or a specific group of constitutional rights and freedoms. For example, the order of the Ministry of Internal Affairs of Ukraine and the State Department of Ukraine for Execution of Punishments from 4 of November, 2003, № 1303/203 «On approval of the Instruction about implementation of administrative supervision for individuals released from prison»¹.

The second group consists of orders, which concretize the activities of certain bodies (departments) of MIA to protect rights and freedoms of citizens. For example, organization of work of the State Security Service units concerning implementation of measures for property and personal security by using technical means of protection is governed by relevant Instruction, approved by the Ministry of Internal Affairs of Ukraine in November, 2003, № 1429².

The third group consists of orders, which concretize issues of organization and realization of joint activities of MIA with other executive authorities to ensure rights and freedoms in the field of public order and public safety. This is, for example, the order of the Ministry of Justice of Ukraine, the Prosecutor General of Ukraine, the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the Supreme Court of Ukraine, State Tax Administration of Ukraine, State Department for Execution of Punishments from 29 of June, 1999, № 34/5/22/130/512/326 / 73 "On approval of Instruction on implementation of European conventions on criminal justice"³.

And the last group includes acts which concretize the activity of control direction of MIA. For example, orders of MIA of Ukraine from 31 August, 2006, № 894 initiated work of permanent mobile groups for monitoring of rights and freedoms of man and citizen in the work of MIA agencies in Ukraine.

Conclusions. In summary it should be noted that of course there are many unspecified points. First of all, concerning the very concept of local concretization of law, and also concerning its types: organizational, territorial and departmental concretization of law. The question about subjects which exercise local concretization of law remains insufficiently explored; also there is a need to pay attention to a place of local concretization within the legal system of Ukraine. The procedure of organizational and territorial concretization of law is still uncertain enough; the question of departmental concretization is generally avoided by most scientists. Therefore, this article is an attempt to actualize the question of local concretization of law, a try to give determination of the concept and to emphasize its main characteristics.

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¹ Інструкція про організація здійснення адміністративного нагляду за особами, звільненими з місць позбавлення волі 2003 (Міністерство внутрішніх справ України). Київ: Воля, 554-581.

² Інструкція із здійснення підрозділами державної служби охорони заходів майнової та особистої безпеки громадян з використанням технічних засобів охорони 2003 (Міністерство внутрішніх справ України).

Офіційний вісник України, 97.

³ Інструкція про порядок виконання європейських конвенцій з питань кримінального судочинства 1999 (Міністерство юстиції України). Офіційний вісник України, 85.