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LEGAL SUPPORT FOR THE RIGHT TO ENTREPRENEURIAL ACTIVITY IN UKRAINE ON THE PATH TO EUROPEAN INTEGRATION

Purpose. Analysis of the provisions of Ukrainian law, US and EU law, and the national legislation of EU countries, and justification of the directions and measures for improving Ukrainian legislation to safeguard the right to entrepreneurial activity.

Methodology. Using the system-structural method, the right to entrepreneurial activity was defined as a system and its components were identified. The use of formal-legal and formal-logical methods allowed to point out gaps and inconsistencies in the categorical apparatus of REA and to propose definitions of these categories. Using the comparative law method, discrepancies in the regulatory and legal field of economically developed countries and Ukraine were identified, which allowed indicating directions for improving Ukrainian legislation.

Findings. Gaps and discrepancies in the categorical apparatus of REA are identified. The inconsistency of legal norms is established. It is indicated that these limits the rights of entrepreneurs. The need to expand the disposability of the norms regulating the specified right is substantiated. The need to strengthen the imperativeness of the norms of REA is substantiated by comparing the norms of Ukrainian law, US and EU law, and national legislation of EU countries. The definition of individual main categories and measures to improve legal norms to ensure the REA are proposed.

Originality. It is indicated that the REA should be considered as a holistic system. The components of this system are indicated. It is noted that failure to grant rights under at least one of these components violates the integrity of the system.

Practical value. The proposed changes to legal norms, the definition of legal categories and directions for improving legal support will reduce the uncertainty of legislation and strengthen the protection of REA.

Keywords: *entrepreneurial activity, systematicity of entrepreneurial law, inconsistency of legal norms, uncertainty, dispositivity*

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Introduction. Business activity in Ukraine is characterized by high risks. Small and medium-sized entrepreneurs are especially vulnerable, as they do not have sufficient financial resources to compensate for risks and are often unable to provide themselves with high-quality legal support in the event of a violation of their rights. However, the greatest risks are inherent in the activities of small innovative enterprises and startups, which are not sufficiently regulated in the Legislation of Ukraine. A set of legal norms aimed at reliable protection of their right to entrepreneurial activity can reduce a certain part of these risks while creating favorable conditions for entrepreneurs. With sustainable and effective protection of their rights, entrepreneurs will be able to plan their activities for the future. This element is an important component of the competitiveness of European entrepreneurs, as well as ensuring proportionality of interference in their activities and avoiding its excessive administration. At the same time, the efficiency of the legal system in resolving emerging problems of entrepreneurship, the timely formation of regulatory and legal foundations of new types of entrepreneurial activity will provide Ukrainian entrepreneurs with an appropriate level of competitiveness in foreign markets. Also, competitiveness in the European Union market will be ensured by the adaptation of Ukrainian legislation to EU legislation, which leads to dynamic changes in the Ukrainian legal field.

The dynamism of the legal system, the multi-vector nature of citizens' rights in the field of entrepreneurial activity, various aspects of the implementation and protection of these rights require detailed elaboration of legal instruments that should contribute to the development of entrepreneurship. Taken together, these measures should lead to the formation of a balanced model of interaction between the state and entrepreneurship, in which national law ensures not the dominance of institutions, but the coordination of the interests of all parties to these legal relations. Achieving a balance of interests requires improving the instruments of legal influence. At the same time, the increase in the number of regulatory and legal acts that regulate entrepreneurship and the complication of administrative procedures negatively affect the provision of citizens' right to entrepreneurial activity. This, in particular, increases the risks of abuse of power. Therefore, it is relevant to compare the legislation of countries with developed economies and

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Ukraine, identify discrepancies in them and establish the presence of obstacles to the legal provision of the right to entrepreneurial activity in Ukraine.

Literature review. The specialized literature points to the insufficient legislative support for the right to entrepreneurial activity, the presence of gaps in the legal field and even contradictions in the interpretation of the main categories. Thus, in the article by Guliyev, et al. [1], different interpretations of the concept of "entrepreneurial activity" are investigated. In the scientific community, there are also different approaches to the interpretation of the category "legal support for the right to entrepreneurial activity". In particular, in the article by Tolstykh and Nikolenko [2] it is indicated that this is "a set of legal means, methods and forms", but the category "legal form" is not inherent in the Legislation of Ukraine. The norm "organizational and legal form", which, in particular, is present in the title of the Law of Ukraine No. 4196-IX [3]. Often, scientific works use not the category "right to entrepreneurial activity" but the category "right of business entities" [2]. In the article by Koliesnik [4] it is indicated that since "legal support" is a continuous activity of law-making subjects regarding the formalization, guaranteeing, protection and defense of citizens' rights, in the conditions of the abolition of the Economic Code of Ukraine, administrative law becomes a complex mechanism for ensuring rights, in particular, in the sphere of entrepreneurial activity while simultaneously maintaining a balance of interests of the state and subjects of entrepreneurial activity. The thesis about the "complexity" of instruments and mechanisms of the law on entrepreneurial activity, which is often found in scientific works, is mainly declarative in nature in the presence of gaps, contradictory norms and fragmentation of the Legislation of Ukraine in this area.

Scientists note that the abolition of the Economic Code of Ukraine is a sign of the transformation of the legal regulation of entrepreneurial activity and the acceleration of adaptation to the acquis communautaire of the EU [5]. But significant changes in the legal field increase the influence of the factor of instability of the Legislation on entrepreneurial activity. The instability of the Legislation, changes in the procedures for registration, reorganization, and regulation of the specified activity, leads to an increase in the number of appeals to the Supreme Court to clarify various aspects of the law on entrepreneurial activity [6]. Therefore, according to Holovach [6], there is a need to improve the legal support of entrepreneurship with the priority role of the Civil Code of Ukraine (CCU) [7]. The article by Maziy [5] indicates that this is hindered by the unclear interpretation of legal categories, the presence of facts of non-compliance with the principle of legal certainty, and the lack of a clear distinction between different branches of law in this area. It is also advisable to propose the introduction of an adaptation period in the event of significant changes in the regulatory and legal field [5].

Scientists study the principles of ensuring the right to entrepreneurial activity and obstacles to the adaptation of the Ukrainian legal field to EU legislation regarding compliance with these principles [8]. However, the detailed description of the components of this right is often overlooked by scientists. Some of these components are not explicitly mentioned, and sometimes even contradictory, in scientific works. Thus, in the article by Nenko [8], the possibility of strict regulation by the Legislation of organizational forms of activity, which is a restriction of the rights of entrepreneurs, is not excluded. At the same time, it is indicated that the boundaries of administrative and legal regulation of entrepreneurship should be determined exclusively by the tasks of protecting the rights and interests of other persons [8].

Scientists also often identify the categories of "principle" and "law", for example, treating the free hiring of employees not as a right, but as a principle [9], which raises certain doubts and therefore requires research.

A significant number of scientists prove that the most vulnerable types of entrepreneurship are medium-sized and small businesses and individual entrepreneurs (IEOs) [9]. That is why they are given attention in the presented article.

Investigating the legal support of small businesses in developed countries, Lysenko, et al. [10] point to its current direction – the regulation of problems of new types of such business, in particular, startups. Although in developed economies, startups provide a significant part of the gross national product, Lysenko, et al. [10] indicate that the legislation of Ukraine does not even have a categorical apparatus for this type of entrepreneurship and the legal regulation of startups is not sufficiently ensured. Using the example of startups, it is indicated that for innovative or transformed economic types of entrepreneurship, even controversial issues of their functioning are not legally regulated [10]. This confirms the insufficient efficiency of improving the Legislation of Ukraine in this direction.

In the study of the methodological foundations of administrative and legal support of entrepreneurial activity, scientists indicate that the rights of entrepreneurs are far from being fully protected [8]. This is substantiated by the lack of balance between the interests of entrepreneurs and the tasks of ensuring social necessity, which leads to a narrowing of the opportunities for the development of entrepreneurship [11]. As a significant reason for this, the inequality of the parties to legal relations in the administration of the specified activity is indicated as well as the fact that this leads to a complication of the system of social relations in this direction [11].

Given the wide range of administrative law instruments for administrative, i.e., administrative-procedural proceedings, and for administrative-delict, i.e., control and supervisory proceedings regarding entrepreneurial activity [12], it should be noted that this issue is also regulated by other branches of law: constitutional, criminal, etc. Methodological studies of constitutional law as an instrument for ensuring guarantees for entrepreneurs [13] indicate that this allows one to determine the directions of legislative improvement of the right to entrepreneurial activity. The article by Gurzhiy [13] also notes that in the process of establishing legal norms in this area, the laws of economics must be taken into account, where legal overregulation can lead to negative consequences [13].

In the article by Salman, et al. [14] while studying the constitutional foundations of the right of entrepreneurs, this right is considered as a category of "freedom of entrepreneurial activity". It is also indicated that the conditions of war reduce the level of imperativeness of

the constitutional guarantees of this freedom. A feature of the aforementioned freedom is the possibility of choosing and implementing entrepreneurial activity, which in this study is interpreted as one of the components of the right of entrepreneurs. It is also indicated that this freedom leads to the formation of mutual obligations of the individual and the state, but it is not indicated that the aforementioned obligations do not indicate the equality of the aforementioned parties to the legal relationship. This requires a distinction between the categories of freedom of entrepreneurial activity and the right to it. In scientific works, the right to entrepreneurial activity is often considered in the context of human rights. Thus, in the article by Ustymenko, et al. [15] it is indicated that according to the checklist of the Danish Institute for Human Rights, Ukraine has fully implemented the UN Guiding Principles on Business and Human Rights. Noting the importance for Ukraine to adapt to EU norms, it is indicated that EU commissioners, when deciding on the issue of Ukraine's accession to the European Union, will also take into account the level of harmonization of Ukrainian and international law. However, it is not indicated that the level of adaptation of Ukrainian law to European legislation is still insufficient and the need to use the experience of national legislation of EU countries is not mentioned.

A review of the relevant literature allowed identifying contradictions and gaps in ensuring the right to entrepreneurial activity in Ukraine, which substantiates the choice of the direction of research to improve this provision and the relevance of the presented article.

The purpose of the article is to indicate directions and measures for improving the laws of Ukraine regarding ensuring the right to entrepreneurial activity while studying the norms of Ukrainian law, US and EU law, national legislation of EU countries.

The tasks set are to substantiate the determination of the right to entrepreneurial activity as a holistic system and indicate its components; to provide proposals for improving the legal norms ensuring the right to entrepreneurial activity; to substantiate the expansion of the discretion of legal norms regarding the right to entrepreneurial activity.

Methods. The study required the use of general methods of scientific knowledge and formal-legal methods. Thus, the system-structural method, which refers to general methods of scientific knowledge, was used to determine the right to entrepreneurial activity as a system and identify the components of this system. But the main method of research is the formal-legal method with the inclusion of comparative-legal and formal-logical methods. The use of formal-legal and formal-logical methods allowed us not only to point out the inconsistencies of the main categories, the presence of gaps in the categorical apparatus of the right to entrepreneurial activity, but also to propose definitions of these categories. The comparative-legal method revealed discrepancies in the regulatory and legal field of economically developed countries and Ukraine, which allowed to indicate directions for improving Ukrainian legislation.

Results. Entrepreneurial activity, in accordance with the Law of Ukraine No. 698-XII "On Entrepreneurship" [16], is an economic activity carried out by individuals or legal entities at their own discretion and under their own tort liability for obligations. This activity must be carried out within the limits stipulated by the norms of the Laws of Ukraine and be aimed at achieving economic and social goals, in particular, at obtaining profit or providing jobs. This is especially important in conditions of martial law [17]. Thus, individuals and legal entities-entrepreneurs can be defined as subjects of legal relations in the state economic and social system, a component of which is entrepreneurial activity.

The characteristics of entrepreneurial activity are: high risks; their own responsibility for production, financial, social decisions and their consequences; occupation of a specific niche in the general state economic and social structure using one's own abilities and resources and the most flexible response to changes in consumer needs.

The legal norm "the right to entrepreneurial activity" was introduced into the national legal field by the Constitution of Ukraine [18], Article 42 of which states that "everyone has the right to entrepreneurial activity". Article 13 of the Constitution of Ukraine states that the state ensures the protection of the rights of all business entities.

The right to entrepreneurial activity should be ensured by the use of administrative and legal forms of support for entrepreneurship through legal implementation and enforcement of the norms of laws. Legal implementation indicates the possibility of full implementation of the norms of laws in practical entrepreneurial activity. Thus, legal implementation confirms the need for the imperative rather than declarative nature of legal norms. Legal enforcement indicates the possibility of full use of legal norms by institutional structures and their representatives. That is, legal enforcement ensures the implementation of the principles of justice and the rule of law.

The effectiveness of legal implementation and enforcement is ensured by the consistency of the norms of laws, the absence of gaps and outdated norms in the legislation. The presence of outdated norms can not only complicate legal proceedings and entrepreneurial practice, but also narrow the right to entrepreneurial activity. An example of this is the second paragraph of Article 155 of the Code of Ukraine on Administrative Offenses [19] regarding the prohibition of "selling goods from warehouses, bases, back rooms... concealing goods from buyers". Concealing goods from buyers in conditions of market saturation reduces turnover indicators, leading to a lack of profit. The prohibition of "selling goods from warehouses" limits wholesale sales, stops the possibility of getting rid of product residues. Formal enforcement of this article would actually make the activities of a significant number of entrepreneurs impossible.

An example of the presence of outdated norms on the regulation of entrepreneurial activity is also Article 155-2 of the Code of Administrative Offenses [19] "exceeding established prices and tariffs"; Article 156-1 of the Code of Administrative Offenses [19] on the refusal to provide consumers with information on the rules for the safe use of goods, preventing consumers from checking their quality and weight; Article 163-15 of the Code of Administrative Offenses [19] on not providing buyers with the opportunity to pay by electronic means of payment. Such actions of modern entrepreneurs can lead to a re-

fusal to purchase from them, which will result in bankruptcy, therefore the formal prohibition of these actions is groundless. Also, price regulation is not tolerated by the conditions of a market economy and, as it is known, such regulation can lead to the disappearance of goods from legal sale. Regulation of pricing policy should be carried out not by "setting prices" but by other legal methods. For example, by strengthening the imperativeness of antitrust legislation, limiting the profit rate, etc.

The national experience of EU countries in ensuring the rights of entrepreneurs is also useful for Ukraine in this regard. Thus, under French law, in the event of legislative approval of legal norms that will lead to a reduction in profits from a business project that is under implementation or create unforeseen circumstances in contractual relations, entrepreneurs are exempt from liability. That is, for example, in the case of an increase in taxes or customs tariffs, an entrepreneur must increase the prices of his goods or services. A ban on raising prices will lead to the termination of this entrepreneur's activities. Therefore, following the example of France, exceeding prices due to state actions should not lead to punishment of entrepreneurs, but, on the contrary, legally exempt them from liability for it.

In different branches of law, there are significant differences in the interpretation of the main categories of entrepreneurial activity. Thus, differences in the interpretation of the activities of individuals in tax and civil legislation, regarding their status, rights and responsibilities lead to significant legal conflicts in judicial practice. In particular, under Article 52 of the Civil Code [7] an individual entrepreneur is liable for obligations with all his property. Under the Family Code, this may violate the rights of another family member. In accordance with the Tax Code [20], a citizen's personal financial resources and financial resources received from entrepreneurial activity under a simplified taxation system are separated. That is, under the Tax Code [20] an individual entrepreneur is liable for obligations not with all his property, but only with that acquired in the process of entrepreneurship.

Such a discrepancy between the norms gives rise to legal conflicts even in separate legal branches. For example, under the Tax Code [20] spending money from business accounts (IBAN) for personal needs or replenishing IBAN accounts with personal cash may result in additional taxes. This contradicts the Resolutions of the Supreme Court (in particular, in case No. 306/2004/15-ts [21]), which state that an individual and an individual entrepreneur are an indivisible subject of public relations, but legal documents formalizing obligations can be drawn up for both an individual and an individual entrepreneur. This not only contradicts the above-mentioned provisions of the Tax Code, but also complicates proving the legal liability of an individual entrepreneur.

The use of different legal categories in the Legislation of Ukraine, which introduces uncertainty into law enforcement, also leads to conflicts. For example: an individual entrepreneur (Article 165-4 of the Code of Administrative Offenses [19]); a citizen "engaged in entrepreneurial activity" (Article 155 of the Code of Administrative Offenses [19]) or a citizen – a subject of the specified activity (Article 166-17 of the Code of Administrative Offenses [19]), etc. Different definitions of the above categories (individual entrepreneur and "citizen engaged in entrepreneurial activity") are found even in one article of the Code of Administrative Offenses (Article 156-1 [19]).

Different approaches of the Code of Administrative Offenses [19] and the Code of Civil Procedure in the legal interpretation of an individual and a citizen with administrative and economic functions lead to problems not only in law enforcement but also in determining legal liability.

Legal support for the right to entrepreneurial activity in Ukrainian legislation is divided, in particular, due to the established approaches of administrative law, into administrative, i.e., administrative-procedural proceedings and administrative-delict, i.e., control and supervisory proceedings, which can also introduce uncertainty into law enforcement.

The scientific category of "legal support" for the right to entrepreneurial activity should be closely related to the category of protection of the right to this activity. This is due to the fact that legal support consists not only in guaranteeing this right [22], norming regulatory actions regarding it, but also, from the point of view of economic entities, in protecting their rights. Although Article 55 of the Constitution of Ukraine [18] guarantees the right to apply to court to protect one's rights, Article 42 [18] declares the protection of competition in entrepreneurial activity, the protection of consumer rights, and not the protection of the right to entrepreneurial activity [23]. In scientific works, the concept of "protection of rights" is interpreted both as a set of legal norms that should formalize obligations and the procedure for their implementation by representatives of institutional structures regarding the protection of the rights of economic entities, and as a set of legal norms aimed at protecting the implementation of this right, that is, its inviolability and preventing its violation [24].

This indicates the need to normalize the category of "ensuring the right to entrepreneurial activity" by state institutions as a permanent, continuous activity of government bodies represented by its officials and employees, which is carried out in accordance with their clearly defined functional responsibilities to create a favorable environment for citizens to exercise their right to entrepreneurial activity.

The specified uncertainty not only of legal norms but also of the main categories of the right to entrepreneurial activity necessitates the expansion of the dispositivity of the specified right. Dispositivity provides the possibility of specifying an indefinite rule of law using the tool of self-regulation.

The right to entrepreneurial activity, given the declared path of Ukraine to the EU, goes far beyond its implementation and unhindered implementation of administrative and procedural aspects, in particular, its registration and official formalities. It is proposed to consider the specified right as a system, which is substantiated by the presence of the properties of the system: integrity, inherence, emergence.

This system should include such components as: the right to invest in entrepreneurial activity; not to be hindered by the norms of legislation in acquiring the competitiveness of national entrepreneurship in foreign markets; free choice of the organizational and legal form of

entrepreneurial activity, the scope of subjective rights and obligations assumed; freedom of contractual relations; freedom of pricing; freedom of competition on the principles determined by law; choice of the form and method of sale of goods/services; free disposal of the results of entrepreneurial activity; to avoid limiting the possibilities of dynamic response to challenges; limitation of unlawful influence by the authorities in the person of its officials and employees; impossibility of creating obstacles to entrepreneurial activity, avoiding unlawful imposition of obligations on entrepreneurs or unlawful holding them accountable. All these rights are a single complex, which as a whole ensures the right to entrepreneurial activity. The removal of any of its components from this complex is a restriction of the right of entrepreneurs.

The thesis about the right of entrepreneurs to avoid restrictions on the ability to respond dynamically to challenges is confirmed by the data of the Judicial and Legal Newspaper [25] presented in Fig. 1, regarding the change in the number of individual entrepreneurs in Ukraine in January of 2021–2026. The specified data indicate that the period of a certain stabilization of the number of individual entrepreneurs before the start of large-scale hostilities, after a sudden change in this indicator in 2022–2023, having responded to fundamental changes in the economic and social situation, stabilized again but at a different level. Attempts by regulators to influence the ability to dynamically respond to challenges, for example by restricting prices, forms and methods of sales, etc., will create significant additional risks for business activities.

In the above list of components of ensuring the right to entrepreneurial activity, obstacles can be structured into subjective (regarding the actions of individual representatives of institutional structures or entrepreneurs themselves) and objective, caused by unregulated legislative relations of the entrepreneur with the state and its structures. This is the main direction in the implementation of the first principle defined in The Small Business Act for Europe [26] regarding the formation of a favorable environment for small businesses. The use of EU practice regarding special attention to the protection of the rights of small businesses, as the most vulnerable in legal relations between the state and the entrepreneur. Thus, the Small Business Act [26] regulates the need to reduce the regulatory burden for small businesses, use the principle of "think small first", provide opportunities for using the single market of the European Union, adapt legal instruments to the needs of small and medium-sized businesses, etc.

The dynamics of changes in entrepreneurial activity also determines the need for prompt improvement of legislation in this area.

This is confirmed by the data of YC Market [27], presented in Fig. 2. The indicated data demonstrate not only significant fluctuations in the balance of the number of registered individual entrepreneurs and the number of individual entrepreneurs who have ceased their activities, but also the presence of periods when the balance takes on negative values. Negative values of the balance are due to a combination of reasons, in particular, due to the insufficient level of legal support for the right to entrepreneurial activity. In particular, the continuity of this activity is complicated or even made impossible by the constant change of technical and other regulations, reporting forms, tariff, tax, customs norms, variability of the level of access to state resources and budget financing.

This allows indicating that legislative actions regarding the "legal support of the right to entrepreneurial activity" should be aimed at the continuous and unhindered implementation of citizens' rights in the legal field through the prompt improvement of relevant legal provisions, procedures and norms of institutional actions. In particular, norms and procedures that do not provide citizens with protection from economic or social risks or complicate the activities of entrepreneurs should be excluded from the legal field with legal support. This applies, for example, to discrepancies in the interpretation of permitting and regulatory procedures available in various legal norms. In particular, the State Regulatory Service, departments of ministries, and local government structures are involved in licensing entrepreneurial activity, which leads to legal conflicts of parallel subordination. Regulatory actions of institutional structures often have signs of violation of the principle of proportionality of interference in entrepreneurial activity and excessive administration. An example can be Chapter 17

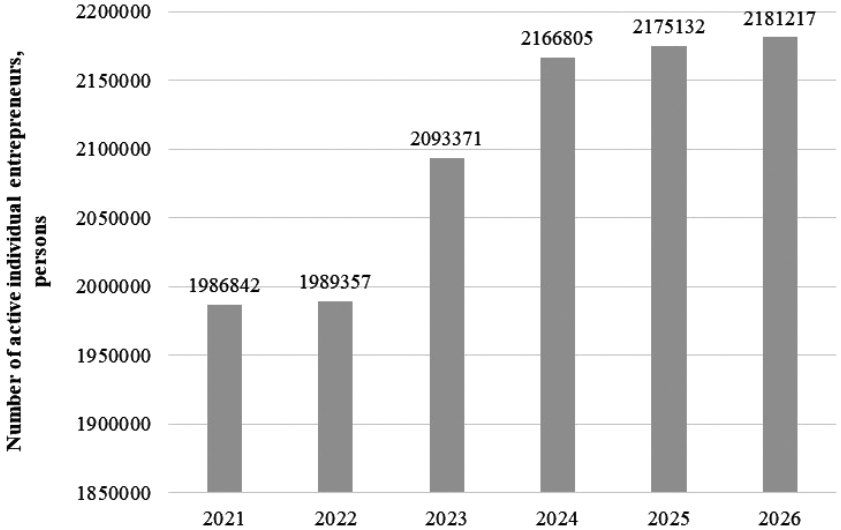

Fig. 1. Dynamics of the number of operating individual entrepreneurs in January 2021–2026, people

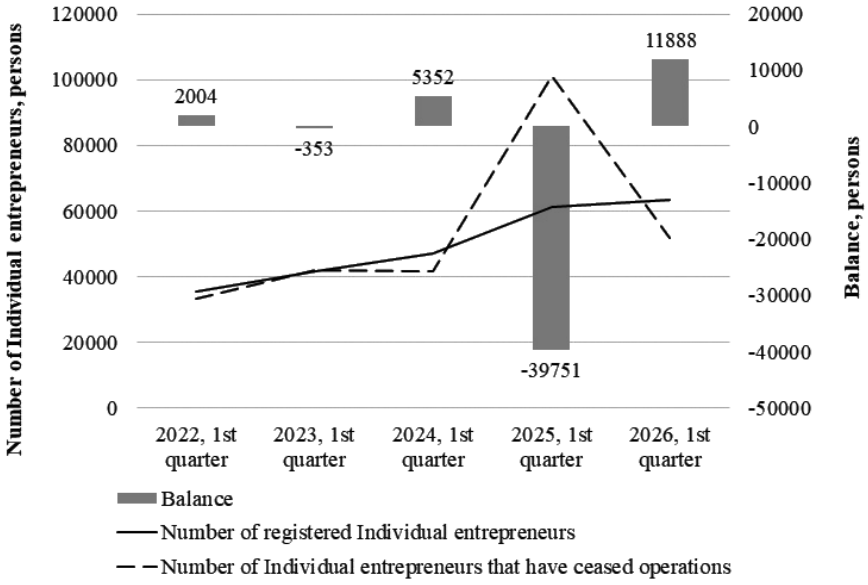

Fig. 2. Registration and termination of activities of individual entrepreneurs, individuals

of the Criminal Procedure Code of Ukraine (CPC of Ukraine) [28] which does not specify the maximum period of seizure of property, which even if the suspected entrepreneur is not proven guilty for not suspending his/her obligations on loans, payments to suppliers, etc., may lead to his/her bankruptcy. Differences in the interpretation of permitting and regulatory procedures may also lead to violations of the rights of entrepreneurs by representatives of institutional structures.

The fragmentary nature of that part of the Ukrainian Legislation that is aimed at legal support for entrepreneurial activity must also be overcome. This is especially important in view of the adaptation of the Ukrainian regulatory and legal field to the EU acquis communautaire. Given the importance of this process, it is worth pointing out such a direction of legal regulation of entrepreneurship in the EU as deregulation. It is also important to direct control primarily to the early prevention of violations of entrepreneurial norms, rather than to record violations post-factum, with the appropriate use of punitive procedures.

In this regard, the experience of European countries is useful for Ukraine. It is also appropriate to recall the experience of the United States in the period after the end of World War II in providing loans to veterans with an interest-free first tranche to conduct their own business. Such attention of US legislators to small business contributed to the fact that in terms of its share in the national income (44 % and another 4 % added by startups) [29] this business does not lag behind large business.

The above also allows for the introduction of horizontal lending to small businesses, thereby solving the problem of lack of finance and expensive bank loans, which is typical for Ukrainian small businesses. This problem, in particular, is due to the lack of attention of Ukrainian legislators to the legal regulation of modern types of lending. The above also indicates the importance of ensuring the above-mentioned right to invest as a component of the general right to entrepreneurial activity.

The experience of the EU and the USA also indicates the need to improve the legislation on the protection of the rights of innovative entrepreneurship, in particular in the organizational and legal form of startups. To do this, first of all, it is necessary to strengthen the imperative of protecting intellectual property, providing the possibility of flexible and rapid change of the organizational and legal form of these enterprises. The latter proposal is important primarily for startups, since their activities are dynamic, in particular in the transition from the research stage to the production stage. This necessitates the need to change the organizational and legal form of an individual entrepreneur to the organizational and legal form of a limited liability company or a controlled foreign company. Accordingly, for innovative enterprises and individual entrepreneurs, this requires a reduction in the cost of administrative procedures.

Unlike Ukraine, the right to this is confirmed by the laws of France, Germany and some other EU countries. German legislation also lists the factors that innovative enterprises must meet, in particular, to have been operating for less than seven years, to have signs of innovation, etc. The list of these signs is given in the Guidelines of the Federal Ministry of Economics and Energy of Germany. Changes to it can be promptly made by an independent expert registered in the relevant state register.

In Ukraine, this list is covered by Article 420 of the Civil Code of Ukraine [7], but Article 420 bypasses important areas of innovative activity. For example, technological processes, new materials (in particular, nanomaterials), etc. At the same time, when presented in Article 420, this list has a complete, final legal form, that is, it does not allow for changes. This can be improved by adding "and others" at the end of Article 420.

The right to facilitate the entry of startups' products/services into foreign markets also requires attention. In the legal sphere, the above allows reconsidering the comparison of the national law of the EU countries and Ukraine. If the settlement of contradictions between Ukrainian and pan-European legislation requires the adaptation of Ukrainian law, then the differences in the national legal norms of the EU countries and Ukraine can be characterized as competition. Competition between national legislations in academic circles is mainly

considered as a basis for giving priority to the legislation of one or another country (the so-called "forum shopping"). This category is also used to refer to differences in the legal norms of the communities of countries and individual member states of these communities [30]. Therefore, the expansion of this category to the legislation of the EU countries and Ukraine in the field of entrepreneurs' rights corresponds to the general trends of world law. In particular, this concerns the effectiveness and dynamism of changes in legal norms that support the innovative activities of small enterprises, reduce or compensate for risks for them. This is important because, for example, the risks are significant for startups.

The study of the legal support of the right to entrepreneurial activity has established significant differences in the legislation of countries with developed economies and Ukraine, and not always in favor of the specified countries. Thus, in the USA there is no single, orderly administrative-delict system of legislation in this area of law. The problem is exacerbated by the presence of legislation in individual states, which differ significantly from each other. Unlike the USA, Ukraine has a consolidated, orderly set of legal norms regarding entrepreneurial activity – the Code of Administrative Offenses [19]. The fragmentation of US legislation is compensated by the imperative nature of legal norms and the level of responsibility of offenders.

The German Administrative Offenses Act (Gesetz über Ordnungswidrigkeiten, 1968) [31] regulates part of the legal relations related to entrepreneurial activity. The regulation of the specified legal relations, for example, regarding consumer rights, is carried out according to the norms of the German Civil Code, the Criminal Code, the Insolvency Code and laws regulating competition, etc. Ukrainian legislation provides for significantly less liability for entrepreneurs than the German legislation. For example, illegal actions for bankruptcy in Germany entail criminal liability, imprisonment for a term of up to five years or fines. In Ukraine, such actions are subject to administrative liability. Violators of bankruptcy rules in Ukraine under Article 166-16 of the Code of Administrative Offenses [19] face a fine of 500 to 1,000 tax-free minimums.

Unlike Germany, in France, administrative tort law regarding the regulation of entrepreneurial activity is separated from criminal law. Public relations in this area are regulated by the French Commercial Code of 09/15/1807 as amended on 10/15/2022. In France (and in the EU as a whole), the circle of persons liable for violations in the field of entrepreneurial activity has been significantly expanded. For example, this circle includes individuals who are representatives of legal entities. For comparison, in France, offenses during bankruptcy are punishable by imprisonment for five years and a fine of 75 thousand euros. The circle of persons liable for violations in the field of entrepreneurial activity in Ukraine is limited by the norms of Chapter 12 of the Special Part of Section II of the Code of Administrative Offenses [19]. These are: those who carry out the specified activity as founders of a business and its participants; legal and natural persons registered as entrepreneurs; officials or employees who carry out entrepreneurial activities; officials involved in regulatory or supervisory activities regarding entrepreneurial structures.

The right to entrepreneurial activity in the EU is regulated by the Charter of Fundamental Rights of the EU and the Treaty on the Functioning of the EU, which regulate the existence of the single market of the European Union. The main difference with Ukraine is the significant bureaucratization of Ukrainian entrepreneurial activity. There are also other differences. Thus, the EU is characterized by a significant level of digitalization of administrative procedures. For example, registering a small business takes from several hours to three days. Unlike Ukraine, where there are significant and dynamic changes in the legal field, EU legislation is more established in nature, in particular, regarding uniform licensing rules. In Ukraine, a clear division of entrepreneurs into individual entrepreneurs and legal entities is regulated. This division in the EU is much less pronounced, which, for example, contributes to a change in the organizational and legal forms of startups. There is also almost no difference in the rights of small firms and freelancers, and activities in new areas of entrepreneurship are regulated more quickly. But the imperativeness of EU legal norms is much higher than in Ukrainian legislation.

There are also differences between the EU and Ukraine in the regulation of the right of foreigners to engage in entrepreneurial activity. With a broad permitting procedure regarding the right of foreigners to work in EU countries, in Ukraine, foreigners must have a tax identification number and obtain legal status of residence in Ukraine to register a business, and a permit to manage an LLC. Foreigners are also limited in the right to own agricultural land.

A problem in conducting entrepreneurial activity in Ukraine, unlike in EU countries, is also the inequality of the parties to legal relations – entrepreneurs on the one hand and representatives of regulatory, controlling, tax and other institutional structure on the other hand. These representatives are endowed with significant power over business entities. They can use these powers as a lever of influence, which causes inequality.

Therefore, the regulatory and legal field should clearly specify the limits and procedures of legal discretion for the specified structures and their representatives. Currently, the powers of these structures and their representatives have become almost unlimited. The use of the powers granted to them by representatives of institutional structures in a legal and even illegal manner may result in the shadowing of entrepreneurial activity, which in conditions of crisis and external aggression increases economic and social threats to the country.

Also, in judicial practice, until recently, it was common to apply measures to entrepreneurial structures in case of violation of current legislation by their counterparties. An example is the decision of the courts of first instance to enter an entrepreneur into the register of risky payers in case of risky transactions with his/her counterparties. The aforementioned decision in case No. 140/11033/20 was overturned by the Resolution of the Supreme Court of 1.12.2021 [32]. The use of such decisions by courts of first instance should be limited by the norms of Article 228 of the Civil Code of Ukraine [7].

It is also necessary to pay attention to the increase in cases of individual entrepreneurs using tax evasion schemes during the period 2025–2026. This is evidenced

by the increase in the number of cases submitted to judicial authorities – 71.8 thousand in 2025 and 62.6 thousand cases as of March 2025 [33]. This requires strengthening the imperativeness of the laws of Ukraine both to tax evaders and to representatives of the Tax Service regarding the illegality of determining the grounds for paying taxes. This also indicates the significant dynamism of legal problems related to entrepreneurial activity.

In order to improve the legislation on the right to entrepreneurial activity, first of all, the issues should be regulated of the procedure and grounds for appeals by business entities in case of violation of their rights and legitimate interests as a result of decisions, actions or inaction of government representatives. To this end, the legal norms should define the limits, grounds and methods of interference in entrepreneurial activity. Therefore, in order to strengthen the protection of the rights of entrepreneurs from violations by institutional structures, it is proposed to supplement Article 166-21 of the Code of Administrative Offenses [19] with the following points concerning the prohibition:

- imposing obligations on entrepreneurs beyond the norms of the current Laws of Ukraine;
- interfering in entrepreneurial activity beyond the norms of the current Laws of Ukraine;
- introducing restrictions on entrepreneurial activity beyond the competence of state supervision (control) structures.

It is proposed to strengthen the responsibility of representatives of institutional structures for violating the rights of entrepreneurs by supplementing Article 166-3 of the Code of Administrative Offenses [19] with "imposition of a fine in the amount of fifty to one hundred non-taxable minimum incomes of citizens and a ban on holding positions in state power and management bodies for a period of one year". This will increase the imperativeness of the specified legal norm.

The following amendments to legal norms are also proposed:

- to Article 27 of the Code of Administrative Offenses [19] "A fine is a monetary penalty imposed on citizens, individual entrepreneurs..." and further in the text. If there are differences between citizens and individual entrepreneurs in the above-mentioned areas of law, such an addition will eliminate legal uncertainty in this matter;
- to Article 4 of the Law of Ukraine No. 1160-IV [34] as amended on 31.10.2025, should be added "The principles of state regulatory policy are: ... continuous and unhindered provision of the right of citizens to engage in entrepreneurial activity". This will not only confirm the priority direction of the state's regulatory activity but will also expand the dispositive nature of legal norms regarding the right to engage in entrepreneurial activity;
- to Article 5 of the Law of Ukraine No. 1160-IV [34] should be added "avoidance of double subordination of business entities to various regulatory structures". This will increase the legal certainty of regulatory and control measures of institutional structures;
- to Part 1 of Article 2 of the Law of Ukraine No. 4196-IX [3] should be added "Entrepreneurship is an economic activity that is carried out independently with the aim of achieving economic and social results, obtaining profit or employment of the population, with its own tort liability for its obligations in the event of bankruptcy". This will allow expanding the dispositivity of legal norms regarding the right to entrepreneurial activity, in particular, in the field of civil and administrative law.

Conclusions. Based on a comparison of the norms of Ukrainian law, US and EU law, national legislation of EU countries, a systemic deficiency of the legal field of the US and EU countries in this area is indicated – its fragmentation. It is noted that this deficiency is compensated by the imperativeness of legal norms. Therefore, strengthening the imperativeness is considered as a direction for improving Ukrainian legislation in this area, since, for example, inadequate protection of entrepreneurs by representatives of institutional structures requires strengthening the imperativeness of norms regarding offenses in this area.

A problem in carrying out entrepreneurial activity in Ukraine, unlike in EU countries, is also the inequality of the parties to legal relations – entrepreneurs and representatives of institutional structures. These representatives are endowed with significant powers of authority over business entities. They can use these powers as a lever of influence, which causes inequality. Therefore, the regulatory and legal field should clearly indicate the boundaries and procedures of legal discretion for these structures and their representatives.

A proposal is presented and substantiated to consider the differences in ensuring the right to entrepreneurial activity in the national legislation of the EU countries and Ukraine as competition. It is indicated that the legislation of economically developed countries is characterized by the operational improvement of the legal protection of new types of business, primarily small innovative enterprises, startups. Therefore, it is proposed to consider this as a direction for improving the laws of Ukraine regarding the protection of the right to entrepreneurial activity. Also, in the context of the tasks of this study, the directions given in The Small Business Act for Europe regarding the formation of a favorable environment for small businesses are relevant for the Legislation of Ukraine.

On the basis of statistical data, it is indicated that the number of small enterprises has significant volatility and therefore, as a component of the economy, small business, individual entrepreneurs require attention and dynamic regulation of their rights to reduce the risks of their activities. This necessitates the operational improvement of legal norms and has provided grounds for an expanded interpretation of the legal category "legal protection of the right to entrepreneurial activity".

It is emphasized that the effectiveness of law enforcement and law administration should be ensured by the consistency of the norms of laws, the absence of not only gaps but also outdated norms in the legislation. The presence of outdated norms can not only complicate the judicial process and the practice of entrepreneurship, but can also narrow the right to entrepreneurial activity. Such norms are identified and their obsolescence is substantiated.

The discrepancies in the categorical apparatus of the law on entrepreneurial activity are indicated, the contradictions of the norms of law on this issue are identified. The discrepancies and gaps in ensuring the right to entrepreneurial activity lead to uncertainty in the legal

field. Uncertainty determines the need to expand the dispositivity of the norms regulating the specified right. Dispositivity provides the possibility of specifying an uncertain norm of law, using self-regulation.

It is emphasized that the right to entrepreneurial activity is a complex, system-structured concept. The components of the system for ensuring the right to entrepreneurial activity are determined. The removal of any of the components may lead not only to the restriction of the right to entrepreneurial activity, but also to its impossibility. This requires improving the regulation of each of the specified components.

As a further direction of research, a detailed analysis of the national legislation of the EU countries and the identification of areas of legal support for the competitiveness of entrepreneurs of these countries is envisaged.

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Правове забезпечення права на підприємницьку діяльність в Україні на шляху до євроінтеграції

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Мета. Аналіз норм українського права, права США та ЄС, національних Законодавств країн ЄС, та обґрунтування напрямів і заходів з удосконалення законів України щодо забезпечення права на підприємницьку діяльність.

Методика. За системно-структурним методом визначено право на підприємницьку діяльність як правову систему й виявлені її складові. Застосування формально-юридичного та формально-логічного методів дозволило вказати на прогалини й невідповідності категоріального апарату права на підприємницьку діяльність і запропонувати визначення цих категорій. За порівняльно-правовим методом виявлені розбіжності нормативно-правового поля економічно розвинених країн і України, що дозволило позначити напрями удосконалення українського Законодавства.

Результати. Виявлені прогалини й розбіжності категоріального апарату права на підприємницьку діяльність. Встановлена неузгодженість правових норм. Вказано, що це обмежує права підприємців. Обґрунтована необхідність розширення диспозитивності норм, регулюючих вказане право. Необхідність посилення імперативності норм права на підприємницьку діяльність обґрунтована порівнянням норм українського права, права США та ЄС, національних Законодавств країн ЄС. Запропоноване визначення окремих основних категорій, заходи вдосконалення правових норм для забезпечення права на підприємницьку діяльність.

Наукова новизна. Вказано, що право на підприємницьку діяльність доцільно розглядати як цілісну систему. Вказані складові цієї системи. Зазначено, що не надання прав хоча би за однією з цих складових порушує цілісність системи.

Практична значимість. Запропоновані зміни правових норм, визначення правових категорій і напрямів удосконалення правого забезпечення зменшать невизначеність законодавства й посилять захист права на підприємницьку діяльність.

Ключові слова: *підприємницька діяльність, системність права підприємців, неузгодженість правових норм, невизначеність, диспозитиність*