Economic Law and Standardization: A Basis for Avoiding Risks in Business

Tetiana G. Popovych[1,*], Oleksandr V. Bezukh[2], Hryhoriy I. Trofanchuk[3] and Tetiana B. Pozhodzhuk[4]

[1]*Department of Directorate, Academician F.H. Burchak Scientific and Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, Kyiv, Ukraine*

[2]*Department of Legal Support of Market Economy, Academician F.H. Burchak Scientific and Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, Kyiv, Ukraine*

[3]*Department of Constitutional, Administrative and International Law, National University "Odessa Law Academy", Kyiv, Ukraine*

[4]*Department of Commercial Law and Commercial Procedure, Taras Shevchenko National University of Kyiv, Kyiv, Ukraine*

Abstract: Currently, in Ukraine, there is a system of technical regulation as part of the general system of standardization. Technical regulation is defined as a means of state regulation, which, like any legal regulation, is implemented by appropriate legal means. This explains the relevance of this study. This paper investigates the Economic Code of Ukraine, several Ukrainian laws (the Law of Ukraine "On Environmental Audit", the Law of Ukraine "On Standardization", the Law of Ukraine "On Technical Regulations and Conformity Assessment", etc.), and State standards. Technical regulation was also considered as a general category and a legal phenomenon, as a result of which it was noted that the technical regulation adopted in Ukraine for dividing products into food and non-food products is only a matter of supervision over the conformity of goods and the use of conditions for a specific legal act and type of product. It was concluded that standardization proceeds from social regulation and generates norms of a technical, organizational, or other orderly nature, transforming into legal provisions. Therewith, technical regulation also derives from legal regulation and gives rise to technical guidelines, which constitute statutory regulations that form part of the national legislation of Ukraine, including economic legislation. As a result, it is proposed to improve and supplement the wording of Part 2 Article 16 of the Law of Ukraine "On Standardization", and it is also proposed to reword Article 24 of the Law of Ukraine "On Technical Regulations and Conformity Assessment".

Keywords: Technical regulation, laws of Ukraine, state standards, ISO, regulations.

INTRODUCTION

Currently, in Ukraine, there is a system of technical regulation as part of the overall system of standardization. Technical regulation is defined as a means of state regulation, which, like any legal regulation, is carried out by appropriate legal means.

Alekseev S. defined legal means as norms of law, individual prescriptions and orders, contracts, means of legal equipment, all other legal regulation tools that are considered in the unity of the maintenance and the form characteristic of them (Alekseev 1987). Sapun V. considers legal means as institutional formations of legal reality. He draws attention to the variety of legal remedies functions at certain stages, areas of legal regulation and types of legal activities, taking into account the methods, techniques, and types of legal regulation (Sapun 2002). Shcherbina V. also notes that the legal means used in the exercise of various functions are diverse, and their composition (scope) depends on the purpose of a particular function (Shcherbyna 1993). The question of legal means, noted Alekseev S., is not so much a question of separation into a special unit of certain fragments of legal reality, as a question of their special vision in a strictly defined perspective – their functional purpose, their role as tools for optimal social problems... – in all cases before us fragments of legal reality, considered from the point of view of their functions, role as tools of legal influence (Alekseev 1995). Malko A. notes that the concept of "legal means" provides an opportunity to summarize all those phenomena (tools and processes) that are designed to ensure the achievement of the goals set by law. The main thing in the theory of legal means: "what social tasks these legal mechanisms can solve, where and in what order they can be used in practical legal activities to achieve socially significant results". This category connects the ideal (goal) with the real (result), including both fragments of the ideal – tools (means-installation) and fragments of the real –

*Address correspondence to this author at the Academician F.H. Burchak Scientific and Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, Kyiv, Ukraine;
Tel: 044 258 25 45; E-mail: t-popovych@tanu.pro

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technology (means-actions). In this plane, these disparate legal phenomena can be considered as means; in this section of legal life, they acquire special properties – the properties of phenomena that act in combination with "goal – means – result" (Malko 1999).

Considering technical regulation as a general category and legal phenomenon, it should be noted. First, adopted in Ukraine for technical regulation of the division of products into food and non-food is only a matter of supervision of conformity of goods and terms for a particular legal act and type. Products. The result to be achieved is determined by the purpose of technical regulation and its functions that ensure the safety of goods and establish the conditions for putting goods into circulation and the conditions of their turnover on the market. The scope of mandatory requirements for product characteristics or related processes and methods, production and the resulting obligations of economic entities to consumers, competitors and economic (market) control bodies actually covers or affects all relations that arise in the process of economic turnover of goods on the market between these entities. That is, technical regulation is not only a technical but also a certain legal phenomenon (institution, subsector?), Which regulates all relations regarding the implementation of mandatory requirements (legal requirements) to the characteristics of products or related processes and production methods that arise. On each chain of trade in goods on the market and are different depending on the type of goods, from the introduction of goods into circulation and the subsequent creation of additional value with its use, up to its consumption or withdrawal from the market.

Depending on the specific type of goods, a specific set of legal means is formed that provide technical regulation in the relevant field and market for certain groups of goods. The object of legal influence, in this case, is the goods (establishment of characteristics) and activities (establishment of obligations to ensure the characteristics) of economic entities, aimed at its creation and sale on the market in compliance with the established conditions of its turnover and consumption. These objects in the cases provided by acts of technical regulation can create legal facts concerning conformity of the goods or economic activity, a performance by subjects of managing of requirements of the current legislation in contractual, tortious and other kinds of the legal relations mediating movement of the goods in the market. Business entities to legal responsibility. That is, the relations arising from the acts of technical regulation and the legal requirements defined by them and legal facts regarding their non-compliance are an integral part of complex social, legal relations arising in the process of economic activity and turnover of goods on the market, namely: contractual relations, tort, competition, consumer protection, market surveillance, etc.

THEORETICAL AND PHILOSOPHICAL DISCOURSE

In the dynamic conditions of the transition period in the development of the economy and relations in society, the system of standardization should not only be harmoniously adapted but also strongly influence the formation and functioning of the economic mechanism, quality and competitiveness of products. Standardization, like any field of knowledge, is studied using certain methods that have formed in the process of its cognition. Theory and method arise simultaneously, and they are interconnected, they have similar requirements. That is why when the theory changes, changes (or corrections) and methods are needed. This relationship is that the method is based on the theory and method without theory is pointless; science – not meaningful. And vice versa. Only theory, armed with adequate knowledge of the method can perform a task – investigate the object. The practical significance of the research methodology is to use real methods to existing regulations and standards, in particular. The correct choice and use of the method ensure both the scientific correctness of the theory and practical effectiveness.

The theory of law has its own list of methods (1) general philosophical, used in all sciences and at all stages of the process of cognition (2) historical and legal method, which is the main method of cognition of the formation and development of specific phenomena (3) prognostic method (4) group of general methods (analysis, synthesis, abstraction, system-structural, the transition from abstract to concrete) used in all sciences, but at all stages (5) group of special methods (statistical, concrete-sociological, psychological, mathematical), which developed by specific sciences and used to learn legal phenomena (6) certain methods (interpretation of rights, comparative law and others). In turn, standardization has its own methods and techniques, among which there are some already mentioned by us, but there are some others: simulations, typification, unification, modelling and others. Standardization is on the verge of law (humanities) and engineering. That is why standardization in the field of environmental protection

uses both legal and technical methods and techniques of research and has its own methodology – a set of techniques and methods of research of phenomena in the field of environmental protection that are subject to standardization.

The methods of standardization in the field of environmental protection can be classified as follows: the first group – general scientific methods; the second group – philosophical, to which we include logical methods; the third group – special (technical). General scientific methods used to study the effects on the theoretical and empirical level. At the empirical level, there is an accumulation of facts, information about objects and phenomena subject to regulation by means of norms and standards, the needs of scientific and technical documentation, means, and measurement methods. At this level, observations, comparisons, measurements are carried out, control over the implementation of new and compliance with existing standards is carried out, during which information on the state of the environment is obtained, experiments are set, new concepts and terms are introduced. At a theoretical level achieved systematization and synthesis of knowledge about the environment and its objects. These methods are used less often and are less used, but without them, it is not possible to do the study and development of standards and theories.

Standardization, as a special type of streamlining activity, is organized and based on principles. Let us consider the classification of standardisation principles, where the main criterion is the sequence of process standardization and social purpose. The sequence and nature of the stages of the standardization process largely determine the place and essence of the principles in the classification series. One of the criteria is the degree sequence guidelines cover the principles of this process, the degree of their influence on expedience, standardization activity of the subject and the ideological orientation of the participants in standardization. These basic criteria determined the number of principles. In the classification of the principles of standardization and also take into account additional criteria: place and role of components ordering system standardization, nature and priorities of its main provisions.

In order for the standardization process to proceed consistently, proportionately and purposefully, and for its bodies to focus on achieving pre-determined results, standardization must be planned (planned). Planning is seen as a way to implement its tasks, which leads to the linking of standardization work with national tasks, improving the quality of products, production efficiency, and performing standardization work within international organizations. Planning is the first principle of standardization.

In the social scientific literature, planning is interpreted in a narrow sense – as conducting standardization work on the basis of long-term plans. But you need to understand this principle much broader, to include the following features like focus, balance, perspective, ordering of society. The natural inclination of man and society to order is an objective basis for work planning, but without special management of standardization work due to various objective and subjective factors, deviations and failures in this process are not excluded. That is why standardization work is the preemptive right of the state. It is represented by its bodies through planning and regulations, organizational function, control and directs standardization activities at its various levels. Thus, the second principle of standardization is the public management of these works. At the same time, the principle of public administration should be considered more broadly than the structure of bodies and services of standardization. For example, the need for personal transport can be met by a system of types and types of cars, but there is no need to create a standard for each of them. The task is to ensure the safety of each of the machines for humans and the environment. It is also necessary to meet the requirements for fuel consumption in cars to reduce the use of natural resources for the rational use of nature.

One or more states, the international community or the world community as a whole, which is bound by certain obligations, treaties, etc., may be interested in the results of standardization. This is where the third principle of standardization arises – multilevel.

In the theory and practice of standardization, there were two directions of development: from the individual to the whole and from the whole to the individual. The first direction was popular with the nascent standardization (in engineering). It was then that individual elements were standardized: bolts, nuts, profile metal, etc. The second direction was developed in the second half of the twentieth century. It is then that whole units and control systems are subject to standardization, and their parts are standardized based on the requirements that have been set for the entire facility. This concept has taken the form of complex standardization of intersectoral systems of standards

and is considered as a dialectical-materialist principle of systematic standardization. Systematicity, or complexity, of standardization, is its fourth principle. It provides the fullest and most optimal satisfaction of the needs of enterprises, organizations and institutions, and intersectoral systems of standards allow to eliminate inter-departmental barriers to solving national problems, promote a common policy on general problems of science and technology, production and streamlining of standardization. In society's development, there is a tendency to dismemberment, differentiation, diversity of objects of practice, knowledge, individual manifestations, to their complication. In contrast to this trend, there is a natural law of restriction of diversity. From philosophy, we know about the spontaneous and the conscious struggle, the new and the old, anarchy and order. We observe these phenomena in everyday life.

In production, the economy as a whole, there is a market element, the lack of a unified technical and economic policy. We know examples of differences in measures and weights in products that are typical for almost all countries. Researcher standards Borysovskyy H. states: "In the pre-revolutionary guide for builders, we find about a hundred different pounds more than forty different miles, one hundred and twenty different kinds pound more." The element in the production of various models is observed in all countries, including highly developed ones. Purposeful, the planned activity of the society is, first of all, to reduce the number of unjustified types and kinds of products, ways and methods of solving production problems. This reduction should be dictated by technical and social factors. Such work must be carried out constantly because the number of types of products is constantly increasing. In search of a rational organization of production, people consciously try to reduce the variety of products to appropriate, controlled proportions, to organize their lives. Therefore, standardization is carried out on five principles – limiting diversity, which in the expanded form is an unjustified reduction in diversity and overcoming excessive complexity of the basis of spontaneity in the organization and management of the relevant areas of social development. This is the basic, most important principle of standardization. It is based on a socio-economic basis. But its preconditions are in nature itself. As you know, there is nothing superfluous in it, everything is simple on the outside, but the internal organization is complex and perfect, weak links die out, strong ones develop. Natural selection is constantly taking place in nature; order and harmony are constantly maintained. Self-regulation that occurs in nature is also inherent in society but is it the dominant role is played by subjective ordering, which has become an integral social attribute in the early stages of human development.

The most characteristic feature of subjective ordering is mutual understanding and coherence in any case. The ancient philosopher Socrates came to the conclusion that state laws – “is that citizens admittedly wrote, finding what to do and what you need to stay”. Somewhat different described the life pattern O. I. Krylov when a fellow is no agreement, the case will not go away and will not matter, but the flour. The principle of coherence components of any object or system has a deep natural and historical basis. Regarding practical standardization, it can be formulated in more detail as mutual coordination of interests and requirements of all participants in standardization, i.e. organizations, enterprises and institutions, government agencies, officials involved in the scope of standards. This sixth principle is very important because it is impossible to develop a norm, to set a standard without agreeing on it with all stakeholders. Specialists involved in the development of standards, laws and other regulations are well aware of how difficult it is organizationally, psychologically and sometimes unreasonably to coordinate draft regulations. Sometimes it is faster and easier to carry out research and technical work than to go through an approval, approval or acceptance procedure. Although the procedure of the standardization process is defined by state standards and other normative documents, due to the lack of flexibility of the planning system, logistics and other reasons, the implementation of this principle of standardization is extremely difficult.

The most creative part of the standardization process is expressed in the seventh principle – the choice of the optimal object of standardization. It is well known that each person during his life solves numerous problems and problems that arise in the process of production, scientific or other activities. It is also known that the success of solving a problem depends on how and in what way, to what extent and at what level it is implemented. The highest efficiency will be achieved when from the many possible solutions to the problem will be chosen the most rational, most economical and most acceptable to society, i.e. the best option. Man is constantly in search of the best, more perfect and exemplary. This is the essence of all her life, all her development. If a person refuses to

search for the optimal, his life will become uninteresting, pointless. The choice of optimality in standardization is conditioned by another regularity: the availability or possibility of options for repeating objects requires the legalization of the optimal option.

Such legalization is necessary so that society can constantly get rid of unjustified, excessive, annoying diversity, spontaneity and chaos. In engineering, production, economics, and standardization, the optimal search engine has given rise to a new field of knowledge – the theory of optimization, optimal computer programming. In the theory of standardization, the theory of optimization is formed in a separate section. The effect of the principle of optimality of the object of standardization is to reflect the effect of socio-economic laws of the development of social production. Therefore, this principle is integrative in nature, and the most appropriate and optimal solutions selected from a large number are determined by many other objective and subjective factors. To develop an optimal standard, it should be considered as a set, a system of norms and concepts that reflect and regulate the state of the object of standardization. The effectiveness of the system, as is known, is achieved only when the required composition of its components. In standardization, all this is the eighth principle – the appropriate completeness of the content of the standard. This principle means the regulation in the standards of the main characteristics and parameters of the object of the order, i.e. the inclusion in the normative document of the minimum of stable indicators, which sufficiently characterizes the object. It is technically and economically feasible for the standards to also specify the indicators that most significantly affect the final results. As a result of this principle of standardization, favourable conditions are created for the implementation of standards and improvement of facilities. In addition, standardized do not spend time creating secondary, almost unnecessary norms and concepts for a standardized object.

One of the criteria of perfection, scientific standards is the reflection of various social needs. According to the fifth principle, standardization seeks to reduce diversity, to minimize it, that is, to reduce it to uniformity. If standardization followed only this path, it would turn from a positive phenomenon into a negative, regressive one. But standardization is a progressive, dynamic activity. It acquires such qualities by providing a multivariate solution with a minimum variety of components of the object, i.e. according to the following principle – the multivariate of the whole with a minimum of elements. But is there a contradiction between these principles? Outwardly, at first glance, these principles seem to be mutually exclusive. In fact, there is no contradiction between them, and there cannot be. On the contrary, there is a complete interdependence between them, a complete mutual connection. This principle also exists in nature: out of a large number of chemical elements (more than a hundred), there are more than a million different compounds in nature that are complete in nature. Through numerical transformations with a minimum of similar elements, nature has created thousands of different creatures. Man, like nature, invents various means and methods to meet his various needs. The principle of ensuring the variability of solutions when creating a whole with a minimum variety of its components has recently been used very often.

A study of the practice of standardization, demand and market conditions shows that increasing the diversity of goods and services meets the needs of modern society. That is why, using the principle of variant transformations, people create new materials, types of plants, species of animals. This principle is creatively applied in the construction of buildings. Equally important is the principle of binding (voluntary recognition) of standards, i.e. the tenth principle. Binding is understood as the legislative nature of standards. However, in European countries, there is also the principle of voluntary recognition of standards. The principle of voluntary standards, according to D. Woodworth, should be the basis of private enterprises or entrepreneurs. Both voluntary recognition and binding standards require that they be followed punctually. At the heart of this principle is the concept of translating the ideal into the real, the theoretical into the practical. This principle is not new. We know many facts (we discussed them above) when countries around the world turned to standards to ensure uniform weights and measures, interchangeability of parts of products, their quality. The standards introduced by the states were directive in nature, and special bodies closely monitored their implementation.

In world practice, there is no consensus on whether to introduce all or part of the standards that are of national importance and are mainly related to environmental protection. In some cases, when implementing product quality standards, economic incentives, and the interest of entrepreneurs and consumers are a more effective and optimal means. The standard, voluntarily adopted by all stakeholders,

will be unquestionably and successfully implemented and will be followed throughout. Therefore, the principle of voluntary recognition of standards should be considered basic. In our country, the vast majority of standards are directive in nature, they must be implemented and strictly adhered to by all organizations, enterprises and institutions to whose products or scope they apply. The directive introduction of standards does not always take into account the technical and economic capabilities of enterprises, institutions and organizations to implement standards in a timely manner. And when the introduced standards have not been implemented due to objective reasons, public authorities must postpone these deadlines for months and years. Standards, like man, like all living things, have the ability to age and change. This ageing is not absolute, but relative. It can be established and measured by comparing the norms of standards with the latest advances in science and practice, with the changes that have occurred during the period of a particular standard. The dynamic trend of standardization objects should be taken into account when reviewing standards.

Ageing standards are a major factor limiting the duration of its social benefits and effectiveness. In order for standards to always be relevant and effective, it is necessary to comprehensively take into account all the factors that affect the content and scientific level of requirements for them, when evaluating and revising. The haste of the assessment and revision of standards also depends on the perfection of the standardization system itself, which operates in the state, and on the legislation governing the stability of standards. Currently, if there is a need to change any requirement in the standard, to supplement it with new requirements, it is allowed to make these changes to the planned, regular revision of the standard. Another effective measure that contributes to the improvement and revision of standards is state certification and certification of products. The practice has established such an order that during their implementation, a kind of attestation of the normative document according to which the products are produced is also carried out.

The level of standards is thus brought up to the level of quality of certified products, which, in turn, must meet the revised standards. There is a direct and inverse relationship, which contributes to the improvement of both standards and products and services. That is why the eleventh principle of standardization is the principle of dynamism, which follows from the objective laws of development of society as a whole. Successful and effective standardization work requires compliance with the whole set of principles. Standardization, as a system, can be faultlessly provided that all its elements function smoothly and all its principles are followed. Failure to comply with one of the principles leads to a violation or even destruction of the standardization system.

THE REGULATION OF ECONOMIC RELATIONS

According to the general theory of the subject of legal regulation of social relations, which have the following features (1) a relationship, which reflects how the individual interests of the society and the general interests of society, (2) in these relations the mutual interests of their participants are realized, each of which accepts certain oppression of the interests for the sake of satisfaction of interests of another, (3) these relations are constructed on the basis of the consent to observe certain rules, (4) these relations require compliance with rules, the binding nature of which is supported by a sufficiently effective force (coercion). The Economic Code of Ukraine defines public relations that are the subject of legal regulation in the field of economic activity (organizational and economic, internal economic relations and economic and production or contractual). All these relationships can be regulated through standardization. Let's consider in more detail, on the basis of which acts and how such regulation takes place.

Organizational and economic relations in Part 6 of Art. 3 of the Commercial Code of Ukraine understand the relationship between business entities and entities of organizational and economic powers in the process of managing economic activity. Organizational and economic relationships arise, usually in the area of economic management (Mamutov *et al.* 2002; Tenkov 2004; Belyanevych *et al.* 2008; Vikhrov 2008). Also, these relationships may arise in connection with the confirmation of compliance of goods and/or services with the requirements of regulatory documents on standardization. Management needs constant monitoring of efficiency and improvement based on such an audit. There are two options (levels) of assessment in the world (1) self-assessment using the system CAF (The Common Assessment Framework), (2) professional assessment based on a series of international standards ISO 9000, ISO 14000, ISO 22000 etc.

The main purpose of the CAF system (European Foundation of Quality Management) is, (1) to introduce

the principles of quality management in the field of administrative management and to promote their development through the method of self-assessment. Facilitate the transition from the plan-do chain to the plan-do-check-influence cycle (PDCA cycle), (2) providing a mechanism for self-assessment of the organization in order to diagnose and improve its activities, (3) to become a connecting element between different models of quality management, (4) ensuring the exchange of experience and best practice study. CAF was created for state institutions, but, in our opinion, it can become a regulatory and technical document to increase the effectiveness of self-regulation of management relations of economic entities, both externally and internally, management and staff, which will increase the level.

The application of ISO standards that perform a social (humanistic) function is a secondary (professional) link of management systems at enterprises, institutions and organizations of economic entities (Mamatova 2013; National standard of Ukraine 2016). In particular, the certification of enterprises, institutions and organizations, according to ISO 9001, ensures that the company can produce products at a stable level of quality and constantly improve it. The application of ISO 9001 guarantees the obligation of quality control in production. To regulate the relations that may arise with third parties (consumers) used certification of management systems in food safety and food products according to ISO 22000 (National standard of Ukraine 2007). Certification, according to this standard, implements the presumption of conformity and guarantees consumers the safety of raw materials, impurities and components used in production. It also ensures that the business entity knows and controls the risk factors that affect the production process. Another area of management provided by standardization is environmental management. The introduction of the ISO 14000 series of standards, which contains the composition and description of the elements of the environmental management system, guidelines for their application, as well as guidelines for environmental audit in the enterprise means that the business entity seeks to minimize its negative impact on the environment. In addition to the ISO 14001 standard, the International Organization for Standardization has developed a series of standards for environmental management systems, many of which are adopted in Ukraine as identical national standards (DSTU) (National standard of Ukraine. DSTU 3718: 2007… 1994). It is recommended to use these standards as an aid in the implementation and improvement of the environmental management system and to demonstrate its compliance with stakeholders.

We believe that implementing an environmental management system, each business entity should determine legislative and other regulatory requirements regarding the environment, he is obligated to perform that compliance of the business entity with laws and regulations is one of the most important criteria for the audit during the certification of the environmental management system (Article 5 of the Law of Ukraine "On Environmental Audit"). This system is a tool that allows determining the environmental aspects of its activities, products or services, assess their impact on the environment, develop and implement actions to prevent pollution, establish impact control and apply corrective measures, determine applicable environmental laws and regulations, ensure activities in accordance with the environmental legislation of Ukraine, to define and achieve environmental goals, improve environmental performance, balance and integrate economic and environmental interests, timely adapt to changing conditions.

Ukraine has two new environmental laws in this area: "On Environmental Impact Assessment" and "On Strategic Environmental Assessment". They should provide the legal and organizational framework for environmental impact assessment and for Ukraine to comply with its international obligations under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Convention on Access to Information, Public Participation in Decision-Making and access to justice in environmental matters (the Aarhus Convention) to which Ukraine is a party, the implementation into national law of the provisions of Directives 2003/4 / EC and 2011/92 / EU, and the application and implementation of strategic environmental assessment in accordance with the approach in Directive 2001/42 / EC of the European Parliament and of the Council of June 27 2001.

With increasing, production scale and technological capabilities, increase the scale of the consequences of accidents and danger to life and health of employees, especially those who perform work with high risk, particularly, the high degree of risk at the enterprises of the oil and gas complex, mining and chemical industries, construction industry. Today, manufacturing companies seek, on the one hand, to reduce the costs

associated with health and safety, on the other hand, to increase the safety of production, effectively managing the risks associated with it, and at the same time improve the corporate image. To this end, companies around the world since 1999 are implementing occupational safety and health management systems, focusing on the requirements of the international standard OHSAS 18001 (OHSAS 18001:2007…).

Internal economic are the relations that develop between the structural units of the business entity, and its relations with its own structural units (Part 7 of Article 3 of the Commercial Code of Ukraine). Internal economic relations are a kind of economic relations that arise directly in the internal production sphere of enterprises and other economic organizations, and their subjects are the internal divisions of enterprises (shops, production, etc.). They enter into a relationship with each other, as well as with the entity in general, of which they are apart. The rights and responsibilities of participants in internal economic relations, as a rule, are determined by local regulations of economic entities. The possibility of concluding internal economic agreements is not excluded either. Local acts are not so much a "mediator" between centralized legislation and a specific business entity, as should be a modifier that translates the general requirements into specific procedures, implementing these rules in the daily activities of business entities (Ring 1972; Anokhin 1991; Korostei 2005; Malko and Pestova 2009). The subject of local acts is the joint activities of entities (parts of business entities, members, participants, employees) that have entered into legal relations within a single business entity. In this regard, local rule-making is aimed at streamlining, standardization of social relations, which are formed within a given local legal location. The legislator gives economic entities the opportunity to develop the terms of cooperation, to determine by agreement of the parties or unilaterally the creation of local norms. The norms adopted by them are obligatory rules of proper behaviour for all parts of business entities, members, participants, employees. Local rule-making depends on the level of legal culture and legal consciousness of those involved in the creation of these rules (Samoshchenko 1963; Raska and Rebane 1977; Semitko 1997; Ganzenko 2003; Golovan 2003). The importance of legal culture, legal awareness and legal education in carrying out economic activities was rarely mentioned, but at all times. In our opinion, it is from the legal culture and legal consciousness of individuals who create local acts for business entities that the creation of such a system of local legal norms depends, which should adequately reflect the conditions of economic, production and technological activities of this entity.

Legal regulation with the help of local norms leads to the rise of legal regulation to a new level, makes it adequate to the last stage of development of society and in this sense has a constructive impact on it. Advance regulation serves as a way to resolve contradictions in the development of the legal form itself. Such regulation shows the need to change legal norms that have come into conflict with the needs of life, or their abolition, the adoption of new ones that reflect the trends of social development. Local regulation shows the shortcomings of legislative regulation, acts as a form of criticism of existing regulations. We believe that in order to achieve the goal of legal regulation of economic activity, internal economic relations of economic entities should be based on DSTU 1.4-93 “State system of standardization of Ukraine. The standards of the company. Main Provisions” (National standard of Ukraine. DSTU 1.4–93… 1994). Local acts of business entities must meet the specified standard, even if the name does not indicate that it is a standard of the enterprise. Consider taking into account the requirements of regulatory and technical documents for standardization in the contractual relations of economic entities in Ukraine. These legal relations create a mechanism for "translating" the general rules of objective law into the plane of subjective rights and obligations, which may take the form of an economic or another type of contract. The contract as a means of legal regulation was considered often and in detail. It can generate facts and regulate specific legal relationships.

Based on the position that the contract combines norms-permits, norms-prohibitions and norms-prescriptions and contains socially necessary restrictions, we are talking about standardization as a means of achieving the goal of economic activity – achieving economic and social results with or without profit (Belyanevych 2002; Gaivoronsky *et al.* 2005; Vinnyk 2008; Milash 2008; Belyanevych *et al.* 2012). In the contracting business cannot do without the principle of justice that guarantees the balance of the market, create fair competition and ensured through regulatory and technical documents on standardization. Standardization addition to limiting contractual relationship creates orderliness and clarity in the formulation (determining) the subject of the contract, predicts the possible relationship of responsibility for

failure (failure) requirements of regulatory and technical documents on standardization and is a factor in ensuring the public interest in carrying out economic activities. The vagueness of the wording of the subject of the contract, including the failure to specify the standardization requirements to be met by goods (services), has led to litigation although there are other cases.

Now there is an objective need to enter directly into the text of the contract an imperative condition – a list of technical regulations, standards or other regulatory and technical documents, rather than references in the form of “in accordance with existing rules, regulations”. This is especially true of public contracts (the interpretation of Art. 633 of the Civil Code of Ukraine) when the economic entity acting strength, the other party (the customer) can rely on the good faith and cannot prevent abuse on the part of the business entity. Similarly, in online retail outlets goods (services) great confidence of consumers is the availability of certificates or other documents confirming the quality and compliance.

The business contract allows the establishment of more stringent (increased) requirements for goods (services) than in the regulatory and technical documents for standardization or the creation of "under the contract" new standardization requirements, which should contain more stringent or simply other requirements. For example, in Europe today, there is a need for soy and soy products. The main requirement for the supply of soybeans is its purity, i.e. the absence of GMOs. GMO varieties are used only for a feed of individual animals. To control the supply of products and soybean farmers preferences (or farms) that they are grown, there are two French organizations Soybean Association and the Association "Danube soybeans". These organizations are non-governmental, but provide certificates for the supply of soybeans to Switzerland, Austria, Germany, France and other Western European markets (Kudryavtseva 2016). These organizations have their own standards (rules) for soybean production, including methods of growing soybeans, organic productivity, cultivation technology and selection of the best seed material. Certification bodies engaged SGS (in Ukraine – Organic Standard), confirming compliance with the requirement of the Association "Danube soy", which is an order of magnitude higher and more stringent by force in Ukraine and Europe. Ukrainian producers, such as "Svarog West Group", obtaining certificates of conformity by Organic Standard of compliance with the Association "Danube soybeans" are able to conclude export contracts for supplies of soybeans to European markets by getting not only the European price but also preferences for the further development of their business.

In the case of economic activity in a particular area governed by technical regulations, which provides for mandatory requirements for goods (services), failure to specify in the contract the need to comply with these requirements still causes negative consequences and does not cancel such requirements. That is, the imperatives established by technical regulations apply regardless of whether they are known to business entities and whether they include these requirements in the contracts. However, voluntary requirements of regulatory and technical documents on standardization in the same situation do not give rise to the obligation to fulfil them. Only a declaration of compliance with voluntary requirements translates them into an imperative field, and non-compliance (non-compliance) has negative consequences.

In our opinion, in the case of sale of goods (services), which must comply with local regulatory and technical documents for standardization, used only by this business entity, the contract should directly state the need to provide them simultaneously with the goods (services). It is also necessary to provide for the mandatory provision of enterprise standards simultaneously with the transfer of intellectual (industrial) property rights if the product (service) cannot be produced (provided) separately from the requirements of such regulatory and technical documents.

CONCLUSIONS

Standardization comes from social regulation, generates norms of technical, organizational or other orderly nature, which can pass (turn) into rules of law. At the same time, technical regulation is derived from legal regulation (part of social regulation) and generates technical regulations that are normative legal acts – part of the national legislation of Ukraine, including economic. Standardization as an activity creates requirements (norms) that can take different forms (fixed in different types of documents: from enterprise standards to legislation). As the concept of technical regulation has already been introduced in more than 500 regulations, there should be a clear emphasis on the relationship between standardization and technical regulation, consolidation and

implementation of their requirements in order to eliminate technical barriers to trade and ensure the rights of stakeholders in standardization.

It is proposed to set out in a new edition and supplement the sentence of part 2 of Art. 16 of the Law of Ukraine “On Standardization”: “2. Standards, codes of practice, technical conditions and other regulatory and technical documents adopted by enterprises, institutions and organizations are applied on a voluntary basis. Contracts or otherwise may provide for the voluntary assessment of the conformity of products with these requirements”. It is proposed to set out in a new edition Add a new paragraph of Article 24 of the Law of Ukraine "On Technical Regulations and Conformity Assessment": "4. The manufacturer or other economic operator has the right to apply conformity assessment procedures by drawing up a document of conformity and/or by posting the relevant information on the official website. In this case, the business entity assumes responsibility for the compliance of products with the requirements specified in the document of conformity and/or posted on the official website".

REFERENCES

Alekseev, Sergey S., 1987. “Legal means: problem statement, concept, classification”. Soviet State and Law 6: 12–19.

Alekseev, Sergey S. 1995. Theory of Law. 2nd ed. Moscow: BEK.

Anokhin, Viktor S. 1991. Legal Work in the National Economy in the New Economic Conditions. Voronezh: VGU.

Belyanevych, Olena A. 2002. Economic Contract and Methods of Its Conclusion. Kyiv: Naukova Dumka.

Belyanevych, Olena A., Vinnik, Oksana M. and Valentyn S. Shcherbyna. 2012. Scientific and Practical Commentary on the Commercial Code of Ukraine. Kyiv: Jurinkom Inter.

Belyanevych, Olena A., Vinnyk, Oksana M. and Valentyn S. Shcherbyna. 2008. Scientific and Practical Commentary on the Commercial Code of Ukraine. Kyiv: Jurinkom Inter.

European Foundation of Quality Management. Fundamental Concepts of EFQM. (https://www.efqm.org/index.php/efqm-model/the-concepts/).

Gaivoronsky, Volodymyr M., Zhushman, Volodymyr P. and Nataliia V. Pogoretskaya. 2005. Economic Law of Ukraine. Kharkiv: Pravo.

Ganzenko, Oleksandr. 2003. Formation of Legal Culture of the Person in the Conditions of Development of the Legal State Ukraine. Kyiv: Kyiv National University named after Taras Shevchenko.

Golovan, Ivan V. 2003. Legal Work and Protection of the Rights of Entrepreneurs. Donetsk: Yugo-Vostok.

Korostei, Vasiliy I. 2005. Normative Acts of Business Entities. Economic Legislation of Ukraine: Application Practice and Development Prospects in the Context of the European Choice. Donetsk: Institute of Economic Research.

Kudryavtseva, Lidiia. 2016. “Whimsical soy”. Agribusiness Today 7(326). (http://agro-business.com.ua/agro/ekonomichnyi-hektar/item/7923-prymkhlyva-soia.html).

Malko, Aleksandr V. 1999. “Legal means as a general theoretical problem”. Jurisprudence 2: 4–16.

Malko, Aleksandr V. and Tatiana P. Pestova. 2009. “Local legal acts as a means of implementing legal policy”. Legal Policy and Legal Life 3: 197–201.

Mamatova, Tetiana V. 2013. “Introduction of control system by quality at the grant of municipal services: existent practices and directions of improvement”. Aspects Of Public Governance 1(1): 105–112. https://doi.org/10.15421/151317

Mamutov, Valentyn, Znamensky, Heorhii and Vladyslav Khakhulin. 2002. Economic Law. Kyiv: Jurinkom Inter.

Milash, Viktoriia S. 2008. Economic Law. Kharkiv: Pravo.

National standard of Ukraine. 1994. DSTU 1.4–93 Enterprise Standards. Basic provisions. Kyiv: Derzhstandart Ukrainy. (http://online.budstandart.com/ua/catalog/doc-page.html?id_doc=5594).

National standard of Ukraine. 1994. DSTU 3718: 2007 Food concentrates. Sweet dishes. Jelly, mousses, puddings, milk concentrates. General technical conditions. Kyiv: State Standard of Ukraine. (https://dnaop.com/html/34035/doc-ДСТУ_3718_2007).

National standard of Ukraine. 2007. DSTU ISO 22000:2007 (ISO 22000:2005, IDT). (https://www.assistem.kiev.ua/doc/DSTU_ISO_22000-2007.pdf).

National standard of Ukraine. 2016. DSTU ISO 9001:2015 (ISO 9001:2015, IDT). (https://nmapo.edu.ua/images/Onas/Pidrozdil/03_03_18m-3.pdf).

OHSAS 18001:2007 “Occupational health and safety management systems – Requirements”. (http://csr-eu-jm.com.ua/files/OHSAS_18001.pdf).

Raska, Eduard E. and Ivan A. Rebane. 1977. “Methodological aspects of legal education of the population”. Soviet State and Law 4: 109–114.

Ring, Mikhail P. 1972. “Legal regulation of scientific and technological progress”. Soviet State and Law 2: 111–121.

Samoshchenko, Ivan. 1963. “Freedom of will and its importance for the regulation of social relations”. Soviet State and Law 12: 35–44.

Sapun, Valentin. 2002. The theory of legal means and the mechanism for the implementation of law. Retrieved June 27, 2020 (http://lawtheses.com/teoriya-pravovyh-sredstv-i-mehanizm-realizatsii-prava#ix%20zz5HA7FQj2W).

Semitko, Aleksey. 1997. Legal Culture. Theory of State and Law. Moscow: Moscow.

Shcherbyna, Valentyn. 1993. Prevention of Economic Offenses. Kyiv: Lybid.

Tenkov, Serhii. 2004. Scientific and Practical Commentary to the Commercial Code of Ukraine. Kyiv: A.S.K.

Vikhrov, Oleksandr. 2008. Organizational and Economic Relations. Kyiv: Slovo.

Vinnyk, Oksana. 2008. Economic Law. Kyiv: Pravova yednist.

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