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Legal Protection of the State Interests in Ukraine: Some Theoretical Issues

1. Introduction

Nowadays the Ukrainian law contains various legal mechanisms aimed at securing protection of the state interests. Such mechanisms have been introduced into the legal system of Ukraine already in the previous decades and are currently evolving. Among the vivid examples there are the rules of the civil, commercial and administrative procedures providing for the power of the prosecutors to bring claims before the courts to protect the interests of the state; the civil and commercial law rules providing for avoidance of the deeds on the grounds of non-compliance with the interests of the state; the legislation which empowers the domestic courts to refuse recognition and enforcement of the foreign court judgments and arbitral awards in case where such recognition or enforcement poses a threat to the state interests.

An effective protection of the interests of the state is an objective necessity failing which the functioning of the state as well as the democratic development of the society is hardly achievable. The task to secure the protection of the interest of the state is of core importance

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today. This is so considering the emerging threats for the state and the civil society such as continuing encroachments on the territorial integrity of Ukraine over the last years, spread of pandemic danger for population, attempts of certain political groups to undermine the efficiency of the corruption prevention machinery. These circumstances necessitate especial, in certain respect extraordinary measures to be applied by the state in order to protect the state interests. The Ukrainian state currently faces the necessity to protect its vital interests of securing the territorial inviolability, sovereignty, public order, basics of the constitutional order.

At the same time the state when applying the measures to protect the state interests has to impose in many instances restrictions on or to interfere with the private rights of individuals and entities as well as the respective private interests whether civil, commercial, political, etc. The state's measures employed by it for the protection of the state interests are therefore capable of giving rise to the "conflict" between the state interests on the one side and the private rights and the respective private interests being restricted or interfered with by operation of such state's measures – on the other. Those measures of the state restricting or interfering with the private rights and interests are subject to assessment both with respect of compliance with the principles of protection of human rights and freedoms enshrined in the Ukrainian Constitution (assessment at the domestic level) and the international law standards in the area of human rights protection (the assessment at the international level). For example, it was during the last decades and currently remains the case when the state's certain measures allegedly aimed at the protection of the interests of the state are found by the international courts unjustified *inter alia* unlawful, disproportionate resulting in the state being held internationally responsible for the violation of its international undertakings in the human rights or foreign investment protection sphere. As a consequence, the state's reputation, its pecuniary assets, the "investment attractiveness" and, most importantly, confidence of the domestic and the international community in the state's institutions are negatively affected.

It is therefore of core importance to have the genuine rather than the fictitious state interests secured in the national legal system as well as to find a balance (proportionality) between the state authorities' ability

to apply legal measures to protect the interests of the state and the requirements of protection of private rights, freedoms, private legitimate interests guaranteed both at the domestic and the international level. For the said purpose the key task lies in elaboration on theoretical approaches to construction of the state interests concept, to correct identification of such interests and to determination of their position in the legal system of modern Ukraine.

The research of the theoretical issues related to the concept of the state interests in this article is based on systematical analysis of the legislative rules, materials of the case law as well as on the scientific notions of the theory of jurisprudence. In the research process the various scientific methods such as the method of generalization, the historical method, the systematical-structural method, the formal-legal method, the comparative-law method have been employed.

This article constitutes an attempt to propose a scientific theoretical understanding of the concept of the state interests as the legal phenomenon in the context of the Ukrainian law, including the features and the definition of those.

2. Concept of the interests in the domestic legal system

At the outset it is worth noting that the interest is a notion inherent in the Ukrainian legal system. The concept of interest is recognized in the theory of jurisprudence, in the statutory provisions as well in the case law. In this context the term “interest” is of broad general nature: it is not confined to that of the state (the state interest) and refers to the interest of any subject (bearer of the interest) in general, such as natural persons, legal entities, local communities. Since the notion of the state interest constitute an aspect of the broader concept “interest” as a legal phenomenon the theoretical understanding of the state interests, in particular analysis of their definition or requisite features cannot be comprehensive without regard being had to the scientific and legislative approaches to the notion of the interest in general.

From the Ukrainian law perspective the notion of “interest” has a close affinity to that of the “subject right”. In the relevant legislative provisions the both said terms are used in conjunctions, predominant-

ly be means of the expression “rights and legitimate interests”. In the Ukrainian legal system the legitimate interests (those of individuals and entities) enjoy legal protection on an equal basis with the subjective rights. In other words the approach of the Ukrainian law is that a person (whether natural or legal) is provided with guarantees to have both its subjective rights and the legitimate interest legally protected. This approached, being reflected both in the private law and in the public law sphere, is generally accepted in the domestic legal system. For example, under the Civil Code of Ukraine of 2003 (2003 Civil Code) one of the basics of the civil law is a principle of judicial protection of civil right and interest²; according to the Act On Joint-Stock Companies of 2008 a decision of a general shareholders meeting of the company can be appealed against before a court by a shareholder whose rights and legitimate interests have been violated by such decision³; the Code of Administrative Procedure of Ukraine of 2005 provides for the protection, by means of the litigation before the administrative courts, of rights, freedoms and legitimate interests of person⁴.

The above cited examples provide grounds to characterize the “interest” as the object of legal protection within the meaning of the Ukrainian legal system. The legislative framework relevant to the concept of “interest” is not, however, limited to this characterization. Another aspect of the concept of interest at the legislative level implies its understanding, in broad terms, as the circumstance giving rise to the obligations of a subject of law to undertake certain legal actions. Within this meaning the interest may be understood as a certain value deserving of being protected by legal measures. As an example one could cite the provisions of the Act On Commercial Companies of 1991 (as subsequently amended) which impose on the audit commission of a joint-stock company an obligation to require an extraordinary general shareholders

² Civil Code of Ukraine: Law of Ukraine of 16 January 2003 No. 435-IV, Article 3(5), See: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

³ Act On Joint-Stock Companies: Law of Ukraine of 17 September 2008 No. 514-VI, Article 50(1), See: <https://zakon.rada.gov.ua/laws/show/514-17#Text>

⁴ Code of Administrative Procedure of Ukraine: Law of Ukraine of 6 July 2005 No. 2747-IV, Article 5(1), See: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>

meeting to be held *inter alia* in the event of a threat to the essential interests of the joint stock-company⁵.

The issue of the interest as the legal category has been developed in the practice of the Ukrainian judiciary. The Constitutional Court of Ukraine in its decision of 2004⁶ has adopted a construction of the term of legitimate interest which has been used in the Code of Civil Procedure of Ukraine effective at the material time as well as in the other statutes. In that decision the Constitutional Court has listed series of characteristics inherent to the legitimate interest enabling to draw a distinction between the legitimate interest concept and that of the subjective right. From the perspective of understanding of the Ukrainian legal systems' approach to the nature of the interest as a methodological basis for development of the state interests concept the two following features of the legitimate interests, accepted by the Constitutional Court in the decision of 2004, are of most relevance. Firstly, the legitimate interest is aimed at satisfaction of the individual or collective needs recognized by the subject of the interest and, secondly, the legitimate interest implies a desire to enjoy a certain pecuniary or non-pecuniary benefits⁷. The approach to the interpretation of the notion of the legitimate interest expressed by the Constitutional Court in the cited decision has been widely relied on by the Ukrainian courts of the general jurisdiction thereafter⁸ and has become established in the case-law.

The legal theory tends to interpret the notion of the interest as the complex structural phenomenon, closely linked with and based on the respective need. The needs are commonly regarded as the key element of the interest. The viewpoints recognizing the existence, beside the

⁵ Act On Commercial Companies: Law of Ukraine of 19 September 1991 No. 1576-XII, Article 49(8), See: <https://zakon.rada.gov.ua/laws/show/1576-12#Text>

⁶ Case Of the Legitimate Interest: Constitutional Court of Ukraine, Decision of 1 December 2004 No. 18-пп/2004, See: <https://zakon.rada.gov.ua/laws/show/v018p710-04#Text>

⁷ Ibidem.

⁸ Among others: Resolution of the Supreme Court of 20 February 2019, Case No. 522/3665/17, in which the Supreme Court has underpinned its reasoning with the approaches to the interpretation of the concept of the legitimate interest adopted by the Constitutional Court in its decision of 2004, See: <http://www.reyestr.court.gov.ua/Review/80167902>.

needs, of other components within the structure of the interest and therefore admitting its complex structural nature have been developed in scholarly works. More specifically, some authors opine that the interests comprise the needs and the ways of achievement of such needs⁹. Other definitions of the interest proposed in the legal theory accept in substance the characterization of the interests as the phenomenon which is preconditioned by the respective needs. As an example we could adduce the approach which defines the interests as the objective needs reflected in conscious striving of the person for active willful actions aimed at their (needs) satisfaction¹⁰.

Another aspect of the characterization of the notion of the interest, also accepted by the scholars, relates to its conscious nature. According to this thesis the interest exists provided that it is acknowledged (realized) by its subject. Subjective acknowledgment (realization) is widely ascribed to the inherent features of the interest in the legal context. This characteristic of the notion of the interest could be found, for example, in the proposition to identify the interest as the conscious aiming of the subject at the possession of certain pecuniary or non-pecuniary good (benefit)¹¹.

The theoretical provisions relevant to the concept of the interest in law which recognize its complex structural nature, specifically the existence of series of elements in the interest, such as objective needs, ways of their achievement and acknowledgment by the bearer (subject) of the interest, that is a combination of objective and subjective aspects

⁹ I. Venediktova (2011). Metodolohichni pidkhody do spivvidnoshennia poniat «interes» i «potreba» pry vyznachenni yurydychnoi katehorii «okhoroniuvanyi zakonom interes». Problemy tsyvilnoho prava [The Methodological Approaches to Interrelations between the Concept “the Interest” and “the Need” at the Defining of the Legal Category “the Interest Protected by the Law”, The Issues of the Civil Law], no. 3 (66), p. 132 [in Ukrainian].

¹⁰ Chubokha N.F. (2019). Poniattia ta zmist interesu v tsyvil'nomu pravi. Pravo i suspil'stvo [The concept and the content of the interest in the civil law. The Law and the Society], no. 3, p. 149 [in Ukrainian].

¹¹ Sambor M. A. (2010). Interes v pravi: zahal'noteoretychni aspekty rozuminnia ta realizatsii. Avtoreferat dysertatsii na здобuttia naukovoho stupenia kandydata iurydychnykh nauk [The interest in law: general theoretical aspects of understanding and realization. Synopsis of thesis for the degree of doctor of philosophy in law], p. 13 [in Ukrainian].

inherent to the interest are to certain extent rooted in the approaches of the soviet era theory which has focused on and contributed to the development of the scientific understanding of the issues related to the legal phenomenon of the interest. In particular, back in 1980s it was suggested in the theory that the structure of the interest comprised the respective needs as a basis on which the interests arise, means by which these needs are capable of being achieved as well as the recognition (consciousness) of such needs¹² thereby supporting the approach to the interest as to the complex notion containing structural elements.

Therefore, in term of the approaches inherent in the modern legal system of Ukraine to the interpretation and understanding of the interest in the law context the following is to be pointed out. The interest is regarded as an object of the legal protection having affinity to the subjective right, it is also understood in certain instances as a value requiring legal actions to be taken; the interest constitutes unification of subjective and objective aspects, specifically, it is based on the respective needs and implies recognition of the needs by their bearer (subject of the interest). Being complex in nature the interest presupposes existence of means by which the underlying needs are capable of being attained. The above positions of the legislator as well as those of the jurisprudence theory provide, in our opinion, valuable methodological basis for further development of the specific notion of the state interests as a law phenomenon. This value is not only of purely scientific – theoretical but also of practical meaning: indeed, attempts of the state authorities to apply legal measures aimed at protection of the state interests, be it at the legislative, judicial or administrative level, without sufficient regard to the theoretical understanding of these interests renders, on many instances, such measures, at best, inefficient or even capable of damaging the genuine state interests.

3. The state interests and the international law context

When one deals with the issues of the protection of the state interest in the domestic legal system of Ukraine the international aspect should

¹² Syrenko V.F. (1980). Problema ynteresa v hosudarstvennom upravlenyy. Monohrafiya [The problem of interest in the state governance. Monography], p. 11 [in Russian].

not be nevertheless omitted. Nowadays the Ukrainian law is integrated into the international system of human rights protection; both the domestic legislation and the practice tend to become conformed, even though gradually, with the international standards in the area of human rights. Back in 1997 Ukraine has joined the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). Since middle 1990s the country has become a party to a number of the bilateral investment treaties (BIT) as well as the Energy Charter Treaty (ECT). The jurisdiction of the international institutions provided for by the said instruments, such as the European Court of Human Rights (European Court) and the international investment tribunals, has been thereby recognized in Ukraine.

The above international law treaties establish the standards in the area of human rights protection. These standards, having been further developed in the case-law of the European Court and the international investment tribunals, have essential impact on the legal realities of modern Ukraine. Firstly, the rules of the international treaties ratified by the Ukrainian Parliament are regarded as a part of the national law of Ukraine and are applicable by the domestic courts. Secondly, in respect of the standards developed in the practice of the European Court the Ukrainian law explicitly provides for that the practice of the European Court is applicable by the Ukrainian courts as a source of law¹³. Thirdly, the approval of or the introduction amendments to the domestic legislation can be directly reasoned specifically by the practice of the European Court. This mainly occurs where the state applies the general measures aimed at remedying the structural problem in the area of human right provided that the existence of such structural problem is established in the European Court's judgment. Sometimes the practice of the European Court influences functioning of the institutions of the domestic law globally. Suffice it to recall the so called small judicial reform of 2001 which has introduced a series of systematic changes into the judiciary of Ukraine including abolishment of extraordinary review of the court decisions, establishment of the appellate instance courts, etc. This reform

¹³ Act On Enforcement of Judgments and Application of Case-Law of the European Court of Human Rights: Law of Ukraine of 23 February 2006 No. 3477-IV, Article 17, See: <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

has been to large extend conditioned by the case of “Sovtransavto Holding v. Ukraine”¹⁴ which had been under review by the European Court during 1999–2003 and culminated in the Ukrainian state being found responsible for the violation of the international undertakings. Finally, some concepts relevant to the human rights protection reflected in the case-law of the international institutions in particular in that of the European Court have been implemented into the national statutory rules. For example, the principle of proportionality which is generally recognized in the case-law of the European Court and the investment arbitral tribunals has been enshrined in the Code of Administrative Procedure of Ukraine of 2005: Article 2 of that code requires that any decisions or actions of the state authorities should meet the proportionality criteria that is to strike a fair balance between the negative implications for the human rights, freedoms, legitimate interest of a person and the aims sought to be achieved by the respective decisions or actions of the state.

Since the measures of the state aimed at the protection of the state interests on many occasions involve the restrictions of or the interference with the human rights and freedoms as well as the respective private interests such state measures have to be assessed against compliance with the standards of the international law on human rights. Consequently, the theoretical understanding of the state interests as a legal category should have regard to the international law requirements in the area of human rights protection, including those developed in the case-law of the international institutions. The theoretical analysis of the notion of the state interests needs therefore to be based *inter alia* on the approaches to the issues of the protection of the state interests inherent in the international law on human rights.

4. The state interests as a complex structural phenomenon

Based on the approaches to the broader concept of the interest inherent in the Ukrainian legislation as well as in the theory the state in-

¹⁴ Interim Resolution ResDH(2004)14 concerning the judgment of the European Court of Human Rights of 25 July 2002 (final on 6 November 2002) in the case of SOVTRANSVTO HOLDING against Ukraine, 11 February 2004, See: <https://rm.coe.int/168059ddae>.

terest should be viewed as a complex phenomenon. That means that such interests comprise elements taken in conjunction. The said also implies that the state interest only exists subject to the existence of all the structural elements thereof. This thesis is of the methodological importance: indeed, the state, when undertaking the measures aimed at the protection of the state interest should assess the existence of such state interest that is to assess the existence of each of the structural elements of those.

Specifically, we propose to identify the following components in the structure of the state interest: firstly, the underlying needs on which this interest is based; secondly, the recognition (acknowledgement) of such needs by the state and, thirdly, means of achievement of the underlying needs. Each of the listed elements has its specific nature emanating from the specific legal status of the state as well as from its social role.

5. Objective nature of the state interests

The stated interests being based on the objective needs are objective in nature. These interests exist therefore objectively and cannot emanate solely from subjective discretion of the state authorities or governmental officials. Lack of regard to the objective nature of the state interests or a “substitution” of the objective state interests with those of the state entities, state authorities or state officials based solely on their subjective discretion frequently results in the legal measures aimed at the protection of the state interest being ineffective. Moreover, in such situations the narrow bureaucratic interests as well as those of the corporate or political groups become a priority to be achieved by the state measures while the genuine objective state interests do not enjoy the proper recognition and the protection of the state.

The above could be demonstrated by the case of “Agrokompleks v. Ukraine” in which the European Court has found a violation by Ukraine of the applicant company’s right to a fair trial and the peaceful enjoyment of possession guaranteed by the European Convention and the Protocol No. 1 thereto. In one of the episodes the state authorities of Ukraine applied the measures interfering with the private rights of the applicant company by quashing the final court decision in which the

matters of its civil rights had been settled. These measure constituted the interference with the rights of the applicant company to the fair trial and to the peaceful enjoyment of possession within the meaning of the case-law of the European Court. The review of the final court decision had been initiated by the authorities of the executive power allegedly for the purpose of securing the public interests of maintaining proper administration of justice and correction of fundamental judicial errors that is in the interests which are the genuine state interests in nature. However in view of the circumstances of the case the European Court has reached the conclusion that in reality the state measures interfering with the rights of the applicant company had been caused merely by the state officials' disagreement with the final court decision and their willingness to attain a fresh review of the case. The European Court held that the quashing of the final decision constituted in substance an "appeal in disguise" which was based on subjective disagreement of certain officials with that decision¹⁵.

In the above situation the state measures interfering with the human rights have not been applied in the genuine objective state interest. Rather, those measures were aiming at securing separate interests of public officials, narrow corporate or political interests which were not identical to those of the state and deviated from the state interests. The state interests have been incorrectly identified by the state when undertaking the legal measures to protect such interest, in particular the objective nature of the state interest has been disregarded.

The cited case allows, as relevant to our research of the theoretical notion of the state interests, to demonstrate that the state authorities when implementing the measures aiming at the protection of the state interests especially those restricting the private rights and freedoms should differentiate the interests of the state as a whole from the narrow interests of state officials, state authorities, entities, political groups having influence on the state machinery, etc. which may not always coincide with the interests of the state. The important criterion for such assessment is the objective nature of the state interests.

¹⁵ Case of Agrokompleks v. Ukraine: ECHR, Judgment, 6 October 2011, § 151, See: [https://hudoc.echr.coe.int/eng#{«itemid»: \[«001-106636»\]}](https://hudoc.echr.coe.int/eng#{«itemid»: [«001-106636»]}).

6. Public character of the state interests

The thesis that the state interests are based on the relevant needs as outlined above is linked to the next feature of the state interest, specifically their public nature. The public nature of the state interest relates to the character of the underlying needs. Such needs are public in essence. That means that the needs on which the state interests are based are needs of the society that is the general social needs. Such needs are vital from the perspective of the society as a whole and are not limited to the needs of the state authorities, branches of power, entities, collectives, groups, etc. The state interests exist therefore when these are based on the general needs of the society rather than merely on governmental, corporate needs or those of state machinery.

The view that the general social needs constitute the requisite element of the state interests failing which no genuine state interest comes into existence corresponds with the approaches inherent in the modern theory of jurisprudence recognizing the representation of the interests of the society as a whole as the objective of the state power¹⁶. It is the premise that the state interests are based on the general (public) needs which provides the state power with legal and moral grounds to apply measures restricting the human rights, freedoms and the respective private interests.

The public needs on which the genuine state interests are grounded are to be differentiated from the narrow needs of the state authorities and the state machinery since they may or may not coincide with the public needs. This transpires from another case of the European Court, specifically “Maksymenko and Gerasymenko v. Ukraine” in which Ukraine has been held responsible for violation of the international commitments in the human rights sphere. In that case the state applied the legal measures interfering with the rights of the applicants to possession guaranteed by the Protocol No. 1 to the European Convention. These measures included the deprivation of the applicant’s ownership rights to

¹⁶ Kuian I. (2009), *Do pytannia pro publichnist' i suverennist' derzhavnoi vlady. Pra-vo Ukrainy* [To the Issue of Publicity and Sovereignty of the State Power. The Law of Ukraine], no. 11, p. 54 [in Ukrainian].

the immovable properties which occurred in the result of the litigation initiated by the prosecutor. The court proceeding had been instituted by the prosecutor in the economic interests of the state. In this regard the European Court pointed out that “no explanation was given as to what particular economic interests of the State were at stake or how they served the “public interest”¹⁷. The cited case provides an example of how the state authorities have erroneously qualified the narrow interests of the state machinery as the general (public) interest, in particular the public nature of the genuine state interest as its requisite feature have been disregarded. This factor has contributed to the Ukrainian state being found internationally responsible for violation of the rights to peaceful enjoyment of possession under the European Convention. Similar approach has been expressed by the European Court in the case of “Batkivska Turbota Foundation v. Ukraine” which dealt with the deprivation of the applicant’s possession following the claim brought by the prosecutor. The claim of the prosecutor was reasoned by the need to protect the state interests in the restoration of the state ownership to the disputed properties. The European Court went on to hold that the state authorities had provided no grounds that these interests in the property were the public interest or how they were aimed at securing the public interest¹⁸.

7. Legal measures of achievement of the state interests

Within the framework of the theoretical analysis of the concept of the state interests the issue of the legal measures by which the protection of these interests are to be secured is of relevance. As mentioned above the interest is commonly regarded in the theory of jurisprudence as a complex phenomenon comprising *inter alia* the means of achievement of the underlying needs. Further, the application by the state of the measures aimed at the protection of the state interests is able to result in restriction of or interference with the rights, freedoms and the respective

¹⁷ Maksymenko and Gerasymenko v. Ukraine: ECHR Judgment, 16 May 2013, §57, See: [https://hudoc.echr.coe.int/fre#{«itemid»: \[«001-119688»\]}](https://hudoc.echr.coe.int/fre#{«itemid»: [«001-119688»]}).

¹⁸ Case of Batkivska Turbota Foundation v. Ukraine: ECHR, Judgment, 9 October 2018, §62, See: <https://t.co/D4J2DiaH8p?amp=1>.

private interests, including those guaranteed at the international level, thereby giving rise to the conflict of interests. Both in the domestic law and in the sphere of the international undertakings relevant to the protection of human rights it is frequently the case where, even though the genuine state interest exists, the state authorities choose the measures inappropriate for its protection. At the international level such situations frequently give rise to the responsibility of the state for the violation of the international obligations in the human rights sphere which has been also reflected *inter alia* in the practice of the European Court.

It follows from the above that the state interests are to be protected by the legal measures which are not chosen by the state authorities (the legislator, the administrative or judicial authority) on merely discretionary basis in arbitrary manner. Rather, such measures should meet the following criteria. First, the measures should correspond to the relevant interest they intend to pursue; second, such measures should take into account the specific social relationships in the area of which the relevant state interests are to be protected; third, the measures aimed at the protection of the state interest should be assessed against the potential possibility of applying another (alternative) measures to achieve the same state interest in the specific social relationships. The situations where the state authorities have chosen the measures to protect the state interest without the assessment of these criteria have resulted in the state interests being deprived of the efficient protection and, moreover, the state being held internationally responsible on many occasions. This could be clearly demonstrated, for example, with the judgment of the European Court in the case of “Zelenchuk and Tsytsyura v. Ukraine”. In that case the European Court has held that the interference with the property rights of the applicants had been disproportionate and thus incompatible with the requirements of the Protocol No.1 to the European Convention. The disputed interference implied the legislative restrictions on alienation and change of designated use of the land owned by the applicants (the so called “land moratorium”). The European Court accepted that these restrictions pursued the general (public) interest such as avoidance of excessive concentration of land in the hands of wealthy individuals, prevention of landlessness and impoverishment of

the rural population, maintaining food security¹⁹. That is, in the terms of our research, the genuine state interest have been public in nature and correctly identified by the authorities. However, it was pointed out by the European Court that the state authorities have applied the most restrictive measures to protect the relevant state interests and failed to assess the possibility of application of less restrictive mechanism even though these were available to them and were capable of protection these state interests²⁰.

8. Conclusions

Against the foregoing background the following conclusions are to be made. The protection of the state interests in the legal system is the objective necessity. Such protection is achieved by the legal measures applied by the state at the legislative, administrative and judicial level. The core aspect in the scientific analysis of the process of the protection of the state interest is the theoretical understanding of the state interests concept, including their requisite features. The measures of the state aimed at the protection of its interests involve restrictions of, interference with the human rights, freedoms respective private interests including those guaranteed in the international law. The theoretical approaches to the state interests concept should therefore be based both on the provisions of the domestic law and the legal theory and the approaches of the international law on human rights. From this perspective the state interests are to be regarded as a complex phenomenon which is objective, is based on the general needs of the society and is public in nature, recognized by the state and capable of being achieved by the corresponding (appropriate) legal measures. This approach to the understanding of the state interests should, in our opinion, contribute to the increase of the effectiveness of the process of their protection in the legal system of Ukraine.

¹⁹ Zelenchuk and Tsytysyura v. Ukraine: ECHR Judgment, 22 May 2018, § 108, See: [https://hudoc.echr.coe.int/eng#{«itemid»: \[«001-183128»\]}](https://hudoc.echr.coe.int/eng#{«itemid»: [«001-183128»]}).

²⁰ Ibidem, § 147, 148.

References

- Act On Commercial Companies: Law of Ukraine of 19 September 1991 No. 1576-XII, Retrieved from: <https://zakon.rada.gov.ua/laws/show/1576-12#Text>.
- Act On Enforcement of Judgments and Application of Case-Law of the European Court of Human Rights: Law of Ukraine of 23 February 2006 No. 3477-IV, Retrieved from: <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.
- Act On Information: Law of Ukraine of 2 October 1992 No. 2657-XII, Retrieved from: <https://zakon.rada.gov.ua/laws/show/2657-12#Text>.
- Act On Joint-Stock Companies: Law of Ukraine of 17 September 2008 No. 514-VI, Retrieved from: <https://zakon.rada.gov.ua/laws/show/514-17#Text>.
- Case Of the Legitimate Interest: Constitutional Court of Ukraine, Decision of 1 December 2004 No. 18-pr/2004, Retrieved from: <https://zakon.rada.gov.ua/laws/show/v018p710-04#Text>.
- Civil Code of Ukraine: Law of Ukraine of 16 January 2003 No. 435-IV, Retrieved from: <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
- Code of Administrative Procedure of Ukraine: Law of Ukraine of 6 July 2005 No. 2747-IV, Retrieved from: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.
- Chubokha N.F. (2019), *Poniattia ta zmist interesu v tsyvil'nomu pravi. Pravo i suspil'stvo* [The concept and the content of the interest in the civil law. The Law and the Society], no. 3, p.149 [in Ukrainian].
- ECHR: Case of Agrokompleks v. Ukraine, Judgment, 6 October 2011, Retrieved from: [https://hudoc.echr.coe.int/eng#{«itemid»: \[«001-106636»\]}](https://hudoc.echr.coe.int/eng#{«itemid»: [«001-106636»]}).
- ECHR: Case of Batkivska Turbota Foundation v. Ukraine, Judgment, 9 October 2018, Retrieved from: <https://t.co/D4J2DiaH8p?amp=1>.
- ECHR: Case of Maksymenko and Gerasymenko v. Ukraine, Judgment, 16 May 2013, Retrieved from: [https://hudoc.echr.coe.int/fre#{«itemid»: \[«001-119688»\]}](https://hudoc.echr.coe.int/fre#{«itemid»: [«001-119688»]}).
- ECHR: Case of Zelenchuk and Tsytsyura v. Ukraine, Judgment, 22 May 2018, Retrieved from: [https://hudoc.echr.coe.int/eng#{«itemid»: \[«001-183128»\]}](https://hudoc.echr.coe.int/eng#{«itemid»: [«001-183128»]}).
- Interim Resolution ResDH (2004), 14 concerning the judgment of the Eu-

- ropean Court of Human Rights of 25 July 2002 (final on 6 November 2002) in the case of SOVTRANSVTO HOLDING against Ukraine, 11 February 2004, Retrieved from: <https://rm.coe.int/168059ddae>.
- Kuian I. (2009), Do pytannia pro publichnist' i suverennist' derzhavnoi vlady. Pravo Ukrainy. [To the Issue of Publicity and Sovereignty of the State Power. The Law of Ukraine], no. 11, p. 54 [in Ukrainian].
- Sambor M. A. (2010), Interes v pravi: zahal'noteoretychni aspekty rozuminnia ta realizatsii. Avtoreferat dysertatsii na zdobuttia naukovoho stupenia kandydata iurydychnykh nauk [The interest in law: general theoretical aspects of understanding and realization. Synopsis of the thesis for the degree of doctor of philosophy in law], p.13 [in Ukrainian].
- Supreme Court: Resolution of 20 February 2019, Case No. 522/3665/17, Retrieved from: <http://www.reyestr.court.gov.ua/Review/80167902>.
- Syrenko V.F. (1980), Problema ynteresa v hosudarstvennom upravlenyy. Monohrafiya [The problem of interest in the state governance. Monography], p.11 [in Russian].
- Venediktova I. (2011), Metodolohichni pidkhody do spivvidnoshennia poniat «interes» i «potreba» pry vyznachenni yurydychnoi katehorii «okhoroniuvanyi zakonom interes». Problemy tsyvilnoho prava [The Methodological Approaches to Interrelations between the Concept “the Interest” and “the Need” at the Defining of the Legal Category “the Interest Protected by the Law”, The Issues of the Civil Law], no. 3 (66), p. 132 [in Ukrainian].

Summary

The article addresses the theoretical issues of the protection of the state interests in the Ukrainian law. The protection of the state interests, being an objective necessity from the perspective of the development of the state and the civil society, requires legal measures to be applied by the state. The core aspect in the analysis of the process of the protection of the state interests by such measures is the theoretical understanding of the state interests concept, including their definition and the requisite qualifications. Based on the approaches of the domestic as well as of the international law on human rights the state interests are proposed to be viewed as objective interests, public in nature, comprising the underlying general social needs, acknowledged by the

state. The state interest include, further, the appropriate legal means by which such interests are capable of being protected. Such measures should be relevant to the respective state interests as well as to the specific social relationships in which such measures are to be applied.

Keywords: the interest; the state interest; the public interest; the state; the responsibility of state