

**THE LEGAL SYSTEM OF UKRAINE:
TIMES OF CHANGE**

*Interview of President of the National Academy
of Legal Sciences of Ukraine, Academician
V. Tatsiy with Legal Journal «Law of Ukraine»*



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Reforms in order to advance to Europe — it is their implementation that appears to be the priority question for Ukraine. This embraces election, medical, pension, land and constitutional reforms ... All these reforms require

changes due to the fact that some legislation still bears the imprint of outdated regimes even now. At the end of last year, official Kiev reached agreement with Europeans about the endorsement of the Association Agreement. However, while

doing this, European leaders emphasized that the signing of agreements will depend on the pace of democratic reforms in Ukraine. A special concern for European representatives was the state of the Ukrainian court system.

The bright minds of national jurisprudence also support the idea that Ukraine should modify its legislation towards the consolidation of principles of democracy. In particular, the President of the National Academy of Legal Sciences, V. Tatsiy, Chairman of the editorial board of the five-volume treatise «Legal System of Ukraine: history, current state, perspectives» (Kharkov, 2011), expresses his confidence that comprehensive changes in the legal system of Ukraine are inevitable.

V. Tatsiy: An analysis of the contemporary legal system of Ukraine allows us to conclude today that there are no fundamental differences between this system and the continental legal systems (Romano-Germanic) either in the ways legal norms are formed or in the nature of their systematization, interpretation, utilization, and law application practice. Essential changes have occurred in law interpretation, in particular, the ideas of rule of law, inalienability of human rights, rule-of-law, social, democratic state, division of law into public and private, inviolability of private ownership, which are characteristic of the European legal tradition, are recognized. Nevertheless, further advancement of Ukraine towards the recognition and introduction of basic European values and priorities in all spheres of societal life requires further modification of fundamental components of the national legal system.

First, academic research undoubtedly demonstrate the priority necessity for the continuation of constitutional and

legal reforms because the Constitution itself is the basis for all elements of the legal system to function. That is why it is necessary to provide full support to the initiative of the President of Ukraine to create the Constitutional Assembly with the objective to develop a scientifically substantiated Concept for introducing amendments to the Constitution of Ukraine and the preparation on this basis of a corresponding draft law(s)¹. I am confident that the work of Constitutional Assembly will be facilitated by numerous suggestions and recommendations contained in the volumes of the five-volume treatise devoted to the legal system of Ukraine. Moreover, some authors are members of this special body.

The contemporary state of the legal system of Ukraine requires further renovation of its normative base – the legal system and the system of law-making. During the last decade, the normative basis of legal regulation of social relations in all spheres of social life have been basically modified; Criminal, Penal, Civil, Family, Civil Procedure, Economic, Budget, and the Tax Code of Ukraine, Code on Administrative Proceedings of Ukraine and other codes were adopted. In fact, the full-scale codification of legislation in force took place, which generated tangible global transformations in the legal system as a whole. Nevertheless, the treatise confirms that we must proceed further along this path, because there remain many spheres of legal regulation which need either institutionalization or fundamental renovation of the normative base. First, new criminal procedure and labour codes must be adopted; they have been submitted to the Supreme Rada for consideration. It is necessary to make changes and

¹ See the Edicts of the President of Ukraine «Questions of formation and organization of activity of Constitutional Assembly», 25 January 2012, № 31/ 2012; «On support of the initiative related to the creation of Constitutional Assembly», 21 February 2011, № 224.

additions to the Land Code of Ukraine, which must reflect the clear vision of land reform and resolve the sale of land in Ukraine; adopt new Housing and Land Codes and a Code on Innovations, and so on.

Taking into consideration the European legal tradition, the architects of the legal system of Ukraine should pay attention not only to the legislation but also to other forms of law: ratification by Ukraine of international treaties, primarily those which relate to fundamental human rights; they must be enforced directly in courts in the event of a violation of their provisions.

The institutional component of the legal system of Ukraine requires further change: the agenda must include the continuation of judicial reform, implementation of *advokatura* and procuracy reforms and of other law enforcement agencies; reform of local self-government, which must optimize the activity of agencies of local self-government and ensure that this corresponds to the established standards of compliance with and protection of the rights and freedoms of man and citizen.

Finally, it is necessary to note that none of the political and legal reforms can ensure the achievement of anticipated results until those who execute legal and State policies as well as the entire population acquire an appropriate vision of legal reality. The only way to develop the Ukrainian legal system lies in the perception by each member of society of legal values and the formation of personal joint and several conviction as to the acceptability of those models of socially significant behaviour which correspond to generally-recognized legal principles and values, prescriptions of legislation in force that do not violate the fundamental rights and freedoms of other individuals. Legal research and contemporary legal

doctrine as a whole must make their utmost contribution to this end.

In 2008, Vasiliy Yakovlevich in cooperation with a number of other scholars managed to edit in five volumes fundamental information about the legal system of Ukraine. This work can be considered to be unique because this treatise comprises not only the history and the state of contemporary Ukrainian law, but also far reaching plans, perspectives for the future – a new vision of national legal doctrine in the light of European democratic principles.

Why was it necessary to prepare the five-volume treatise «Legal System of Ukraine: History, Current State, and Perspectives»?

V. Tatsiy: The need to prepare and publish the first treatise in the history of Ukrainian legal science of a comprehensive fundamental work consisting of five volumes «Legal System of Ukraine: History, Current State, and Perspectives» (Kharkov, 2008, in Ukrainian; Kharkov, 2011, in Russian) can be objectively attributed to the very creation of an independent Ukrainian State and by the emergence of new social and historical phenomena — legal system of Ukraine.

All stages of the evolution of independent Ukrainian statehood had their preconditions, legal forms and mechanisms, and they have influenced the condition of the Ukrainian legal system. As of today, one necessary precondition for the successful construction of a democratic, social, rule-of-law State is the formation of a corresponding legal system which indicates the state of legal culture in society, the standard of efficiency and quality of legal regulation of social relations; as a measure of the introduction of generally-recognized European values:

human rights, democracy, and the rule of law. The development of the Ukrainian legal system is directly connected with the improvement of the system of legislation in force and its separate branches and institutions, law enforcement and law-protection activities, optimization of activity of State agencies, increasing the level of legal consciousness and respect for law both by the officials and by the population of the country as a whole.

All of this has created an urgent need for a comprehensive study of the history, contemporary state, and the perspectives for the development of legal system of Ukraine which would concentrate on problems of State and law system-building in Ukraine. We should bear in mind that in Ukrainian doctrine the notion of «legal system» has not been widely researched until recently. There are virtually no fundamental works available on this issue. At the same time, all studies of Ukrainian legal scholarship in one way or another are related to particular problems or institutions of the legal system. Consequently, the value of the category «legal system» lies in the opportunity to analyze with its help the legal sphere of the life of society, investigate the entire range of legal phenomena and processes, demonstrate their interconnectivity, interaction and interdependence; and, finally, study the structure of legal reality in general and the internal organization of each element of the legal system separately.

Considering the above, we may argue that there is an objective necessity in Ukraine to systematize the main achievements of legal science and comprehensively study the general theoretical and special branch problems of the legal system of Ukraine, the result of which has become the unique academic treatise «Legal System of Ukraine:

History, Current State, and Perspectives».

How can we define the social importance of this five volume treatise? Can we argue that this work really influences in some way the transformation of the State and legal system of Ukraine, its law-making and law enforcement practice?

V. Tatsiy: The importance of the academic publication «Legal System of Ukraine: History, Current State, and Perspectives» is defined primarily by the scope of problems and the topicality of the conclusions contained in each of the five volumes.

Thus, in the first volume devoted to the historical theoretical and methodological problems of the formation and development of the legal system of Ukraine, the conceptual theoretical model of a contemporary legal system as historically logical, integrated, and multifaceted social and legal phenomena has been constructed. This study examines the fundamental problems of the contemporary stage of the development of the legal system of Ukraine: the problems of contemporary law interpretation, the peculiarity of law as a social phenomenon, methodological problems of the formation of the conceptual mechanism of legal science, ensuring the rule of law as a fundamental principle of the legal and political system of Ukraine, the determination of democratic preconditions for the establishment and development of rule-of-law State, reforming State agencies in Ukraine, and others. The uniqueness of this part of the publication lies also in the fact that it makes a significant contribution to forming the anthropological dimension of contemporary jurisprudence in Ukraine, elaboration of the idea about its axiological aims based

on the ideology that human rights represent the highest social value.

The authors of the second volume formulated proposals for the introduction of comprehensive measures to facilitate the advancement of constitutionalism in contemporary Ukrainian society, substantiated the social value of the Ukrainian Constitution as a fundamental document which reflects the political and legal perceptions and values of society, and serves as a basis for the entire Ukrainian legal system. The treatise formulates general theoretical and legal approaches to improving the constitutional base of self-government in Ukraine, which allows us to determine the strategy for developing local self-government and improving municipal legislation. Of special significance is the study of the constitutional basis for regulating administrative law, as well as financial law, relations.

In the third volume of this treatise leading experts on civil law in Ukraine examine the topical problems of contemporary private, primarily civil, law, which constitutes an integral part of the Ukrainian legal system. We must stress that the scope of reforming the civil law turned out to be so significant in extent and content that we can say without exaggeration that a new portion of private law has been created in Ukraine. The key directions of reforming the principal civil law institutions have been proposed, in particular, intellectual property, corporate relations, and contract law. Ways to improve labour law have been determined, and the drafts of the Labour Code have been examined that are under review by the Supreme Rada of Ukraine.

The fourth volume of the treatise highlights the main problems and perspectives for the development of special branches of agrarian, ecological, and eco-

nomical laws of Ukraine; suggests relevant mechanisms and guarantees of their implementation aimed at increasing the effectiveness of laws and legislative acts in the corresponding spheres of social relations, in particular, improvement of the legal regime of land use.

In the fifth volume, devoted to the role of criminal procedure in the contemporary period of its development, new directions of fighting crime in Ukraine are determined; the methodological grounds for reforming criminal justice in Ukraine are examined by taking into account the positive Ukrainian traditions of criminal judicature tested by time, and the progressive criminal and legal institutions of leading European and other States, as well as norms and principles of international criminal law.

The practical significance of this publication lies also in the fact that the approaches, conclusions, and recommendations have been extensively used for the preparation of new draft laws or modification of laws in force, in particular, the «Law on State Service», «On the training of Scientific Personnel of Higher Qualifications», «On the Constitutional Court of Ukraine», «On the Supreme Council of Justice», «On Court Organization», «On the Status of an Investigator», «On the Procuracy», «On the Criminological Expert Examination of Drafts Normative Legal Acts», «On Joint-Stock Societies», «On the Rural (or Farmer) Economy», and so on.

The results of the study have found practical application in many expert opinions, observations, and suggestions developed at the request of the President of Ukraine, Supreme Rada of Ukraine, Cabinet of Ministers of Ukraine, and Supreme Court of Ukraine.

The treatise edited by V. Tatsiy «Legal system of Ukraine: History, Current State,

and Perspectives» is of an innovative nature, based on the newest methodological base, and is, in fact, a unique doctrinal source. Why unique? Because for the first time in the history of Ukrainian jurisprudence a single publication managed to generalize Ukrainian experience in constructing a national legal system, all its branches, the contemporary state of scholarship and law-making, the practice of law enforcement, and prospects for their development. Considering the volume of academic material, this publication is unparalleled (more than 3,500 pages). The team of authors includes the elite of national jurisprudence, the backbone of which are academicians and corresponding members of National Academy of Legal Sciences of Ukraine and leading scholars of Ukrainian law schools. In general, the majority of the team are Doctors of Legal Sciences and professors.

V. Tatsiy: The learned work «Legal system of Ukraine: History, Current State, and Perspectives» made a significant theoretical contribution and is a practical step towards the resolution of priority problems in the development of Ukrainian statehood. It evoked significant interest and generated fruitful discussions in academic circles, accelerated the recognition of recent directions in academic research, approval and defence of topics for theses, and the publication of interesting academic articles in the leading specialist legal publications. The popularity and general recognition of this comprehensive treatise is demonstrated by the high number of citations from this work in academic legal literature.

This five-volume publication has become a genuine treasury of legal knowledge for students, post-graduate students, and young scholars who are actively mastering its content while

studying various legal disciplines and taking advantage of its conclusions in their fledgling academic studies. The precondition for such an opportunity is the fact that the libraries of all leading legal higher educational institutions have been provided with this publication, which makes it readily accessible for an academic and student audience.

Finally, this fundamental treatise has evoked significant interest among legal practitioners, judges and procurators, representatives of other State institutions and agencies of local self-government, as well as among politicians responsible for determining the strategic objectives of the legal system of Ukraine. The recording of doctrinal achievements in law enforcement practice will enable Ukraine to approximate the desired standards of social and legal life, to increase the level of respect for generally-accepted legal values on the part of law enforcement personnel, facilitate the development of contemporary legal way of thinking, and the breadth of legal outlook. The introduction of the tools of this treatise into the law-making process will assuredly enhance the quality of laws and the essential renovation and improvement of the legislative system, which in turn will ensure greater effectiveness of the system of law in Ukraine.

The excellent reception by legal scholars, practitioners, State executives and the entire legal public who acquired this collective treatise is expressed in numerous positive comments and reviews provided by leading legal specialists and published in well-known publications (the journals «Law of Ukraine», «Legal Herald of Ukraine», «Law and Society», «Herald of Kyiv National University of Internal Affairs», collections of academic works «Theory and Practice of Forensic Expertise and Criminalistics», «Questions of Fighting

Crime», and the newspaper «Mirror of the Week», «Day», and so on.

How has this publication been received by the Ukrainian and international legal public in academic circles, government, and political leaders of the country?

V. Tatsiy: I am very pleased to note that interest in this fundamental treatise has transcended Ukrainian borders. In 2011 the publishing house «Law» of the National Academy of Legal Sciences of Ukraine issued a second edition of this five-volume treatise «Legal System of Ukraine: History, Current State, and Perspectives», translated into Russian. The team of authors consists of 122 scholars. The main objective of this publication is to provide an opportunity to legal scholars in other countries, first the

Russian Federation and the New Independent States, to become acquainted with the achievements of Ukrainian legal science in various fields of the law, contemporary legislation of Ukraine and the practice of its application. Furthermore, an English language version of this comprehensive treatise is underway, after the publication of which the findings of Ukrainian legal science will be accessible to legal scholars worldwide.

Wide public recognition of this fundamental legal work is evidenced by the fact that the Committee on State Awards of Ukraine in the field of science and technology conferred on the treatise «Legal System of Ukraine: History, Current State, and Perspectives» the State Award in the field of science and technology in 2011.