ASIA LIFE SCIENCES

ISSN 0117-3375

REPRINT

The Asian International Journal of Life Sciences

Beyond Excellence©

SUPPLEMENT 21(2) 28 DECEMBER 2019

Social & Legal Changes for Sustainable Development: Trends, Issues & Effective Solutions

e-mails: asialifesciences@yahoo.com wsmgruezo@gmail.com
Website - http://emtpub.com/journals/ALS/

 Printed in the Philippines

ASIA LIFE SCIENCES **The Asian International Journal of Life Sciences** *Beyond Excellence©*

ASIA LIFE SCIENCES -The Asian International Journal of Life Sciences (ISSN 0117-3375) is a non-profit, non-stock, refereed/peer-reviewed (double-blind review), international, scientific journal devoted to the publication of original research in the Life Sciences and other disciplines. Articles originating from anywhere in the world are most welcome. Two issues a year make a volume.

Deadlines for submission of manuscripts. *First issue*-01 July; *Second issue*-01 January. Please contact the Chief Editor/Chairman, ALS Board of Editors (see addresses below).

Subscription Prices. **Foreign:** Institutional - US$1000; Individual - US$800 (including Volumes 1-28, 1992-2019 + 21 Supplements). **Local:** Institutional - PhP10,000; Individual - PhP8,000 (including Volumes 1-28, 1992-2019 + 21 Supplements). Prepayment of order/back order is required. All issues are to be sent by air mail. Back orders will have an additional packing-handling and postage cost.

Send manuscripts, subscription orders and correspondence to: Dr. William Sm. Gruèzo, ***ASIA LIFE SCIENCES***, The Asian International Journal of Life Sciences, 81 Governor F.T. San Luis Avenue, Masaya, Bay 4033, Laguna, Philippines. ***e-mails*:** asialifesciences@yahoo.com wsmgruezo@gmail.com ***Website*:** http://emtpub.com/journals/ALS/

 Printed in the Philippines

Contents

783 On the generation of mechanical vibrations of semiconductor membranes under local pulsed excitation
Arkadiy A. Skvortsov & Ivan A. Poselsky

795 The doctrine of human rights in the field of private law relations: legal theoretical aspects
Veronica Yu. Horielova, Vasyl A. Omelchuk, Oleksandr F. Kalinichenko, Inna V. Naida & Yuliya V. Sagaydak

821 Civil law contract: Doctrinal and legal approaches
Oleksandra O. Karmaza, Yulia M. Panfilova, Anastasiia A. saparova, Alina S. Sheludchenkova & Serhii M. Oriekhov

837 Heat transfer in nonlinear anisotropic growing bodies based on analytical solution
Ekaterina L. Kuznetsova & Lev N. Rabinskiy

847 Issues and prospects of legal regulation of commercial concession in Ukraine **Tatyana V. Bodnar, Olena A. Belianevych, Nino B. Patsuriia, Valeria V. Radzyviliuk & Viktoriia V. Rieznikova**

863 Protection of ownership right in the court: The essence and particularities **Viacheslav V. Vapniarchuk, Iryna I. Puchkovska, Oleksii V. Tavolzhanskyi & Roman I. Tashian**

881 The right to artistic freedom in post-Soviet countries
Valentyn O. Bazhanov, Viktoriia O. Bazhanova, Vira O. Kachur, Liliia O. Pankova & Maryna V. Pushkar

897 Mathematical modeling of heat and mass transfer in shock layer on dimmed bodies at aerodynamic heating of aircraft **Lev N. Rabinskiy, Olga V. Tushavina & Vladimir F. Formalev**

Beyond Excellence©

81 Governor F.T. San Luis Avenue, Masaya, Bay 4033
Laguna, Philippines
Celfone nos. (063) (049) 0916-526-0164; 0977-706-0972
e-mails: asialifesciences@yahoo.com
wsmgruezo@gmail.com
http://emtpub.com/journals/ALS/

Asia Life Sciences has an Impact Factor of 0.180

The papers published in ***Asia Life Sciences*** are indexed/covered by SCOPUS, Elsevier B.V., Radarweg 29, 1043 NX, Amsterdam, The Netherlands; CABI, Wallingford, Oxon, UK; China National Knowledge Infrastructure (CNKI), 66 Xixiaokou Avenue, Haidian District, Beijing, China; J-Gate, Informatics Publishing Limited, No. 194, RV Road, Basavanagudi, Bangalore-560004, Karnataka, India and EBSCO Publishing, Inc., 10 Estes Street, Ipswich, Massachusetts, 01938-0682, USA.

Asia Life Sciences is a recipient of the Journal Accreditation Award of the Commission on Higher Education (CHED), Republic of the Philippines (2010-2016).

Printed on acid-free papers

Actual Date of Publication: *Asia Life Sciences* Supplement 21, Number 2, 2019 - 28 December 2019

ASIA LIFE SCIENCES SUPPLEMENT 21(2)
The Asian International Journal of Life Sciences

The right to artistic freedom in post-Soviet countries

VALENTYN O. BAZHANOV[1*], VIKTORIIA O. BAZHANOVA[2],
VIRA O. KACHUR[3], LILIIA O. PANKOVA[2], MARYNA V. PUSHKAR[2]

The information community today is seen as a new historical round of civilisation, in which the main products are information and knowledge, and technologies are applied a qualitatively differently and are considered not only as technical means, but also as a social toolkit for implementation of human potential. In turn, the essence of the right to artistic freedom and its role in a modernised society on the territory of the post-Soviet countries is today considered from a historical perspective in the context of freedom and cultural human rights, acquiring special relevance. In the framework of the purpose of the article and the tasks set by the author: 1) it was stated that from a doctrinal point of view, the right to artistic freedom is unified and considered in the unity of its terminological components. Particular emphasis is placed on the category of "freedom", which is variably interpreted by representatives of various scientific schools and does not have a single approach to its content and elements; 2) it was revealed that in the legal regulation of the countries of the former Soviet Union, the right to artistic freedom is reviewed as an integral element of cultural rights through the prism of model regulatory legal acts and international cooperation of the post-Soviet countries. In almost all countries of the Commonwealth, national laws on culture have been developed or adopted, in which a special place is given to the right to artistic freedom; 3) it was established that the legislative regulation of the right to artistic freedom in the territory of the post-Soviet countries at this stage is almost identical, the variability in the terminology or components of this law, fixed at the constitutional level, does not give rise to sharp variations in the practice of enforcement in national legal systems; 4) a debatable issue was considered among scientific schools of the countries of former Soviet Union area regarding the correlation of the right to artistic freedom and plagiarism, and it was established that this ratio is considered by scientists in the segment of abuse of this right; 5) it was summarised that today doctrinal approaches and legislative norms in the field of regulation of the right to artistic freedom in the post-Soviet countries are subject to modernised reform, which is based on the processes of Europeanisation and intensification of information innovations.

Keywords: society, the right to creativity, community, plagiarism, restriction of rights.

[1]Department of Civil Law, Taras Shevchenko National University of Kyiv, 01033, 60 Volodymyrska Str., Kyiv, Ukraine

[2]Department of Civil and Commercial Law, National University of Life and Environmental Sciences of Ukraine, 03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

[3]Department of the Theory and History of State and Law, National University of Life and Environmental Sciences of Ukraine, 03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

*Corresponding author

INTRODUCTION

The information community today is seen as a new historical round of civilisation, in which the main products are information and knowledge, and technologies are applied a qualitatively differently and are considered not only as technical means, but also as a social toolkit for implementation of human potential (Shestopal & Smulkina 2018, Tishchenko 2018).Globalisation intensifies the contradictions between international and national systems of regulation, protection and restriction of the right to artistic freedom. Scientists note that in such conditions, transnational holdings are increasingly setting global "rules of the game", designed more for profit than for maintaining human freedoms in various fields, except for business one (Citco Group Ltd…2019). In the context of the race for European "sustainable business" trends, the post-Soviet countries are characterised by a low level of national legal awareness and minimised aspirations to implement the right to artistic freedom in the field of innovation (Djelic & Quack 2018), randomly copying global "trends" without adapting them to national legal systems and prevailing business practices (Zatulin et al. 2017).

In turn, according to M.P. Rabinovich, human development is a process of expanding choices for a person, consisting, first of all, of three important things: to lead a healthy lifestyle and live long, to acquire knowledge, to have resources to maintain an adequate life level. This also includes political, economic and social freedoms, the opportunity to engage in artistic and productive activities, and guarantees of human rights (Rabinovich & Khavronyuk 2004, Zakieva et al. 2019). In the context of modern innovations, a gradual reorientation of value takes place, and one of the main values is the artistic activity of a person, since the main resource is intellectual potential, and not traditional material resources (Simonton 2017). A modernised economy based on high-quality knowledge gives rise to a new social group of people, which becomes a structural determinant with the function of social management in all spheres of life. Professionalism and ability to create, the desire of an individual to self-improvement are the leading criteria that indicate the social status of a person (Lisitsa 2018). In such circumstances, detailed legislative regulation of the right to artistic freedom becomes one of the leading tasks of any state of law that is aimed at protecting and ensuring human rights (Fomina 2018).

The variability of scientists' points of view justifies the existence of controversy in the sphere of implementation and restriction of the right to artistic freedom in the former Soviet countries, rather than its essence and content (Shurentayev et al. 2018). Moreover, despite the scepticism of some representatives of the doctrine (Anokhina 2013), the information model of the future society has become a new paradigm of social development, within the framework of which revolutionary strategies for the formation of society are developed, both at the international and local levels in the post-Soviet space. The topic of the study is of particular relevance in the light of the development of issues related to the transformation of human rights and freedoms, which at the present stage of world development is an integral characteristic of state policy in its domestic and international aspects, are universal in nature, and are the subject of research by scientists in many branches of social science and legal sciences, each of which determines a certain sphere of human activity (Rödl 2019).

Studying and analysing the problems of human rights and freedoms in the countries on the post-Soviet territory, including issues related to legal regulation and ensuring the right to freedom of creativity, requires new methodological approaches and views, involves the consideration of a wide range of sources concerning not only these topics, but also those that highlight the legal content of each type of right to creativity, cultural rights, their groups, as well as the features of their implementation and restrictions. In addition, civil society, which is being formed on the territory of the countries in the post-Soviet area, has its own peculiarities of formation and development, therefore it also requires analysis and research in the context of the implementation of this right, because exactly thanks to the existence of a conscious public sector the full integration of democratic experience and reform of legislation are possible, including the implementation of basic world values – the protection of human rights, the democratic structure of the state and society, multiculturalism and tolerance. The basics of legal regulation, protection and restriction of the right

to artistic freedom in the post-Soviet countries are also of particular importance in conducting a comparative analysis (Voronov et al. 2019, Tsybulskaia & Parakhina 2019).

At the same time, paying tribute to a significant number of fundamental and substantial scientific works devoted to human rights, we have to admit that in the modern international and national legal doctrine of the theory of law and constitutional law, the comparative legal analysis of the content and features of the implementation of the right to artistic freedom is insufficiently developed in the territory of the post-Soviet countries. Therefore, the relevance of the topic of the article is due not only to the democratisation of the political system, the formation of civil society, deep reforms, but also to the need for further scientific and theoretical rethinking and improvement of the content of the law in the transboundary context.

Based on the foregoing, the aim of the article is a comprehensive comparative analysis of the features of legal regulation and the implementation of the right to artistic freedom in the countries of the former Soviet Union. To achieve this aim, the following tasks were formulated: 1) to reveal transboundary doctrinal approaches to the essence of the right to artistic freedom and its components, to highlight the state of scientific development of this issue; 2) to analyse and compare the legal regulation of the right to artistic freedom in the post-Soviet countries; 3) to identify and characterise the features of the implementation and restrictions on the right to artistic freedom in the post-Soviet countries.

MATERIALS AND METHODS

The methodological basis of the article is a combination of philosophical and worldview, general scientific and special scientific methods of cognition of state-legal phenomena and processes, which, in turn, have provided an objective analysis of the subject under study and the reliability of the results and conclusions.

The study relies on a materialistic understanding of the human rights system as a natural result of the historical development of society. The dialectical method of cognition, based on the epistemological possibilities of laws and categories of dialectics, is used to study doctrinal and normative sources considering the right to creative freedom as an objective social reality that is associated with other social phenomena of a political, economic, sociocultural and other nature, and is constantly evolving under the influence of internal and external contradictions along with the development of human civilisation.

The logical method, which includes analysis, synthesis, induction and deduction, made it possible to conduct a meaningful analysis of the legal constructions of norms that enshrined the right to artistic freedom, to highlight its essential features. The systematic method, as one of the main methods of streamlining the legislation, made it possible to study the constitutional and legal regulation of the right to artistic freedom as an integral and dynamic system consisting of separate elements, helped to determine the place and significance of this right in the human rights system, and also provided an opportunity to highlight problems legal regulation in the countries in the post-Soviet area.

The methods of legal modelling and forecasting made it possible, based on the experience of modern practice of the countries of the former Soviet Union and factors influencing the development of their advisory legislation, to reveal the features and prospects of the implementation of the right to artistic freedom in the post-Soviet countries. The method of generalisation has become the methodological basis for the development of doctrinal research and legislative practice of regulating the right to artistic freedom, with its help, the key characteristics of the phenomenon of scientific concepts “human rights”, “cultural rights”, “artistic freedom of” were identified. The comparative legal method made it possible to study, compare and generalise the experience of national legal regulation of the right to artistic freedom in the countries of the former Soviet Union, made it possible to identify similar signs and differences between them, establish legal formulations of the provisions of legislative norms in the field of limitation of the law under study.

RESULTS

The essence of the right to artistic freedom and its role in society in the post-Soviet countries should be approached from a historical perspective and viewed in the context of freedom and cultural human rights. The modern list of rights and freedoms is the result of their long formation, it is fixed in many international legal acts and constitutions of legal states. Standards in this area, which became the norm of a democratic society, were preceded by the development of society in several centuries. In different historical eras, the concept, content and scope of human rights and freedoms have changed and have been varied (Bratasyuk 2013). They were formed in the process of human activity, which was determined by a variety of actions, needs, forms of relations, accompanied by the inevitability of confrontations, oppositions of interests and freedom.

Significant activation of democratic processes in the modern world, against the backdrop of globalisation challenges and threats, has become one of the main impetuses for the transformation of classical ideas about freedom and creativity, has led to the emergence of new theoretical structures and models for their legal consolidation and support (Atanesyan 2018). Building a democratic, social, legal state is impossible without ensuring freedom at the constitutional level. That is why there was an urgent need to rethink the category of freedom, to determine the further vector of its development, to ensure it as the value of the whole society, as a principle of the constitutional system, as a civilisational phenomenon in the context of its various aspects, including artistic freedom.

Freedom, as a category, has not been comprehensively studied in the science of the countries on the territory of former Soviet Union. Many issues related to freedom are debatable, in particular, regarding the legal forms of ensuring it, the mechanism of ensuring, or responsibility for its violation. The problems associated with ensuring the freedom and development of a personality, creativity were most often covered in works relating to freedom of religion, freedom of speech, artistic freedom, freedom of information and the like. Today, there are various views that reveal an understanding of freedom by one or another author belonging to a particular scientific school. So, for example, I. Pogrebnoy understands freedom as an individual's ability to independently choose one or another variant of behaviour among the pluralities of the possible (Pogrebnoy 2003).

According to other authors, the freedom of a subject includes both freedom of choice of a particular option of action, and freedom of will as a property of a subject to make an appropriate decision, and freedom of action as its unhindered implementation (General Theory of State and Law 2000). However, the most clear-cut definition of freedom is that proposed by L. Bruno, who writes that freedom is a condition in which a person does not feel compelled by other people towards himself/herself (Bruno 2008). Scientists identify the following signs of freedom as a principle of law: 1) the highest degree of abstraction; 2) sustainability in comparison with the rules of law; 3) fixation in rights and freedoms; 4) fundamentality for the system of law; 5) regulatory nature (Milova 2008). It has been established that freedom is inextricably linked to such principles of law as equality, humanism, justice, the rule of law. The author concludes that freedom is an integral element of the system of law, is its fundamental principle, is inextricably linked with other principles of law, which are characterised by such features and properties as universality, imperativeness, universality, significance, sustainability and stability for an indefinitely long time, a guiding character, above all, for the development and functioning of the legal system. Freedom of creativity implies the inadmissibility of ideological dictate, control and censorship on the part of the state in all kinds of creative self-realisation, and the right to freedom of creativity provides for the right of a person to create literary, artistic, scientific and other works, to carry out scientific researches, to engage in inventing, teaching, stage activity guaranteed by constitutional norms (Hinz 2017). It can be stated that the category of freedom and its content are especially important for consideration in the framework of the study of the right to creativity, in their interrelation and conditionality.

Thus, creativity in the post-Soviet area is considered by representatives of the doctrine as a qualitative process of formation of cultural values by an individual, as well as their interpretation, determined by novelty, uniqueness, social-historical and other identity, which consists of several

stages, has its purpose, means and certain result (Razumov 2018). Professor Yu.I. Kovaliv considers creativity as the spiritual activity of an artist, aimed at creating new original artistic values, another artistic reality (Encyclopedia of Literary Studies 2007). The scientist names the necessary prerequisites for creativity, namely: the presence of the artist's gift, talent or genius, idiostyle, as well as motives, knowledge, skills of artistic creativity, peculiar kind of worldview, ideological and aesthetic platform, culture of thinking, and also emphasises the importance of such factors as the power of presentation, intuition, an artist's need for actualisation, the expansion of his creative potential, the utmost concentration of spiritual forces. The above definition reveals directly artistic creativity, but by analogy can be applied to other types of creativity.

Creativity is freedom, which is not determined by any conventions and prescriptions. The creation of a something new, according to a certain algorithm or specific requirements, is a rather improvement of something that has already happened rather than the emergence of a fundamentally new one. This is a path of evolution that follows certain canons, fits into certain rules, etc. Certainties and conventions paralyse the creative impulse, directing it in a given way (Hanaba 2014). The right to artistic freedom, as a subjective right, consists of such competency components that are structural elements of its content:

1) the opportunity of any individual to engage in all possible types of creative activity that correlate with his/her interests and needs;

2) the prospect of engaging in varied forms of creativity at different levels – from amateur to professional;

3) the necessity for any person to create the right conditions for the implementation of the right to creativity, the right to demand such actions;

4) an appeal in the established manner against the actions of persons, state or other bodies and organisations aimed at violating or restricting the right to creativity, the right to appeal to the judicial authorities for the protection of their violated rights.

Artistic freedom provides an individual with the right to act in accordance with his/her inner convictions and guidelines, which, in their essence and content, can qualitatively differ from generally accepted canons, norms and rules, including those legalised and established by the legislator. In turn, requiring a public and state assessment of individual's activities in the field of creativity, the latter must comply with the modelled behaviour pattern for adoption by society (Gumerov 2012). Each individual who exercises the right to artistic freedom is automatically vested with the right to protect his/her intellectual property from illegal use. Unfortunately, in modern conditions, the level of activity of copyright holders to protect violated rights in the countries of former Soviet Union cannot be considered high, although positive trends are still observed (Tsybulskaia & Parakhina 2019). In this context, the direct implementation of the artistic freedom and the definition of its boundaries are of particular importance. It is worth considering the features of the legal regulation of this issue in the territory of the post-Soviet countries and to conduct a comparative analysis of legislative norms and practice of law enforcement (Herrmann et al. 2017).

First of all, it should be noted that legal regulation is expressed in the official public recognition of culture as a value of society and people, in fixing the goals of preserving and enhancing the cultural heritage, in creating legal conditions for activities in this area and in implementation the constitutional right of citizens to participate in cultural life. The mechanism for the effective implementation of this right provides for the mandatory guarantee of freedom of literary, artistic and other types of creativity, the right of everyone to access cultural property, an obligation to take care of the preservation of cultural heritage, preserve historical and cultural monuments and the like. These components of cultural rights are embodied in the constitutions and interstate agreements of the countries of the former Soviet, detailing the right to creativity.

The artistic freedom, as an element of cultural rights, is enshrined in the constitutions: of the Republic of Armenia (Article 40) (The Constitution of the Republic of Armenia 1995), the Republic of Belarus (Article 51) (The Constitution of the Republic of Belarus 1994), the Kyrgyz Republic (Article 33) (The Constitution of the Kyrgyz Republic 2010), the Russian Federation (Article 44) (The Constitution of the Russian Federation 2008), Turkmenistan (Article 39) (The Constitution of

Turkmenistan 2017), The Republic of Moldova (Article 33) (The Constitution of the Republic of Moldova 1994), the Republic of Uzbekistan (Article 42) (The Constitution of the Republic of Uzbekistan 1992), Ukraine (Article 54) (The Constitution of Ukraine 1996), the Republic of Azerbaijan (Article 49) (The Constitution of the Republic of Azerbaijan 2016), the Republic of Tajikistan (Article 40) (The Constitution of the Republic of Tajikistan 1994), Georgia (Article 20) (The Constitution of Georgia 2017). These Basic laws of states fix the variability of the concept of "right to artistic freedom", thereby providing for both different types of creativity (artistic, scientific, technical and others), as well as the procedure for their implementation and restrictions (measure of freedom). It is worth noting that Georgia at the constitutional level secured only one freedom – of intellectual creativity.

In general, in the countries of former Soviets there is a similarity of legal regulation of the right to artistic freedom, which is also supported by close interstate cooperation in this field that affects the content of legal norms. In order to regulate cultural cooperation and ensure the right to artistic freedom, as its element, various acts are adopted within the post-Soviet countries: conventions, agreements, treaties, decisions and orders of various bodies, recommendations, reports, reports, model laws. Some of them are of a normative nature and are mandatory for use in national legal systems, subject to implementation procedures. Such cooperation is consistent with the letter and spirit of the CIS Charter, which stipulates that the main regulatory framework of interstate relations, within the framework of the Commonwealth, are multilateral and bilateral agreements in various areas of relations between the member states. Agreements made within the framework of the Commonwealth must comply with its goals and principles, obligations of the participating states (Art. 5). The fact of concluding multilateral and bilateral treaties is considered by the Charter as evidence of the approximation of national legal systems (Article 20) (The Charter of the Commonwealth…1993).

Therefore, all international treaties concluded within the framework of the post-Soviet countries in the field of ensuring the right to artistic freedom are very diverse in form, content, subjects and order of application, as well as a means of unifying legal regulation, since, with the help of these acts, into the legal systems of states identical rules are introduced, common rules for all, prompting their bodies and organisations to act in concert, or even the same, to achieve common goals. Thus, it is possible to talk about the gradual formation of a certain system of international administrative and legal norms in the field of regulation and ensuring the right to artistic freedom, which, in the context of globalisation, pays special attention to the processes of interaction of international and domestic law of states in the matter under study. On the one hand, universally recognised principles and norms of international law affect national legal systems, on the other hand, general rules of conduct in the world community are established by recognising their value and regulatory status for the states of former Soviet Union, that is, the influence of international law on domestic law also has a feedback, and they are interconnected and interdependent (Karabchuk 2019).

The empirical material analysed makes it possible to state that the right to artistic freedom must be considered as a component of cultural rights. So, the legislation of many post-Soviet countries in the field of culture is in a state of the "second wave" of legal regulation. The essence of this process is that after the stage of the existence of transitional laws, marked by acts adopted in the 90s of the last century, the legislation is substantially updated, and archaic laws are replaced by acts that take into account twenty years of experience in developing a market economy and democratic states. The expansion of the means and mechanisms of international cooperation of the former Soviet states, the active use of legal forms, including normative legal regulation, contributes to the effective updating of legislation in the field under study. This stage is different, first of all, due to the expansion of the right to the cultural sphere and the sphere of creativity in particular (Arun & Yıldırım 2017). Legal regulation in this area is acquiring a systemic and integrated character, the role of the law as a legal regulator is being strengthened.

In general, the states of former Soviet area adhere to a system of legislation on culture, based on a common basic law, which applies to all types of cultural activities. Moreover, the

following most important components and principles of modern cultural policy, such as the freedom of creativity and the implementation of cultural activities, their state support, should be reflected in this law. It should be noted that almost all countries have similar general laws on culture. Such tendencies are characteristic due to the historical commonality of the state organisation and the traditions of the functioning of state institutions, which is expressed in traditional forms of exercising power and similar regulation of public relations in the field of culture and the implementation of the right to artistic freedom (Karzhaubaev 2017, Nurmatov 2019).

Consideration of a peculiar legal triad is of particular importance, in the context of the legal regulation of the right to artistic freedom in the post-Soviet countries: the right to creativity – restrictions on this right – abuse of it. Therefore, it must be clearly understood that the constructive realition of the law is impossible without assuming the obligations generated by the use of a law. One manifestation of this acceptance is the recognition of legal restrictions on the right, in particular, the right to work. As noted by A.V. Kokhanovska, the freedom of individuals in the exercise of their rights is limited to certain boundaries. There are general and specific (special) boundaries of the exercise of civil rights. Specific (special) boundaries are established for certain civil rights and are provided for in specific articles of the law or transactions. There are also general boundaries to the exercise of subjective rights. They are characterised by the fact that they affect all subjective rights and envisaged norms and principles. Violation of such common boundaries is sometimes characterised as the use of illegal specific forms within the framework of an allowed general type of behaviour. The general purpose of subjective law, not defined by a special legal norm, is violated (Kokhanovska 2010). The restriction of the right to creativity is mentioned, for example, in article 34 of the Constitution of Ukraine: “The exercise of these rights (freedom of thought and expression, expression of opinion and belief) may be restricted by law in the interests of national security, territorial integrity or public order (Opolska 2016).

Restrictions on artistic freedom are of a different nature, source of origin and purpose, and therefore it is not possible to divide them into unified categories. So, lawyers of post-Soviet countries distinguish three categories of restrictions, guided by their nature, source of origin and purpose of introduction (Belkin 2012). These restrictions relate directly to the will of an author, the traditions of society and the requirements of the law. G. Ulyanova, in particular, calls the restrictions, which are: 1) “established by the creator, have an individual character and are determined by the worldview of the author, the scope of artistic activity, the purpose of its implementation, etc.”; 2) “have a social character and are formed in society, the state. Such restrictions are more moral and ethical, preventive in nature (such as the prohibition of inciting interracial, interethnic, inter-religious hostility; propaganda of separatism, etc.); 3) “are legislative restrictions that are binding, and apply to all creators or established for certain types of intellectual, artistic activity” (Ulyanova 2015). However, it is the existence of a particular legal norm and its limitations that will inevitably give rise to the abuses associated with it, namely, the abuse of the right. Researcher A. Rogach gives the following definition of this category, “Abuse of right is a socially harmful phenomenon that reflects a person’s nihilistic attitude to law and consists in an attempt by a subject of legal relations to create the illusion (visibility) of the lawful use of the right while committing intentional actions aimed at violation of objective boundaries of the exercise of the right and internal (special) borders” (Rogach 2011). G. Ulyanova extrapolates this concept to the phenomenon of plagiarism (Ulyanova 2011).

All of the above gives reason to state that the legal regulation of the right to artistic freedom in the territory of the former Soviet Union countries at this stage is almost identical, the variability in the terminology or components of this law, fixed at the constitutional level, does not give rise to sharp variations in the practice of enforcement in national legal systems. Also, the possibility of restricting the law under study in the territory of the countries of the Commonwealth is similar; it differs only in its volume and procedural features of its application by the state. Both doctrinal approaches and legislative norms today are subject to modernised reform, which is based on the processes of Europeanisation and intensification of information innovations.

DISCUSSION

A very debatable issue among the scientific schools of the post-Soviet countries is the ratio of the right to artistic freedom and plagiarism. This ratio is considered by scientists in the segment of abuse of this right, and its expansion is a direct consequence of the change in value paradigms, determined, among other things, by a deterioration in the standard of living of society and corruption in all areas, devalues respect for the law; as well as the rapid development of the latest technologies, in particular communication, creating a fertile ground for various copyright infringements and affecting the rethinking of the very concept of authorship, on the one hand; and on the other, it leads to the realisation that it is the means of mass communication that can become a platform for the revival and preservation of a legal culture as opposed to legal nihilism.

Understanding the ratio of the right to creativity and plagiarism is due to the need to understand the essence of the phenomenon of plagiarism, on the one hand, and in search of an answer to the question: "Where does creativity end and plagiarism begin?", on the other. The specified problematics of plagiarism expansion and its detailed consideration became possible due to a contradictory understanding of the right to creativity, which can be conditionally divided into two groups. The first is related to the interpretation and perception of the very concept of "creativity, art". The second – to a peculiar legal triad, already disclosed in this article: the right to creativity – restriction of this right – abuse of it. Today, a comprehensive study of plagiarism in the plane of jurisprudence is G. Ulyanova's PhD dissertation, "Methodological issues of civil legal protection of intellectual property rights from plagiarism" (Ulyanova 2015), and A. Rogach's work, "Abuse of law: legal and theoretical research" (Rogach 2011) in the field of abuse of law. Based on the analysed points of view, it should be noted the following, the most relevant in the framework of this study. So, E. Shestakova considers the essence of plagiarism as a form of social and scientific communication, in particular, its transformation into an "attractive form of power" (Shestakova 2016). S. Blagodeteleva-Vovk suggests to understand plagiarism as the actual threat to national security (Blagodieteleva-Vovk 2017), and identifies four forms of plagiarism as a threat through:

1) the formation of toxic networks of the beneficiary and replacement of the management apparatus, in particular the state, with them;

2) financial losses resulting from the redistribution of funds for additional payments to plagiarists and underfunding of a productive science;

3) the intensification of anomie in society, that is, the strengthening of anarchy, abuse of power, the lack of legality and protection of the rights of citizens;

4) blurring of national identity due to the loss of key values, in particular related to creativity.

It can be stated that the negative influence of plagiarism is in the fact that the rights and interests of creators and inventors are violated, the quality and effectiveness of scientific activity is significantly reduced, misuse of public funds allocated for financing fundamental and applied research is carried out, considerable losses are caused to business entities, the quality of training of future specialists in various fields of knowledge is declining. In addition, the misappropriation of authorship is also one of the manifestations of unethical behaviour in the professional sphere, neglect of someone else's intellectual, artistic work. The established approach to plagiarism exclusively as a violation of intellectual property rights requires a new rethinking, because plagiarism also violates the rights and interests of users, society, and the state.

CONCLUSION

The analysis of the content, essence and signs of cultural rights and freedoms makes it possible to conclude that they are not some random, amorphous association, but are an interconnected special group of human and civil rights and freedoms, the content of which is disclosed in the articles of the constitutions of the former Soviet Union states and is detailed in applicable national law. These rights are associated with the concept of a social state, ensuring a high standard of living for their citizens and their self-realisation, thereby directly interacting with each individual, contributing to the spiritual development of a person and ensuring his/her participation in the economic, social, cultural and creative progress of society.

The right to artistic freedom in post-Soviet countries

From a doctrinal point of view, the right to artistic freedom is considered in the unity of its terminological components. Particular emphasis is placed on the category of "freedom", which is variably interpreted by representatives of various scientific schools and does not have a unified approach to its content and elements. In turn, creativity is considered as a qualitative process of the formation of cultural values by an individual, as well as their interpretation, determined by novelty, uniqueness, socio-historical and other identity, which consists of several stages, has its own goal, means and a certain result.

In the legal regulation of the post-Soviet countries, the right to artistic freedom is considered as an integral element of cultural rights through the prism of model normative legal acts and international cooperation of the countries of former Soviet space. In almost all countries of the Commonwealth, national laws on culture have been developed or adopted, in which a special place is given to the right to artistic freedom. This trend is characteristic of the post-Soviet countries due to the historical community of the state organisation and the traditions of functioning of state institutions.

The freedom of creativity implies the inadmissibility of ideological dictatorship, control and censorship by the state in all types of creative self-realisation, and the right to artistic freedom provides for the human right to create literary, artistic, scientific and other works, to conduct scientific research, to engage in invention, teaching, and stage work, which guaranteed by constitutional norms. The study showed that at the constitutional level, not all the countries studied fixed the legal protection of the right to artistic freedom in full, legalising only the right to creativity and depriving it of such a necessary and inalienable category as "freedom". Despite this, in the practice of law enforcement, freedom remains the central measure and criterion for the implementation of the right to creativity.

The article also examined the existence of a kind of legal triad: the right to creativity – restrictions on this right – abuse of it, and it was found that in the countries of the former Soviet Union, it is possible to distinguish three categories of restrictions, guided by their nature, source of origin and purpose of introduction. Such restrictions relate directly to the will of an author, the traditions of society and the requirements of the law. Restrictions on artistic freedom are of a different nature, source of origin and purpose, and therefore it is not possible to divide them into unified categories at this stage of the study.

It has been stated that a very debatable issue among scientific schools of the post-Soviet countries is the ratio of the right to artistic freedom and plagiarism. This ratio is considered by scientists in the segment of abuse of this right, and its expansion is a direct consequence of the change in value paradigms, determined, among other things, by a deterioration in the standard of living of society and unsubstantiated corruption in all areas.

LITERATURE CITED

Anokhina, N.F. 2013. Features of the manifestation of intellectual parasitism in educational enviroment. *News of the Saratov University. New series. Acmeology of Education Series. Developmental psychology* 1(5): 109.

Arun, K. and D. Yıldırım. 2017. Effects of foreign direct investment on intellectual property, patents and R&D. *Queen Mary Journal of Intellectual Property* 7(2): 226-241.

Atanesyan, A.V. 2018. "Velvet Revolution" in Armenia: Potential, gains and risks of political protest activity. *Polis (Russian Federation)* 6: 80-98.

Belkin, M.L. 2012. Guarantees of artistic freedom and the boundaries of their limitations in decisions of the European Court of Human Rights. *Law in the Modern World* 2: 165-172.

Blagodieteleva-Vovk, S. 2017. *Is plagiarism a threat to national security? Censor Reform*. Available at http://reforms.censor.net.ua/columns/3021592/chy_stanovyt_plagiat_zagrozu_natsionalniyi_bezpetsi (Accessed date 08.02.2019).

Bratasyuk, V.M. 2013. Human personality as a subject of law in the context of modern legal politics. *Public Law* 4(12), 127-134.

Bruno, L. 2008. *Freedom and law*. IRISEN, Moscow, 308 p.

Citco Group Ltd. Top 10 best practices for subsidiary governance. 2019. Available at https://www.citco.com/our-thinking/latest-news/top-10-best-practices-subsidiary-governance/ (Accessed date 02.08.2019).

Djelic, M.-L. and S. Quack. 2018. Globalization and business regulation. *Annual Review of Sociology* 44: 123-143.

Fomina, T.H. 2018. Personal obligation: procedural characteristics and practice of application. *Journal of the National Academy of Legal Sciences of Ukraine* 25(2): 41-54.

Gumerov, L.A. 2012. Freedom of scientific and technical creativity in the system of human rights. *Scientific Notes of Kazan University* 154(4): 16-24.

Hanaba, S. 2014. Freedom of education as a prerequisite for the development of creativity. *Future Human Image* 1(4). Available at http://www.fhijournal.org/?p=431 (Accessed date 02.08.2019).

Herrmann, F., G.G. Pesenatto, E. Goldani and J.B. Silva. 2017. The use of alternative experimental models on microsurgery technique's training for medicine undergradute students. *Periodico Tche Quimica* 14(27):117-122.

Hinz, L.D. 2017. The ethics of art therapy: Promoting creativity as a force for positive change. *Art Therapy* 34(3): 142-145.

Karabchuk, T.S. 2019. *Analyzing the dynamics in the attitudes of youth in the post-Soviet countries towards CIS integration processes*. Colorit, St. Petersburg, 149 p.

Karzhaubaev, E.K., Ualiyev K.S. and A.E. Sydykova. 2017. Main trends and prospects of the development of civil society institutions in the Republic of Kazakhstan. *Man in India* 97(6): 13-26.

Kokhanovska, O.V. 2010. Personal non-property rights of individuals as an institute of civil law of Ukraine. *Bulletin of Taras Shevchenko National University of Kyiv. Legal Sciences* 85: 5-6.

Kopeychikov, V.V. (Ed.). 2000. *General theory of state and law*. Yurincom Inter, Kyiv, 320 p.

Kovaliv, Yu.I. (Ed.). 2007. *Encyclopedia of literary studies*. Academy, Kyiv, 624 p.

Lisitsa, V.N. 2018. Intellectual property and intellectual rights: Issues of correlation. *Journal of Intellectual Property Rights* 23(2-3): 86-93.

Milova, T.M. 2008. *The constitutional right of a human and citizen to the freedom of scientific creativity in Ukraine*. Institute of Security and Law V.M. Koretsky of the NAS of Ukraine, Kyiv, 198 p.

Nurmatov, T. 2019. Perspectives of the Kyrgyz Republic on Eurasia. *India Quarterly* 75(1): 108-113.

Opolska, N.M. 2016. *Genesis of the right to artistic freedom in the territory of Ukraine*. Publishing House of National Pedagogical Dragomanov University, Kyiv, 79 p.

Pogrebnoy, I.M. 2003. *Theory of law*. State Specialised Publishing House "Osnova", Kharkov, 128 p.

Rabinovich, P.M. and M.I. Khavronyuk. 2004. *The rights of a human and a citizen*. Atika, Kyiv, 446 p.

Razumov, A.E. 2018. Freedom of creativity and creative imagination. Man and his time. *Vysshee Obrazovanie v Rossii* 27(5): 130-140.

Rödl, F. 2019. The legitimacy of civil freedom. *University of Toronto Law Journal* 69(1): 159-181.

Rogach, O.Ya. 2011. *Abuse of a right: a theoretical and legal study*. Lyra, Uzhgorod, 368 p.

Shestakova, E. 2016. Ordinary history, or Plagiarism as a manifestation of social power. *Relga* 15. Available at http://www.relga.ru/Environ/WebObjects/tgu-www.woa/wa/Main?textid=4835&level1=main&level2=articles (Accessed date 02.08.2019).

Shestopal, E.B. and N.V. Smulkina. 2018. Factors of political perception of post-soviet countries in contemporary Russian society. *Polis (Russian Federation)* 1: 26-44.

Shurentayev, A.M., Yesdauletov, A.O., Tolegen, M.A. and A.O. Tursynbayeva. 2018. Retrospective analysis of formation and development of legal journalism in Kazakhstan. *Media Watch* 9(3): 329-346.

Simonton, D.K. 2017. *Creativity and free will: creative thought enhances personal freedom.* Academic Press, Cambridge, 65 p.

The Charter of the Commonwealth of Independent States (Minsk, January 22, 1993). Available at http://cis.minsk.by/page.php?id=180 (Accessed date 08.02.2019).

The Constitution of Georgia as amended by the Constitutional Law of Georgia On Amending the Constitution of Georgia. From 10/13/2017. Available at https://matsne.gov.ge/ru/document/view/3811818?publication=1 (Accessed date 02.08.2019).

The Constitution of the Kyrgyz Republic. Adopted by referendum (popular vote) on June 27, 2010. Available at http://cbd.minjust.gov.kg/act/view/ru-ru/202913?cl=ru-ru (Accessed date 02.08.2019).

The Constitution of the Republic of Armenia. Adopted on July 5, 1995. Available at https://www.gov.am/u_files/file/Constitution/Constitution-hin.pdf (Accessed date 02.08.2019).

The Constitution of the Republic of Azerbaijan dated September 26, 2016. Available at https://www.caa.gov.az/index.php?option=com_k2&view=item&id=93:constitution-of-the-republic-of-azerbaijan&Itemid=173&lang=en (Accessed date 02.08.2019).

The Constitution of the Republic of Belarus of 1994 (with amendments and additions adopted at republican referenda on November 24, 1996 and October 17, 2004). Available at http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/ (Accessed date 02.08.2019).

The Constitution of the Republic of Moldova dated July 29, 1994. Available at http://lex.justice.md/viewdoc.php?id=311496&lang=2 (Accessed date 02.08.2019).

The Constitution of the Republic of Tajikistan dated November 6, 1994. Available at http://prokuratura.tj/ru/legislation/the-constitution-of-the-republic-of-tajikistan.html (Accessed date 02.08.2019).

The Constitution of the Republic of Uzbekistan dated 12/08/1992. Available at http://lex.uz/acts/35869 (Accessed date 02.08.2019)

The Constitution of the Russian Federation (adopted by popular vote 12/12/1993) (as amended by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation dated December 30, 2008 N 6-FKZ, dated 30.12.2008 N 7-FKZ, dated 05.02.2014 N 2-FKZ, dated July 21, 2014 N 11-FKZ). Available at http://www.consultant.ru/document/cons_doc_LAW_28399/ (Accessed date 02.08.2019).

The Constitution of Turkmenistan (new edition) (As amended by the Constitutional Law of Turkmenistan dated October 9, 2017 No. 617-V). Available at http://minjust.gov.tm/en/mmerkezi/doc_view.php?doc_id=8124 (Accessed date 02.08.2019).

The Constitution of Ukraine dated June 28, 1996. Available at https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80 (Accessed date 02.08.2019).

Tishchenko, Y.V. 2018. Legal myths and mythologues in jurisprudence. *Journal of the National Academy of Legal Sciences of Ukraine* 25(2): 27-40.

Tsybulskaia, L.A. and V.N. Parakhina. 2019. Intellectual property management in modern Russian conditions. *IOP Conference Series: Earth and Environmental Science* 272(3). Available at https://iopscience.iop.org/article/10.1088/1755-1315/272/3/032172/pdf (Accessed date 02.08.2019).

Ulyanova, G.A. 2011. Objects of intellectual property rights that ensure the functioning of the Internet: problems of legal protection, pp. 18-25. In: *International Scientific-Practical Conference "Problems of Piracy in the Russian Federation. Features of Internet Piracy"*, 13 April, in Moscow, Russian Federation, 93 p.

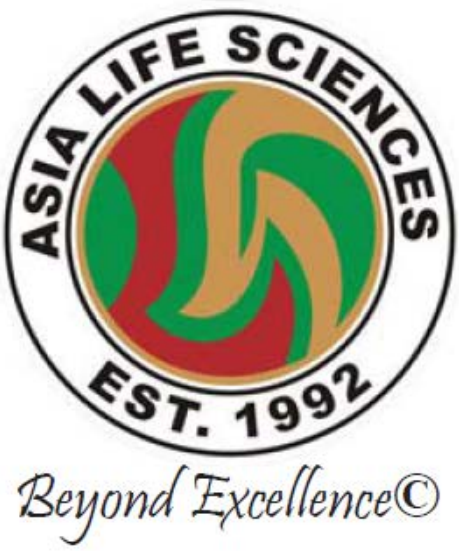
Ulyanova, G.O. 2015. *Methodological issues of civil legal protection of intellectual property rights from plagiarism*. Odessa Law Academy, Odessa, 433 p.

Voronov, A.M., M.N. Kobzar-Frolova, V.M. Redkous and A.M. Gogolev. 2019. Civil society of modern Russia: Problems of implementation of constitutional rights and freedoms. *International Journal of Economics & Business Administration* 7: 243-251.

Zakieva, R.R., V.V. Kolmakov, A.V. Pavlyuk, V.V. Ling, D.V. Medovnikova and R.H. Azieva. 2019. The significance of studying legal protection of rights on innovative creations: The case of entrepreneurship education. *Journal of Entrepreneurship Education* 22(3): 1-11.

Zatulin, K.F., V.G. Egorov, A.V. Dokuchaeva, V.P. Mikhailov, E.I. Shibaeva, Yu.Yu. Yanovskaya, O.V. Savina, A.S. Gaeva and N.M. Novikova. 2017. *Analysis of the legal status of compatriots living in the countries of the former Soviet Union.* Institute of Diaspora Studies and Integration, Moscow, 684 p.

www.publ.science
info@publ.science
rus: +7 (487) 244 05 08
ua: +38 (044) 392 45 52
kz: +7 (727) 312 27 86


ASIA LIFE SCIENCES
EST. 1992
Beyond Excellence©

Beyond Excellence©

81 Governor F.T. San Luis Avenue, Masaya, Bay 4033
Laguna, Philippines
Celfone nos. (063) (049) 0916-526-0164; 0977-706-0972
e-mails: asialifesciences@yahoo.com
wsmgruezo@gmail.com
http://emtpub.com/journals/ALS/

Asia Life Sciences has an Impact Factor of 0.180

The papers published in ***Asia Life Sciences*** are indexed/covered by SCOPUS, Elsevier B.V., Radarweg 29, 1043 NX, Amsterdam, The Netherlands; CABI, Wallingford, Oxon, UK; China National Knowledge Infrastructure (CNKI), 66 Xixiaokou Avenue, Haidian District, Beijing, China; J-Gate, Informatics Publishing Limited, No. 194, RV Road, Basavanagudi, Bangalore-560004, Karnataka, India and EBSCO Publishing, Inc., 10 Estes Street, Ipswich, Massachusetts, 01938-0682, USA.

Asia Life Sciences is a recipient of the Journal Accreditation Award of the Commission on Higher Education (CHED), Republic of the Philippines (2010-2016).

Printed on acid-free papers

Asia Life Sciences Supplement 21(2) 2019