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Temporary Legislation: Theoretical and Practical Aspects

1. Introduction

Present dynamic development of the social relations (on both global and national levels) requires revision of the temporal criteria for legal issues by theorists of law and lawyers (practitioners). One of the legal categories which requires in-depth research is the action of legal acts in time. Basically law in general and the legal acts in particular are closely connected in terms of time: change of social relations and their development demand changes in legal regulation; synchronously law or any other regulative act also exists in time objectively (in terms of time it is developed, considered by the legislative organ and adopted, entering into action and subsequently loses its force and action proceeding).

Jean-Louis Bergel, the French theorist of law, states that “despite its unresolved nature, the problem of application of law in time is a classical issue.”² It is classical because the reflection on the connection between the law³ and its temporal features dates back to the times of Aristotle

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² Bergel, J.-L. (2000). *Obshaya teoriya prava* [The general theory of law] (Translation from French). Moscow: Izdatelskij dom NOTA BENE. p. 213.

³ Here and subsequently in this article the term “the law” is used in a broad sense, as a regulatory act.

who advocated reasonable approach for amending the laws⁴ and to Cicero who first mentioned the principle of retroactivity in law⁵. At the same time, this problem remains unresolved mainly because for almost two millennia, since the times Cicero and later late Roman Empire, research on the temporal action of law (the action of law in time) in jurisprudence has largely been limited to applications of the the principle *lex ad praeteriam non valet*. Different scholars identified this research phenomena in the states of various forms of government and legal systems⁶.

The contemporary world increasingly requires non-standard approaches, including lawmaking. Practically, lawmakers either too hasten to implement new regulation or change current regulations without an appropriate introductory or transitional period or, on the contrary, do not have enough time to catch up with new political, legal, social and technical (sometimes – innovative) transformations to regulate legal relations promptly.

Current practical challenges which face lawmaking practice allow identifying a number of directions in new research which can be considered as a challenge to traditional approaches. In the scope of the temporal characteristics of law the following aspects are to be indicated:

- 1) application of the principle *lex ad praeteriam non valet* in the context of balance between urgent and prospective action of law in time: research aimed to search for an equilibrium between legislator's intention to change the legal regulation as soon as possible

⁴ Aristotle. (2003). *Polityka [Politics]* (Translation from ancient Greek). Kyiv: Osnovy. p. 7.

⁵ It is first mention of the principle of reverse action. Cicero. (1901). *Polnoe sobranie rechej [Complete collection of speeches]*. Saint Petersburg. P. 155. Tille, A.A. (1965). *Vremya, prostranstvo, zakon. Dejstvie sovetskogo zakona vo vremeni i prostranstve [Time, space, law. The action of Soviet law in time and space]*. Moscow: Yuridicheskaya literatura. p. 5.

⁶ See Alekseev, S. S. (1973). *Problemy teorii prava [The problems of theory of law]* (Vol. 2). Sverdlovsk: Sverdlovskij yuridicheskij institut. p. 133–134. Bahrah, D.N. (2004). *Dejstvie norm prava vo vremeni: teoriya, zakonodatelstvo, sudebnaya praktika [Action of law in time: Theory, legislation, judicial practice]*. Moscow: Norma. p. 12. Gersen, J.E. (2007). *Temporary legislation*. The University of Chicago, The Law School, John M. Olin law & economics working paper no. 296, public law working paper no. 130. Retrieved from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=911603.

and a need for the legal certainty within stability and amending of regulation⁷;

- 2) differentiation between the institutes of law entering into force and its coming into effect: research addressing scholarly and practical study of distinction of the moments of entering the law into force and the introduction of new regulations, as the necessity of this distinction is needed to implement some preparatory organizational and legal actions, required by public authorities for the appropriate implementation of new regulation⁸;
- 3) application of the temporal regulation (including experimental): research aimed at the study of basis and limits of temporal legislation (including experimental) to resolve practical issues which require urgent legislative regulation.

Resolution of the political and legal conflicts, implementation of the experimental economic assistance for certain branch or region, implementation of a new regulation for innovative production or implementing of the new instruments of regulation for the current one – this is not a full list of cases when the temporary legal regulation enable resolving a problem more or less promptly.

Analogically as the start of innovative products usually requires testing and correction at the initial stage of launch, the introduction of a test period for innovative legal regulation can diminish political, economic and social risks while implementing such regulation. The very factor of temporary (experimental) regulation, which is implementing, signals to society, on the one hand, the ability of government to address urgent challenges

⁷ Particularly, it is the study of “primary” and “secondary” legislative retroactivity. Laitos J. G. (1997). Legislative Retroactivity. Washington University Journal of Urban and Contemporary Law, vol. 52, pp. 81–160. Retrieved from: https://openscholarship.wustl.edu/law_urbanlaw/vol52/iss1/13. Shulima, A.O. (2011). Sposoby dii pravovoi normy v chasi [The ways of action of legal norm in time]. Naukovi zapysky Instytutu zakonodavstva Verkhovnoi Rady Ukrainy, no. 2, pp. 69–77.

⁸ Tepliuk, M. O. (2014). Vvedennia zakonu v diiu: teoretyko-pravovi problemy zakonodavchoho rehuliuвання [Putting the law into action: Theoretical and legal problems of legislative regulation] (Avroreferat dysertatsii doktora yurydychnykh nauk: 12.00.01). Kyiv: NAN Ukrainy, Instytut derzhavy i prava im. V. M. Korytskoho. Shulima, A.O. (2011). “Chynnist” i “dii” zakonu: rozmezhuvannia poniat [“Validity” and “action” of law: differentiation of the notions]. Derzhava i pravo, no. 51, pp. 64–74.

and, on the other hand, it sends a signal that that the temporality of the introduced regulation is a kind of the policy test period chosen for a certain time. Thus temporary regulation allows shifting the “frozen” cases when timely legal regulation is restricted due to excessive hesitation of the legislator searching for the “ideal” option and in situations of unpreparedness to implement experimental or innovative approaches in regulation.

This article aims to analyze the significance of temporary legislation (including experimental) for regulation of social relations and to discuss the practical issues of its implementation.

2. Central Aspects of Scholarly Research on Temporary Legislation

Studying the question of temporary legislation (in particular experimental), *John E. Finn* remarks that despite novelty of this topic, the examples of such legislation can be found in the ancient Greece, in the colonies of Great Britain of the 17th century (in American among others)⁹. In the present times the topic of temporary legislation became the object of research for law scholars quite recently¹⁰.

According to *Frank Fagan*, deficiency of the research interest to the topic of temporary (experimental) legislation for a long time is caused by critical doubts on this institution¹¹. In general there is distrust to such a tool as temporary (experimental) legislation among the researchers. It is based on concerns that such practice could open a way for unpredictable rules, unprincipled legislative compromise and threaten fundamental principle of the rule of law¹².

Moreover, temporary legislation (noticeably experimental) challenges such stable principle as long-term certainty of law concept¹³. While usu-

⁹ Farnam, H.W. (1938). Chapters in the history of social legislation in the United States to 1860. Washington, Carnegie Institution of Washington.

¹⁰ Ranchordás, S. (2014). Constitutional sunsets and experimental legislation: A comparative perspective. Edward Elgar Publishing.

¹¹ Fagan, F. (2013). Law and limits of government: Temporary versus permanent legislation. Cheltenham, UK; Northampton, USA: Edward Elgar Publishing Limited.

¹² Karkkainen, B.C. (2003). Adaptive ecosystem management and regulatory penalty defaults: Toward a bounded pragmatism. *Minnesota Law Review*, vol. 87, pp. 943–998.

¹³ According to the concept of longevity of law developed by the Romans, law can-

ally laws must have long-term action, to be predictable and non-discriminatory, temporary legislation has limited validity (albeit predetermined) and is often based on exceptions to the general legislation.

According to *Antonis Chanos*, temporary (experimental) legislation is interpreted as an internal contradiction from the point of view of traditional legal approach¹⁴. There are several perspectives from which this statements seems to be based on.

Firstly, as it was mentioned above there is a contradiction in the very fact of temporality (literally – fixed in time) of legal regulation because usually the legislation is perceived as a source of stability and consistency. According to general approaches, achieving this stability requires ensuring the succession of laws and limiting number of amendments to them. It means that legislators should act as if they already know all possible circumstances of implementation of the law at the time of its preparation. Jointly to the hypotheses that citizens must clearly understand what the law demands, which opportunities it grants to fulfill their rights¹⁵, such a classical approach provides a sense of legal certainty. However, in terms of the consistency of the legislation this argument “crashes” into reality of numerous changes in legal regulation which exists today. However, concerns regarding heredity activates a significant issue: to be in line with the rule of law the legislator, introducing temporary legislation (in particular experimental), must immediately predict and design the transition from such regulation after the end of its temporary effect.

Secondly, the area of possible implication of temporary legislation is quite broad and quite often introduced on the the by-laws level (secondary legislation). Generally, such temporary secondary regulation embraces limited scope of actors and reveals in diversion from a number of legislative provisions or standards to test new legal approaches and regulate new products or services. As a result, on the one hand, the legislators have possibility to obtain more information about consequences

not be changed abruptly or unpredictably. Leoni, B. (2008). *Svoboda i zakon* [Freedom and the law] (Translation from English). Moscow: IRISEN. P. 103.

¹⁴ Chanos, A. (1999). *Möglichkeiten und Grenzen der Befristung parlamentarischer Gesetzgebung*. Duncker & Humblot. P. 12.

¹⁵ Schwarzschild, M. (2007). Keeping it private. *San Diego Law Review*, no. 3, vol. 44. p. 677, 681.

of certain legal norms implementation with minimal influence on a society¹⁶, on the other hand, the legislators can be criticized for non-compliance with the principles of formal legitimacy and non-discrimination.

Before going in this article to the analysis of the potential of the temporary regulation, it should be indicated that the very notions of “temporary legislation” and “experimental legislation” are often used as synonyms. Typically the term “experimental legislation” has been used recently more and more frequently to avoid certain illusory nature of regulation in case of its temporary essence. However, according to character of such institution application, it would be more correct to divide the temporary legislation into experimental and transitional – examples of each type are demonstrated later in this article.

In the most general and broad terms temporary legislation is regarded as laws (or provisions of legislation in laws) which are active during definite time after which they shall expire if not extended. Temporary legislation usually contains an indication of the expiration date or the term of effect that limits their period of validity¹⁷. Typically such provisions declare that the law or part of it expires on a specific day or after a certain period¹⁸. However, there are alternative ways to give temporary action to laws – to limit their application to certain events, actions or circumstances that occur during a fixed period of time. For instance, the law may presuppose that it will be applied only until the next parliamentary elections, during certain term of the legislative body or until introduction of a specific law that enables permanent regulation.

Indication of the expiration date (sunset clause) is a disposition regarding the expiration date of law or any normative act in frames of a predetermined period – distinctly defines the specific moment when a renewal or extension of its validity requires additional decision of the authorized body. This is one of the central differences from the permanent legislation which, on the contrary, demands separate decision on

¹⁶ Ginsburg, T., Masur, J. S. & McAdams, R. H. (2014). Libertarian paternalism, path dependence, and temporary law. *University of Chicago Law Review*, no. 1, vol. 81, pp. 291–359.

¹⁷ Gersen, J.E. (2007). Temporary legislation. *University of Chicago Law Review*, no. 1, vol. 74, pp. 247–298.

¹⁸ Xanthaki, H. (2014). *Drafting legislation: Art and technology of rules for regulation*. Hart Publishing.

the termination of laws or the cancellation of an entire legal act. In this case the experimental legislation presupposes the assessment of the regulatory provision impact after the end of experiment on the basis of which a decision can be made to extend the validity of the chosen approach as an ordinary legislation¹⁹. In practice it would be appropriate to accomplish such assessment some time before the end of “experiment” to make it permanent (in case this is needed).

The advocates of the temporary legislation state that it is “an important instrument to assure retrospective evaluation on a regular basis,”²⁰ regarded as the principal instrument to refine the legislation as it is quite difficult to cancel active legal issues which have negative influence on the social relations²¹. Short-term, step-by-step, information-oriented nature of temporary legislation presupposes that it interacts with experiments in public administration, enables better lawmaking and more effective regulation. Besides, the implementation of temporary laws can be useful in assessing the main risks of new policy. In this context warning on the expiry date can be used as a preventive tool to assess the implications of a new approach and identify social, political, economic, environmental and other risks. However, this approach will work only in the case of a consistent state policy on monitoring such legislation.

Overall, acceptability, expediency and effectiveness of the temporary legislation application as an instrument of temporary regulation depend on the completion of legal model of both the introduction and completion of such regulation. Applying such approaches, it can be said that the application of temporary regulation will be entirely correspondent to the principle of rule of law, maintaining the standards of justice, stability, awareness and predictability.

Among the factors, which determine the interest in the institution of temporary legislation, are the following:

¹⁹ Lewis Lewis, D.A. (1981). Review procedures and public accountability in sunset legislation: An analysis and proposal for reform. *Administrative Law Review*, no. 4, vol. 33. p. 393.

²⁰ Karpen, U. (2008). Instructions for law drafting. *European Journal of Law Reform*, no. 2, vol. 10, pp. 163–178.

²¹ Gestel, van R.A.J. & Dijck, van G. (2011). Better regulation through experimental legislation. *European Public Law*, no. 3, vol. 17, pp. 539–553.

- 1) development of information and communication technologies due to which certain products and services that require legislative regulation appear quickly;
- 2) search for new forms of public administration (development of concepts of appropriate governance, regulatory state, new public administration, multilevel governance, deregulation, etc.)²²;
- 3) need for immediate response to substantial threats to life and health of citizens (terrorism²³, armed conflicts, pandemics, etc.);
- 4) support of regional integration which anticipates the delegation of the part of state sovereignty to supranational bodies;
- 5) implementation of temporary economic regimes for certain industries, subjects of legal relations or territories;
- 6) implementation of temporary moratorium on the application of legislation.

In each specific case, as it was mentioned, temporary legislation can be experimental or transitional.

3. International Experience in the Implementation of Temporary Legislation

Despite the above mentioned advantages of temporary regulation, it should be addressed that it has not become widespread practice in the majority of legislative systems. Temporary regulation (legislation containing an instruction to terminate action by law) embraces a small part of the legislation adopted in Anglo-Saxon and continental legal systems, e.g. in Great

²² Flueckiger, A. (2010). Can better regulation be achieved by guiding parliaments and governments? How the definition of the quality of legislation affects law improvement methods. *Legisprudence*, no. 2, vol. 4, pp. 213–218.

²³ Finn, J.E. (2010). Sunset clauses and democratic deliberation: Assessing the significance of sunset provisions in antiterrorism legislation. *Columbia Journal of Transnational Law*, no. 3, vol. 48. p. 442.

Britain, Israel, Spain²⁴, the Netherlands, USA, France²⁵, Switzerland²⁶, and it is also used at the level of European Union. The practice of these countries and the EU legislation include different examples of such legislative instruments but temporary legislation was never applied systematically.

In the USA experimental legislation is regarded as a driver of innovation and the tool for further federalization. In 1932 Judge Brandeis in the *New State Ice Co. v. Liebmann* case noted that “the power of states and nation is changing our economic practices and institutions through experiments to meet changing social and economic needs.”²⁷ In the USA experimental legislation is the old tradition and some examples of it can be found in the laws banning child labor in the early 20th century.

In the 1970s guidelines on the period of termination were used primarily at the state level to counteract the dominance of federal agencies²⁸ and in the 21st century they were applied at the national level (i.e., acts to combat terrorism²⁹, in particular the Patriotic Act of the USA³⁰). However, according to Zachary Gubler’s study, US federal agencies rarely introduce experimental rules during recent decades: such acts consist about 1% of all normative acts which entered into force³¹. At the same

²⁴ Pascual, G.D. (2004). Los experimentos jurídicos. *Revista de Administración Pública*, no. 164, pp. 145–187.

²⁵ Crouzatier-Durand, F. (2003). Réflexions sur le concept d’expérimentation législative (à propos de la loi constitutionnelle du 28 mars 2003 relative à l’organisation décentralisée de la République). *Revue Française de Droit Constitutionnel*, vol. 56, pp. 675–695.

²⁶ Mader, L. (2001). Evaluating the effects: A contribution to the quality of legislation. *Statute Law Review*, no. 2, vol. 22, pp. 119–131.

²⁷ *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932). Retrieved from: <https://supreme.justia.com/cases/federal/us/285/262/>.

²⁸ Price, D.R. (1978). Sunset legislation in the United States. *Baylor Law Review*, no. 3, vol. 30, pp. 401–414.

²⁹ Finn, J. E. (2010). Sunset clauses and democratic deliberation: Assessing the significance of sunset provisions in antiterrorism legislation. *Columbia Journal of Transnational Law*, no. 3, vol. 48, pp. 442–502.

³⁰ Uniting and strengthening America by providing appropriate tools required to intercept and obstruct terrorism (USA PATRIOT) Act of 2001. Retrieved from: <https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act>.

³¹ Gubler, Z.J. (2014). Experimental rules. *Boston College Law Review*, no. 1, vol. 55, pp. 129–177.

time significant number of federal programs aimed at increasing investment in research and development include instructions on the period of termination³². Generally, most experiments on laws are still conducted at the level of particular state by waiving some rules (the states can apply to waive a number of federal regulations, experimenting with political and legislative decisions that meet their socioeconomic conditions).

In *Germany* experimental legislation is traditionally introduced in the context of municipal law³³. Although in the 1990s experimental legislation and other types of temporary legislation raised doubt about their constitutionality³⁴, it has been an important tool in the process of the public administration modernization in the last decade³⁵. For the past two decades a number of experimental laws have been introduced to regulate spheres of innovations to ensure that the law meets current requirements. Typically in Germany the guidelines on the expiration of legislation are used as a tool to overcome excessive bureaucratic and regulatory pressure and also to combat terrorism effectively.

The Netherlands does not have considerable experience in the application of experimental legislation and the most legislators are unfamiliar with experimental tools. Between 1985 and 2009, only 85 laws contained warnings on time³⁶. The state parliament usually delegates the right to “experiment” with a number of legislative provisions to executive power with regulatory powers³⁷.

³² Schacht W.H. (2010). Cooperative R & D: Federal efforts to promote industrial competitiveness. Congressional Research Service.

³³ Strätker, G. (2001). Experimentierklauseln im Kommunalrecht. In M. Wallerath (Ed.), *Verwaltungserneuerung. Eine Zwischenbilanz der Modernisierung öffentlicher Verwaltungen* (pp. 95–124). Baden-Baden: Nomos.

³⁴ Horn, H.-D. (1989). *Experimentelle Gesetzgebung unter dem Grundgesetz*. Duncker & Humblot.

³⁵ Maaß, V. (2001). Experimentierklauseln für die Verwaltung und ihre verfassungsrechtlichen Grenzen. Duncker & Humblot. P. 19.

³⁶ Veerman, G.J. & Bulut, S. (2011). Voorbij de horizon: Over horizon – en experimenteerbepalingen. *Tijdschrift voor Constitutioneel Recht*, no. 3, pp. 291–304.

³⁷ Douglas, F. J. & Berg, van den T. (2010). *Horizonwetgeving Dichterbij: onderzoek naar horizonwetgeving en regeldrukvermindering voor bedrijven*. Zenc. Retrieved from: <https://docplayer.nl/170701410-Horizonwetgeving-dichterbij.html>.

In *Israel* temporary legislation has become more prevalent in recent years³⁸ but no systematic research on this issue has been conducted.

At the level of *European Union*, the example of experimental legislation can be considered the greenhouse gas emissions trading scheme³⁹ that combats climate change. This system can be viewed as the world's first large-scale experiment on carbon trading⁴⁰. Simultaneously there is policy diffusion due to which the EU countries are involved in the process of improving the legal framework through rationalization, increasing the efficiency of legislative procedures that allows developing high-quality legislation and regulations⁴¹. These programs emphasize the importance of information-based and so-called evidence-based lawmaking, involving important tools such as *ex-ante* impact assessment, consultation, transparency, study of alternative regulatory projects, and *ex post facto* assessment⁴².

In *Ukraine* the application of temporary legislation at the scholarly and practical levels is still sufficiently biased and unsystematic. However, the range of its function is quite wide. Ukrainian legislation demonstrates the examples of the introduction of temporary regulation, e.g. the application of temporary regulation for period of anti-terrorist operation⁴³,

³⁸ Navot, S. (2014). *The Constitution of Israel: A contextual analysis*. Oxford, United Kingdom; Portland, Oregon: Hart Publishing.

³⁹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003. *Official Journal of the European Union*. (October 25, 2003). Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0087&from=EN>.

⁴⁰ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community OJL140/63–87 (2009). Retrieved from: <http://data.europa.eu/eli/dir/2009/29/oj>.

⁴¹ Popelier, P. (2015). The role of courts in legislative policy diffusion and divergence. *The Theory and Practice of Legislation*, no. 3, vol. 3, pp. 315–331. Voermans, W. (2009). Concern about the quality of EU legislation: What kind of problem, by what kind of standards? *Erasmus Law Review*, no. 1, vol. 2, pp. 59–95.

⁴² Voermans, W. (2016). Beating about the bush in “better regulation”. In B. Steunenbergh, W. Voermans & S. Van den Bogaert (Eds.), *Fit for the future? Reflections from Leiden on the functioning of the EU* (pp. 69–88). The Hague: Eleven international publishing.

⁴³ Закон України “Про тимчасові заходи на період проведення антитерористич-

on military and civilian administrations⁴⁴; introduction of experimental legislative regulation to stimulate mining and metallurgical complex⁴⁵, shipbuilding industry⁴⁶, car production⁴⁷; application of temporary regulation in preparation for the European Football Championship 2012⁴⁸; temporary suspension of the Government resolution on state regulation of prices for socially significant goods (before its cancellation in 2017)⁴⁹ and renewal of such regulation during a pandemic⁵⁰.

noi operatsii” vid 24 veresnia 2014 roku no. 1669-VII, 3 liutoho 2015 roku no. 141-VIII [Law of Ukraine “On temporary measures for the period of carrying out anti-terrorist operation” of September 24, 2014, no. 1669-VII, February 3, 2015, no. 141-VIII]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1669-18#Text>.

⁴⁴ Zakon Ukrainy “Pro viiskovo-tsyvilni administratsii” [Law of Ukraine “On military and civilian administrations]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/141-19#Text>.

⁴⁵ Zakon Ukrainy “Pro provedennia ekonomichnoho eksperymentu na pidpriemstvakh hirnicho-metalurhiinoho kompleksu Ukrainy” [Law of Ukraine “On accomplishment of the economic experiment at the enterprises of mining and metallurgical complex of Ukraine”]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/934-14#Text>.

⁴⁶ Zakon Ukrainy “Pro stymulivannia vyrobnytstva avtomobiliv v Ukraini” vid 19 veresnia 1997 roku no. 535/97-VR [Law of Ukraine “On stimulating car production in Ukraine” of September 19, 1997, no. 535/97-VR]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/535/97-%D0%B2%D1%80#Text>.

⁴⁷ Zakon Ukrainy “Pro provedennia ekonomichnoho eksperymentu shchodo derzhavnoi pidtrymky sudnobudivnoi promyslovosti” vis 6 veresnia 2012 roku no. 5209-VI [Law of Ukraine “On conducting economic experiment concerning the state support of shipbuilding industry” of September 6, 2012, no. 5209-VI]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/5209-17#Text>.

⁴⁸ Zakon Ukrainy “Pro orhanisatsiiu ta provedennia finalnoi chastyny chempionatu Yevropy 2012 roku z futbolu v Ukraini” vid 5 chervnia 2009 roku no. 1474-VI [Law of Ukraine “On organization and holding of the final part European Football Championship 2012 in Ukraine” of June 5, 2009, no. 1474-VI]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1474-17#Text>.

⁴⁹ Postanova Kabinetu Ministriv Ukrainy vid 7 chervnia 2017 roku № 294 “Pro vnesennia zmin u dodatok do postanovy Kabinetu Ministriv vid 25 hrudnia 1996 roku no. 1548 ta vyznannia takymy, shcho vtratyly chynnist, deiakykh postanov Kabinetu Ministriv Ukrainy” [Resolution of the Cabinet of Ministers of Ukraine “On amendments to the supplement to Resolution of the Cabinet of Ministers of December 25, 1996, no. 1548 and recognition of certain resolutions of the Cabinet of Ministers of Ukraine as repealed”]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1548-96-%D0%BF#Text>.

⁵⁰ Postanova Kabinetu Ministriv Ukrainy vid 22 kvitnia 2020 roku no. 341 “Pro zakhody shchodo stabilizatsii tsin na tovary, shcho maiut sotsialnu znachushchist, tovary protyepidemichnoho pryznachennia” vid 22 kvitnia 2020 roku no. 341 [Resolution of

The topical examples of temporary regulation in Ukraine include legislation aimed at combating the pandemic caused by coronavirus infection SARS-CoV-2; parliamentary initiatives to stimulate investment projects with significant investments, in terms of establishing tax benefits until 2035 as well as experimental legislation on setting requirements to obtain Doctor of Philosophy degree. However, in Ukraine the potential of temporary (in particular experimental), legislation is much broader in the sphere of improving the investment climate and implementing other reforms. According to the author of this article, the experimental legislation would allow overcoming the deadlock over a significant part of the legislation in de-shadowing of economy and the introduction of regulation of new institutions. The examples involve long-term discussions on the legislative regulation of the car-hailing market and matters of taxation while purchasing fruit and berry products from the population.

4. Conclusions

Temporary legislation, which contains clear guidelines on the period of its termination, is a multifunctional legislative instrument. Although it is used more often to solve temporary problems or make decisions in conditions of uncertainty, its scope is quite wide, including both the introduction of temporary (intermediate) legislation and experimental regulation.

Temporary legislation (including experimental) widens the possibilities to achieve political and legal consensus or compromise and is one of the means to reach social or political agreement. However, despite the temporality of action, its application (as well as modeling its implementation) requires systematic and comprehensive approaches to withdraw such regulation after its expiration.

The capability of temporary legislation embraces:

- 1) prompt response to temporary topical issues;
- 2) decision-making in the situation of unpredictability or unpreparedness of politicians or society to radical changes;

the Cabinet of Ministers of Ukraine "On measures for stabilization of prices for goods of social significance, anti-epidemic goods" of April 22, 2020, no. 341]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/341-2020-%D0%BF#Text>.

- 3) more dynamic regulation of innovation processes (including legal relations in the context of dynamic development of the innovative technologies);
- 4) transformation of law-making process into process of modeling the influence of legal regulation on the subjects of legal relations and work on the results of the analysis of such influence.

Thus considering temporary legislation as an effective, efficient and prospective tool of legislative regulation, it is important to develop principles, methods and restrictions of its application in the future. On the one hand, this will make possible to apply temporary regulation more in practice and, on the other hand, prevent excessive abuse of this institution in the cases when classical approaches to legislative regulation are more sufficient and justified.

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Summary

This article is devoted to the temporary legislation issues as multifunctional legislative instruments, which can be efficiently used in the current dynamic of social, political, information, communication and economic processes. The author regards main scholarly advantages and drawbacks of the introduction of temporary legislation in lawmaking, particularly in the context of stability and predictability of legal regulation, equality of participants in the legal relations. The factors determining the practical necessity of temporary regulation (particularly, innovative products, introduction of new public regulation or economic regimes political or military crises, pandemic) are systematized in this article. It also introduces the review of international experience of application of a temporary regulation in the countries with different legal systems, which shows ways of practical usage of this instrument and lack of systemized approaches for it. The author suggests distinguishing between two main types of temporary regulation – temporary (transitional) and experimental – and identifying potential areas of practical application of such regulation, in particular: rapid response to temporary topical problems, decision-making in highly unpredictable situations, more dynamic regulation of innovation and development. At the same time the systematic modeling of introduction and expiration date of temporary regulation is indicated as the main requirement for the effective implementation of such regulation in compliance with the principle of rule of law. Overall, the author concludes that to be effective, efficient and prospective tool of

regulation temporal regulation has to be based on the principles, methods and restrictions of its application, which in turn have to be developed by lawyers.

Keywords: action of legal acts in time, experimental legislation, temporary regulation, sunset clause, Ukraine