

# The Legal Environment of Advertising in Ukraine

PhD **Natalia Bulat**

Department of Civil Law Disciplines of  
the Faculty of Economics and Law  
of the Odesa I. I. Mechnikov National University  
Dvoryanskaya str., 2, Odesa, Ukraine 65082;  
Centre of Ukrainian Law of the Faculty of Law of  
the Vilnius University, 3 Universiteto St., LT-01513 Vilnius, Lithuania  
E-mail: [tf@tf.vu.lt](mailto:tf@tf.vu.lt)

The legal environment of advertising in Ukraine is addressed in the article. The research results are based on the study of legal regulation of relations in the field of advertising and the examination of the legal relations in this field with regard to classical consideration of three elements of legal relations – subjects, objects and content. The author clarifies a classification of legal acts regulating relations in the field of advertising, determines subjects of relations in this field and gives their classification, proposes criteria for a classification of advertising and provides this classification, and describes the content of relations in the field of advertising.

**Keywords:** advertising, legislation in the field of advertising, legal relations in the field of advertising, advertising producer, advertising disseminator, advertiser, advertising consumers.

## Teisinė reklamos aplinka Ukrainoje

Šiuo straipsniu siekiama atkreipti dėmesį į teisinę reklamos aplinką Ukrainoje. Tyrimų rezultatai grindžiami reklaminių santykių ir reklamos srities teisinio reglamentavimo analize, atsižvelgiant į tris klasikinius teisinių santykių elementus: subjektai, objektai ir turinys. Autorius išaiškina teisės aktų, reglamentuojančių santykius reklamos srityje, ypatumus, apibūdina santykių šioje srityje subjektus ir siūlo jų klasifikaciją, taip pat reklamos klasifikavimo kriterijus ir apibrėžia santykių turinį reklamos srityje.

**Pagrindiniai žodžiai:** reklama, reklamos sritį reglamentuojantys teisės aktai, teisiniai santykiai reklamos srityje, reklamos rengėjas, reklamos platintojas, reklamuotojas, reklamos vartotojai.

## Introduction

It is difficult to overestimate the role of advertising in the modern information society. Advertising is a developing and wide sphere, and to ensure rights of all subjects of relations in the field of advertising, this field needs legal regulation. Issues concerning advertising from a legal point of view were addressed by a number of researchers. For example, L. Mamchur explored civil aspects of legal regulation of advertising (Mamchur, 2006), V. Kirianova examined normative legal aspect of state regulation of advertising on the Internet space (Kirianova, 2013), A. Oliinyk and O. Lysenkova studied scientific

**Received:** 28/04/2022. **Accepted:** 22/06/2022

Copyright © 2022 Natalia Bulat. Published by Vilnius University Press

This is an Open Access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

and regulatory sources of research of legal regulation of advertising in Ukraine and countries of the European Union (Oliinyk, Lysenkova, 2020). However, the legislation in the field of advertising is dynamic. In addition, some issues need further research and clarification. For example, it is important to clarify a classification of legal acts regulating relations in the field of advertising, to determine subjects of relations in this field and propose their classification, to propose criteria for a classification of advertising and to provide the classification, and to describe the content of relations in the field of advertising.

The aim of the article is to present the legal environment of advertising in Ukraine. With this purpose, it is important firstly to study legal regulation in the field of advertising and to propose a classification of legal acts in this field, and then to examine legal relations in it based on classical consideration of three elements of legal relations – subjects, objects and content.

The research is based on general scientific principles, in particular historicism, objectivity, systematicity, universality and determinism. According to the aim of the article, formal logical, systematic functional and comparative methods have been used. For example, using formal logical approaches (induction, deduction, analysis, synthesis, generalisation and analogy) provides a possibility, in particular, to make classifications of legal acts in the field of advertising, subjects of relations in this field, and advertising itself, determine the legal nature of advertising, and make general conclusions. Systematic functional method helps to address legal acts and relations in the field of advertising as systems with their elements. Comparative method was used, in particular, to compare legal status of different subjects of relations in the field of advertising and the legal nature and particularities of relations between them. All the methods were used in a comprehensive manner in order to fully meet the aim of research.

## **1. Legal regulation of relations in the field of advertising**

The legal environment of advertising is created by a number of international treaties, national laws and subordinate legislation.

It is worth to agree with V. Kirianova that the Constitution of Ukraine being the superior law may be considered as a basis for regulation of relations in the field of advertising (Kirianova, 2013, p. 129), in particular its norms concerning the state language (art. 10), information (art. 32 and 50), the right to entrepreneurial activity (art. 42), freedom of creative activities and protection of intellectual property (art. 54), etc. (Constitution of Ukraine, 1996).

As for international treaties, one should mention the Universal Declaration of Human Rights (the right to dissemination of information (art. 19) and protection of intellectual property (art. 27)) (Universal Declaration of Human Rights, 1948) and the European Convention on Human Rights (dissemination of information and restrictions in the field (art. 10) and the right to property (art. 1, Protocol 1) including intellectual property as it is indicated in the Report “Internet: case-law of the European Court of Human Rights” (European Convention on Human Rights, 1950; Internet: case-law..., 2011, June 2015 (update)). The more special regulation of advertising at the international level is provided by the European Convention on Transfrontier Television (Chapter III) (European Convention on Transfrontier Television, 1989). In addition, it is worth to mention international treaties concerning intellectual property: the Paris Convention for the Protection of Industry Property (especially norms concerning unfair competition (art. 10 bis)) (Paris Convention..., 1883), the Universal Copyright Convention (Universal Copyright Convention, 1952), the Convention Establishing the World Intellectual Property Organization (Convention Establishing..., 1967), the Berne Convention for the Protection of Literary

and Artistic Works (Berne Convention..., 1971), the Trade-Related Aspects of Intellectual Property Rights (Trade-Related Aspects..., 1994), etc.

As for national legislation in the field of advertising, V. Kirianova proposes to divide it into acts which regulate advertising activity as business activity and the ones which regulate relations in the field of advertising directly (Kirianova, 2013, p. 129–130). The same classification is supported by A. Oliinyk and O. Lysenkova (Oliinyk, Lysenkova, 2020, p. 40). Agreeing in general with this statement, we propose to divide acts regulating relations in the field of advertising into the following groups.

1. Acts concerning advertising activity directly. The key one is the Law of Ukraine “On Advertising” which “shall define the principles of advertising activities in Ukraine, regulate relations arising in the process of production, dissemination and consumption of advertising” (On Advertising, 1996). There are also a number of subordinate acts, for example, the Resolution of the Cabinet of Ministers of Ukraine “On the Approval of the Procedure of Imposing Penalties for the Breach of the Legislation on Advertising and the Procedure of Transfers for Production of Social Advertising Information About the Harm of Smoking and Alcoholic Beverages Consumption” (On the Approval of the Procedure..., 1997), the Resolution of the Cabinet of Ministers of Ukraine “On the Approval of the Procedure of Production and Dissemination of Social Advertising Information of Executive Authorities” (On the Approval of the Procedure of Production..., 1998), the Resolution of the Cabinet of Ministers of Ukraine “On the Approval of the Typical Rules of Location of External Advertising” (On the Approval of the Typical Rules..., 2003), the Resolution of the Cabinet of Ministers of Ukraine “On the Approval of the Procedure of Imposing Penalties for the Breach of the Legislation on Advertising” (On the Approval of the Procedure of Imposing Penalties..., 2004), the Resolution of the Cabinet of Ministers of Ukraine “On the Implementation of the Experimental Project concerning Advertising on Radio Particular Goods (Services) and Persons Who Sell (Provide) Them” (On the Implementation of the Experimental Project..., 2019), the Order of the Ministry of Health of Ukraine “On Some Issues of Prohibition on Advertising Medicines” (On Some Issues..., 2012), etc.

2. Acts regulating activity of control bodies in the field of advertising: the Law of Ukraine “On Antimonopoly Committee of Ukraine” (On Antimonopoly Committee of Ukraine, 1993), the Law of Ukraine “On the National Television and Broadcasting Council of Ukraine” (On the National Television and Broadcasting Council of Ukraine, 1997), the Law of Ukraine “On the National Bank of Ukraine” (On the National Bank of Ukraine, 1999), the Decree of the President of Ukraine “On the National Commission on Securities and Stock Market” (On the National Commission on Securities and Stock Market, 2011), the Resolution of the Cabinet of Ministers of Ukraine “On the Approval of the Regulation on the Ministry for Communities and Territories Development of Ukraine” (On the Approval of the Regulation on the Ministry..., 2014), the Resolution of the Cabinet of Ministers of Ukraine “On the Approval of the Regulation on the State Service of Ukraine on Labour Issues” (On the Approval of the Regulation on the State Service of Ukraine on Labour Issues, 2015), the Resolution of the Cabinet of Ministers of Ukraine “On the Approval of the Regulation on the State Service of Ukraine on Food Safety and Consumer Protection” (On the Approval of the Regulation of the State Service..., 2015), and the Resolution of the Cabinet of Ministers of Ukraine “On Establishment of the Agency for the Management of the State Debt” (On Establishment of the Agency..., 2020).

3. Special acts regulating relations in particular fields but having norms concerning advertising activity in these fields. For example, the Law of Ukraine “On Medicinal Products” contains general provisions concerning permission and prohibition of advertising medical products (art. 26) (On Medical Products, 1996). The Law of Ukraine “On Protection against Unfair Competition”, defining the legal basis for protecting business entities and consumers from unfair competition, has norms concerning

illegitimate use of advertising materials (art. 4), comparative advertising (art. 7), and dissemination of misleading information (including by means of advertisement) (art. 15<sup>1</sup>) (On Protection against Unfair Competition, 1996). The Law of Ukraine “On Measures of Prevention and Reduction of Use of Tobacco Products and Their Harmful Influence on People’s Health” establishes a necessity of social advertising about the harm of tobacco products (art. 14) and a prohibition of advertising these products (art. 16) (On Measurer of Prevention and Reduction..., 2005). The Law of Ukraine “On State Lotteries in Ukraine” provides general norms concerning advertising of state lotteries (art. 11) and prohibits advertising of nonstate lotteries (art. 4) (On State Lotteries in Ukraine, 2012). The Law of Ukraine “On Education” contains a prohibition of political advertising at educational institutions (art. 31) (On Education, 2017). The Law of Ukraine “On the Information for Consumers Concerning Food Products” contains general requirements for the information about food products with indication that these requirements apply to advertising food products (art. 4) (On the Information for Consumers Concerning Food Products, 2018). Dissemination of political advertising is regulated by the Electoral Code of Ukraine (Section VIII) (Electoral Code of Ukraine, 2019).

4. Acts regulating relations in fields of intellectual property, information in general and particularly media: the Civil Code of Ukraine (Civil Code of Ukraine, 2003), the Law of Ukraine “On Protection of Rights to Trademarks for Goods and Services” (On Protection of Rights to Trademarks for Goods and Services, 1993), the Law of Ukraine “On Copyright and Related Rights” (On Copyright and Related Rights, 1993), the Law of Ukraine “On Legal Protection of Geographical Indications” (On Legal Protection of Geographical Indications, 1999), the Law of Ukraine “On Information” (On Information, 1992), the Law of Ukraine “On Protection of Public Moral” (On Protection of Public Moral, 2003), the Law of Ukraine “On Printed Mass Media (Press) in Ukraine” (On Printed Mass Media (Press) in Ukraine, 1992), the Law of Ukraine “On Television and Radio Broadcasting” (On Television and Radio Broadcasting, 1993), the Law of Ukraine “On Publishing” (On Publishing, 1997), etc.

5. Acts regulating business activity in general: the Civil Code of Ukraine (Civil Code of Ukraine, 2003), the Economic Code of Ukraine (Economic Code of Ukraine, 2003), the Tax Code of Ukraine (Tax Code of Ukraine, 2010) etc.

The classification of acts in the field of advertising is conditional, because the same act regulating a wide field of relations may be related to different groups as well as there may be different opinions concerning determining a group of a particular act due to a slight difference between the groups. However, the classification may show the extent to which the field of advertising is wide and the number of issues regulated in the field.

It is also worth to mention the Advertising and Marketing Communications Code approved by the International Chamber of Commerce (Advertising and Marketing Communications Code, 2018). This act may be considered as “a globally-applicable self-regulatory framework, developed by experts from all industry sectors worldwide” (International Chamber of Commerce). The first Code on Advertising Practice was issued in 1937. The current edition is of 2018. The Code provides international community with general provisions and definitions on advertising and marketing communications, provisions concerning sales promotion, sponsorship, direct marketing and digital marketing communications and environmental claims in marketing communications (Advertising and Marketing Communications Code, 2018). The importance of the Code is justified by the facts that 1) it “has served as inspiration of self-regulatory codes and building block for self-regulatory structures around the world” and 2) it “has served business and society by providing ethical guidelines that create a level playing field and minimise needs for legislative or regulatory restrictions” (Advertising and Marketing Communications Code, 2018).

## 2. Legal relations in the field of advertising

### 2.1. The subjects of relations in the field of advertising

In the field of advertising as well as in the field of media in general, it is possible to determine governmental authorities, subjects of media industry and orderers and consumers of media services. Let us address the status of subjects of the categories in details.

Article 26 of the Law of Ukraine “On Advertising” contains a list of government authorities that shall implement the control of the observance of the legislation of Ukraine on advertising (On Advertising, 1996). They are “the central executive authorities implementing state policy in the field of state control on the compliance with the legislation on consumer rights protection” (the State Service of Ukraine on Food Safety and Consumer Protection), the Antimonopoly Committee of Ukraine, the National Council of Television and Radio Broadcasting of Ukraine, “the central executive authority implementing state budget policy in the field of the government or government-granted debt management” (the Agency for the Management of the State Debt), the National Bank of Ukraine, the National Commission on Securities and Stock Market, “the central executive authority implementing state policy in the field of construction, architecture” (the Ministry for Communities and Territories Development of Ukraine) and “the central executive authority implementing state policy related to government supervision and control over observance of the public employment legislation” (the State Service of Ukraine on Labour Issues) (On Advertising, 1996). The Law “On Advertising” determines a field which shall be controlled by each body. The state bodies shall act within the limits of their powers (On Advertising, 1996).

The next group of subjects is that of subjects of media industry. They are business entities who carry out activity in a particular media field. In the field of advertising, these subjects are advertising producers and advertising disseminators. According to the article 1 of the Law of Ukraine “On Advertising” advertising producer is “a person who fully or partially performs the production of advertising” and advertising disseminator is “a person who performs dissemination of advertising” (On Advertising, 1996). The relations between these subjects are regulated mainly by contracts. The activity of production and dissemination of advertising may be carried out by a subject who acts only as an advertising producer and (or) an advertising disseminator. However, such subjects of media industry as a production studio (independent producer), a publisher and a producer of publishing products may act as advertising producers. Analogously, such subjects of media industry as television and radio organisations and distributors of publishing products may act as advertising disseminators. The activity of these subjects is regulated by special laws (the Law of Ukraine “On Television and Radio Broadcasting” and the Law of Ukraine “On Publishing”) (On Television and Radio Broadcasting, 1993; On Publishing, 1997).

Under the article 1 of the Law of Ukraine “On Advertising”, an advertiser is “a person who orders advertising for its production and/or dissemination” and advertising consumers are “an uncertain number of persons at whom advertising is directed”. The main difference between these subjects is that an advertiser is a person who orders advertising and has relative rights and duties corresponded by rights and duties of subjects of advertising industry while a consumer is one of an uncertain number of persons who has absolute rights in the field of advertising protected by law.

An advertiser, not being a subject of media industry, is mainly a business entity or an individual entrepreneur who would like to advertise his goods or services. However, a private person or a nongovernmental organisation as well as a state body may act as an advertiser too (for example, ordering social advertising).

A consumer is one of a number of uncertain persons who consume advertising. A special category of consumers is formed by children. That is why the legislation protects their rights in the field. For

example, article 20 of the Law of Ukraine “On Advertising” contains a list of prohibited advertising and establishes that “advertising shall not cause moral or physical damage to children, arouse the feeling of inferiority in them... imply the possibility of purchasing advertised goods, designed mainly for children, by every family without consideration for its budget capacity... give children an impression that the possession of advertised goods gives an advantage over other children” (On Advertising, 1996).

## 2.2. Objects of relations in the field of advertising

The relations in the field of advertising arise in production, dissemination and consumption of advertising. According to article 1 of the Law of Ukraine “On advertising”, advertising is “the information about a person or goods, disseminated in any form and by any means, and is aimed at the development or maintenance of advertising consumer awareness and their interest related to such a person or goods” (On Advertising, 1996). It is worth to agree with L. Mamchur that advertising may contain information not only about a person or goods but also about an idea (Mamchur, 2006, p. 14), for example, social advertising. Under article 1 of the Law of Ukraine “On Information”, “information shall mean any details and/or data, which may be saved on physical media or displayed electronically” (On Information, 1992). However, advertising is not only “dry” data. As it arrives from the legal definition of advertising, one of the functions of advertising is to develop consumers’ interest related to a particular person or goods. To meet this aim, advertising has to be creative. As it is known, there are two requirements for an object to be an object of copyrights: to have an objective form and to have creative nature. As rightly pointed out by L. Mamchur, advertising is presented in an objective form (Mamchur, 2006, p. 14). Despite creative nature is not required for advertising, it is almost impossible to imagine an advertising without this feature. Therefore, the advertising having creative nature is not only information as one of objects of civil rights (Civil Code of Ukraine, 2003), but also a result of intellectual and creative activity – an intellectual property object, a copyright object to be specific.

According to the Law of Ukraine “On Advertising”, it is possible to distinguish the following kinds of advertising:

- internal advertising (“advertisements placed inside buildings, structures, including cinemas and theatres during, before and after film screenings, performances, concerts, as well as during indoor sports competitions, except for sales areas (including buffets, kiosks, stalls), where it is permitted to place information on goods that are directly sold in these places”) (art. 1) (On Advertising, 1996);
- discriminatory advertising (“advertisements including or using statements and/or images discriminatory with regard to race, skin colour, political, religious, and other beliefs, sex, age, disability, ethnic and social origin, nationality, family and property status, place of residence, linguistic or other characteristics concerning a person and/or a group of persons”) (art. 1) (On Advertising, 1996);
- gender-discriminatory advertising (“advertisements that include a statement and/or an image concerning intellectual, physical, social or other benefit of one sex under the other and/or concerning stereotypical role of a male and a female propagandising humiliating and contemptuous attitude; humiliate human dignity with regard to sex; demonstrate violence with regard to sex; use image of a human body (a piece of a body) exclusively as a sexual object with the aim to attract attention of a consumer and/or a link (words, sounds, images) to sexual relations without regard to an advertised product or a way of its consumption”) (art. 1) (On Advertising, 1996);
- external advertising (“advertisements placed on special temporary and stationary constructions – advertising mediums located in open areas as well as on exteriors of buildings, structures, on elements of street equipment, above street roads and traffic ways”) (art. 1) (On Advertising, 1996);

- unfair advertising (“advertising that misleads or may mislead advertisement consumers, cause damage to persons, state or society as a result of inaccuracy, inauthenticity, ambiguity, exaggeration, reticence, breach of requirements concerning the time, place and method of dissemination”) (art. 1) (On Advertising, 1996);
- political advertising (“the information of any type disseminated in any form aimed at popularising the activities of a political party (party organisation), drawing attention to the activities of a political party (party organisation) and its position regarding issues of national (local) significance. Political advertising also means the use of symbols or logos of political parties (party organisations), reports on the support of a political party (party organisation) for spectacular or other public events, or drawing attention to the participation of a political party (party organisation) in such events”) (art. 1) (On Advertising, 1996);
- comparative advertising (“advertising that contains comparisons with other persons and/or goods (activities) of another person, directly or indirectly identifies a competitor, goods or services offered by a competitor”) (art. 1) (On Advertising, 1996);
- hidden advertising (“the information about a person or goods in a programme, broadcasting, publication which serves advertising targets and may mislead persons as for the real purpose of such programmes, broadcastings, publications”) (art. 1) (On Advertising, 1996);
- advertising on transport (“advertisements placed on territories of public transport utilities, metro stations, exteriors and interiors of vehicles and structures of public transport utilities and metro stations”) (art. 1) (On Advertising, 1996);
- social advertising (“the information of any type disseminated in any form aimed at reaching socially useful purposes, popularising universal values and which dissemination does not aim at gaining a profit”) (art. 1) (On Advertising, 1996);
- TV sales (“TV broadcast direct public proposal to conclude a sale and purchase contract for particular goods”) (art. 1) (On Advertising, 1996);
- advertising on television and radio (art. 13) (On Advertising, 1996);
- advertising in printed mass media (art. 14) (On Advertising, 1996);
- advertising of services rendered with the use of electric communications (art. 15) (On Advertising, 1996);
- advertising of medicines, medical equipment, methods of prevention, diagnostics, treatment and rehabilitation (art. 21) (On Advertising, 1996);
- advertising of drug products for veterinary use and medicated feeds (art. 21<sup>1</sup>) (On Advertising, 1996);
- advertising of alcoholic beverages and tobacco products, trademarks for goods and services, other intellectual property rights under which alcoholic beverages and tobacco products are produced (art. 22) (On Advertising, 1996);
- advertising of gambling, gambling organisers (art. 22<sup>1</sup>) (On Advertising, 1996);
- advertising of weapons (art. 23) (On Advertising, 1996);
- advertising in the field of financial services (art. 24) (On Advertising, 1996);
- advertising of the employment services (art. 24<sup>1</sup>) (On Advertising, 1996);
- advertising of securities and stock market (art. 25) (On Advertising, 1996);
- advertising of construction projects, buildings, premises (art. 25<sup>1</sup>) (On Advertising, 1996).

Based on the kinds of advertising determined by a law, it is possible to make the following classification.

1. Depending on a placement of advertising:
  - internal advertising;
  - external advertising;
  - advertising on transport (may be internal or external).
2. Depending on legality:
  - advertising allowed by the law;
  - illegal advertising (advertising prohibited by the law) including:
    - discriminatory advertising (including gender-discriminatory advertising);
    - unfair advertising;
    - hidden advertising.
3. Depending on an object advertised:
  - advertising of goods, services, persons or ideas with special requirements for these advertising (political advertising, advertising of services rendered with the use of electric communications, advertising of medicines, medical equipment, methods of prevention, diagnostics, treatment and rehabilitation, advertising of drug products for veterinary use and medicated feeds, advertising of alcoholic beverages and tobacco products, trademarks for goods and services, other intellectual property rights under which alcoholic beverages and tobacco products are produced, advertising of gambling, gambling organisers, advertising of weapons, advertising in the field of financial services, advertising of the employment services, advertising of securities and stock market, advertising of construction projects, buildings, premises);
  - advertising of the other goods, services, persons or ideas.
4. Depending on containing comparisons with other persons and/or goods (activities) of another person:
  - comparative advertising;
  - advertising without comparisons.
5. Depending on aims of advertising:
  - social advertising;
  - commercial advertising.
6. Depending on containing all the essential conditions of a contract:
  - public offer (including TV sales);
  - invitations to make an offer (art. 641 of the Civil Code of Ukraine) (Civil Code of Ukraine, 2003).
7. Depending on advertising tools:
  - advertising disseminated by advertising events (“events on the dissemination of advertising that provide for the free distribution of samples of advertised goods and/or their exchange to consumers of one quantity or one type of advertised goods for another” (On Advertising, 1996)) including special exhibition events (“events that are carried out to promote relevant goods on the market are held in an organised manner in specific premises or on an enclosed site (including in areas where goods are sold) within specified time aimed at interested and/or professional visitors, which organiser has limited the attendance of the event by those persons who, according to the legislation, are permitted to sell displayed goods” (On Advertising, 1996));
  - advertising on television and radio;
  - advertising in printed mass media;
  - advertising on the Internet;
  - advertising disseminated by other tools.



### 2.3. The content of the relations in the field of advertising

The content of the relations in the field of advertising is represented by rights and duties of their subjects.

Relations between government authorities and subjects of advertising industry are an issue of administrative law regulation. Article 26 of the Law of Ukraine “On Advertising” establishes a list of control bodies and the fields of advertising which they may control. For example, the State Service of Ukraine on Food Safety and Consumer Protection shall control of the observance of the legislation of Ukraine on advertising as for consumer rights protection, the Antimonopoly Committee of Ukraine – as for the protection of economic competition, the National Council of Television and Radio Broadcasting of Ukraine – as for TV and radio companies, the Agency for the Management of the State Debt – as for the advertising of government securities, the National Bank of Ukraine – as for the advertising on the markets of financial services (including the consumer credit), except for the stock market, the National Commission on Securities and Stock Market – as for advertising in the stock market, the Ministry for Communities and Territories Development of Ukraine – as for the construction of a residential house, and the State Service of Ukraine on Labour Issues – as for advertising of job vacancies (recruitment) (On Advertising, 1996).

Article 26(2) of the Law of Ukraine “On Advertising” contains a list of rights of the relevant government authorities: “require advertisers, producers and disseminators of advertising to eliminate detected breaches of the legislative requirements; require the cessation of acts that interfere with the implementation of government control; provide (send to) advertisers, producers and disseminators of advertising with binding instructions to eliminate breaches; take decisions on the recognition of advertising as unfair, hidden, on the recognition of comparison in advertising as unlawful with the immediate suspension of its dissemination; take decisions to suspend the dissemination of relevant advertising”. The government authorities shall act within the limits of their powers (On Advertising, 1996).

Under article 26(3) of the Law of Ukraine “On Advertising”, subjects of advertising industry and advertisers shall have the right to: “be present at the meeting of the government authority when considering the issue regarding the breach of this Law by them; submit necessary documents, provide clarifications; obtain a copy of the minutes and decision of the government authority taken thereon; appeal to the court against actions or inactivity of the specified government authority and its officials” (On Advertising, 1996). These subjects “shall provide documents, verbal and/or written clarifications, video and audio recordings as well as other information” necessary to exercise control powers by government authorities (art. 26(2)) (On Advertising, 1996).

Relations between subjects of advertising industry (advertising producers and advertising disseminators) and between them and advertisers are based on judicial equality, free will expression, and property independence of their participants. These relations are an issue of civil law regulation. Despite civil legislation does not contain special norms concerning advertising contracts, the subjects may make them, and their relations will be regulated mainly by these contracts.

Advertising consumers have absolute rights to fair advertising meeting all other requirements provided by law. Subjects of advertising industry and advertisers shall not make actions violating consumers’ rights. Article 27 of the Law of Ukraine “On Advertising” regulates issues concerning responsibility for the breach of legislation on advertising (On Advertising, 1996).

## Conclusions

1. The legal environment of advertising is created by a number of international treaties, national laws and subordinate legislation. Regarding national legislation, the Constitution of Ukraine may be considered to be a basis for regulation of relations in the field of advertising. Other laws and subordinate acts may be classified as follows: acts concerning advertising activity directly, acts regulating activity of control bodies in the field of advertising, special acts regulating relations in particular fields but having norms concerning advertising activity in these fields, acts regulating relations in fields of intellectual property, information in general and particularly media, and acts regulating business activity in general.
2. Subjects of relations in the field of advertising are government authorities, subjects of advertising industry (advertising producers and advertising disseminators), advertisers and advertising consumers.
3. The relations in the field of advertising arise in production, dissemination and consumption of advertising. Based on legal provisions, it is possible to classify advertising depending on the following criteria: a placement of advertising, legality, an advertised object, containing comparisons with other persons and/or goods (activities) of another person, aims of advertising, containing all the essential conditions of a contract, and advertising tools.
4. The content of the relations in the field of advertising is represented by rights and duties of their subjects. The relations between government authorities and subjects of advertising industry are an issue of administrative law regulation. Relations between subjects of advertising industry (advertising producers and advertising disseminators) and between them and advertisers are based on judicial equality, free will expression, and property independence of their participants. These relations are an issue of civil law regulation. Relations between advertising consumers and subjects of advertising industry and advertisers are also an issue of civil law regulation. However, while rights and duties of advertising producers, advertising disseminators and advertisers correspond each other, consumers in the field of advertising are an uncertain number of persons who have absolute rights protected by law.

## References

### Legal acts

#### *International legal acts*

- Paryzka konvetsiia pro okhoronu promyslovoi vlasnosti [Paris Convention for the Protection of Industry Property] (1883). 995\_123 [online] (modified 1979-10-02). Available at: [https://zakon.rada.gov.ua/laws/show/995\\_123](https://zakon.rada.gov.ua/laws/show/995_123) [Accessed 18 April 2022].
- Zahalna deklaratsiia prav liudyny [Universal Declaration of Human Rights] (1948). 995\_015 [online]. Available at: [https://zakon.rada.gov.ua/laws/show/995\\_015](https://zakon.rada.gov.ua/laws/show/995_015) [Accessed 18 April 2022].
- Yevropeiska konvetsiia z prav liudyny [European Convention on Human Rights] (1950). 995\_004 [online] (modified 2021-08-01). Available at: [https://zakon.rada.gov.ua/laws/show/995\\_004](https://zakon.rada.gov.ua/laws/show/995_004) [Accessed 18 April 2022].
- Vsesvitnia konvetsiia pro avtorske parvo [Universal Copyright Convention] (1952). 995\_052 [online]. Available at: [https://zakon.rada.gov.ua/laws/show/995\\_052](https://zakon.rada.gov.ua/laws/show/995_052) [Accessed 18 April 2022].
- Konvetsiia pro zasnovannia Vsesvitnoi orhanizatsii intelektualnoi vlasnosti [Convention Establishing the World Intellectual Property Organization] (1967). 995\_169 [online] (modified 1979-10-02). Available at: [https://zakon.rada.gov.ua/laws/show/995\\_169](https://zakon.rada.gov.ua/laws/show/995_169) [Accessed 18 April 2022].
- Bernska konvetsiia pro okhoronu literaturnykh i khudozhnykh tvoriv [Berne Convention for the Protection of Literary and Artistic Works] (1971). 995\_051 [online] (modified 1979-10-02). Available at: [https://zakon.rada.gov.ua/laws/show/995\\_051](https://zakon.rada.gov.ua/laws/show/995_051) [Accessed 18 April 2022].

- Yevropeiska konventsiia pro transkordonne telebachennia [European Convention on Transfrontier Television] (1989). 994\_444 [online] (modified 1998-09-09). Available at: [https://zakon.rada.gov.ua/laws/show/994\\_444](https://zakon.rada.gov.ua/laws/show/994_444) [Accessed 18 April 2022].
- Uhoda pro torhovelni aspekty prav intelektualnoi vlasnosti [Trade-Related Aspects of Intellectual Property Rights] (1994). 981\_018 [online] (modified 2005-12-06). Available at: [https://zakon.rada.gov.ua/laws/show/981\\_018](https://zakon.rada.gov.ua/laws/show/981_018) [Accessed 18 April 2022].
- ICC Advertising and Marketing Communications Code (2018) [online]. Available at: <https://iccwbo.org/content/uploads/sites/3/2018/09/icc-advertising-and-marketing-communications-code-int.pdf> [Accessed 18 April 2022].

### *National legal acts*

- Konstytutsiia Ukrainy [Constitution of Ukraine] (1996). 254к/96-BP [online] (modified 2020-01-01). Available at: <https://zakon.rada.gov.ua/laws/show/254к/96-бп> [Accessed 18 April 2022].
- Hospodarskyi kodeks Ukrainy [Economic Code of Ukraine] (2003). 436-IV [online] (modified 2022-01-12). Available at: <https://zakon.rada.gov.ua/laws/show/436-15> [Accessed 18 April 2022].
- Tsyvilnyi kodeks Ukrainy [Civil Code of Ukraine] (2003). 435-IV [online] (modified 2022-03-17). Available at: <https://zakon.rada.gov.ua/laws/show/435-15> [Accessed 18 April 2022].
- Podatkovyi kodeks Ukrainy [Tax Code of Ukraine] (2010). 2755-VI [online] (modified 2022-04-16). Available at: <https://zakon.rada.gov.ua/laws/show/2755-17> [Accessed 18 April 2022].
- Vyborchyi kodeks Ukrainy [Electoral Code of Ukraine] (2019). 396-IX [online] (modified 2022-03-15). Available at: <https://zakon.rada.gov.ua/laws/show/396-20> [Accessed 18 April 2022].
- The Law of Ukraine “Pro informatsiiu” [“On Information”] (1992). 2657-XII [online] (modified 2022-01-01). Available at: <https://zakon.rada.gov.ua/laws/show/2657-12> [Accessed 18 April 2022].
- The Law of Ukraine “Pro drukovani zasoby masovoi informatsii (presu) v Ukraini” [“On Printed Mass Media (Press) in Ukraine”] (1992). 2782-XII [online] (modified 2022-03-16). Available at: <https://zakon.rada.gov.ua/laws/show/2782-12> [Accessed 18 April 2022].
- The Law of Ukraine “Pro Antymonopolnyi komitet Ukrainy” [“On Antimonopoly Committee of Ukraine”] (1993). 3659-XII [online] (modified 2021-08-05). Available at: <https://zakon.rada.gov.ua/laws/show/3659-12> [Accessed 18 April 2022].
- The Law of Ukraine “Pro okhoronu prav na znaky dlia tovariv i posluh” [“On Protection of Rights to Trademarks for Goods and Services”] (1993). 3689-XII [online] (modified 2020-10-14). Available at: <https://zakon.rada.gov.ua/laws/show/3689-12> [Accessed 18 April 2022].
- The Law of Ukraine “Pro telebachennia i radiomovlennia” [“On Television and Radio Broadcasting”] (1993). 3759-XII [online] (modified 2022-03-16). Available at: <https://zakon.rada.gov.ua/laws/show/3759-12> [Accessed 18 April 2022].
- The Law of Ukraine “Pro avtorske pravo i sumizhni prava” [“On Copyright and Related Rights”] (1993). 3792-XII [online] (modified 2022-01-05). Available at: <https://zakon.rada.gov.ua/laws/show/3792-12> [Accessed 18 April 2022].
- The Law of Ukraine “Pro likarski zasoby” [“On Medicinal Products”] (1996). 123/96-BP [online] (modified 2021-11-13). Available at: <https://zakon.rada.gov.ua/laws/show/123/96-бп> [Accessed 18 April 2022].
- The Law of Ukraine “Pro zakhyst vid nedobrosovisnoi konkurentsii” [“On Protection against Unfair Competition”] (1996). 236/96-BP [online] (modified 2020-10-16). Available at: <https://zakon.rada.gov.ua/laws/show/236/96-бп> [Accessed 18 April 2022].
- The Law of Ukraine “Pro reklamu” [“On Advertising”] (1996). 270/96-BP [online] (modified 2022-01-08). Available at: <https://zakon.rada.gov.ua/laws/show/270/96-бп> [Accessed 18 April 2022].
- The Law of Ukraine “Pro vydavnychu spravu” [“On Publishing”] (1997). 318/97-BP [online] (modified 2020-10-16). Available at: <https://zakon.rada.gov.ua/laws/show/318/97-бп> [Accessed 18 April 2022].
- The Law of Ukraine “Pro Natsionalnu radu Ukrainy z pytan telebachennia i radiomovlennia” [“On the National Television and Broadcasting Council of Ukraine”] (1997). 538/97-BP [online] (modified 2022-01-01). Available at: <https://zakon.rada.gov.ua/laws/show/538/97-бп> [Accessed 18 April 2022].
- The Law of Ukraine “Pro Natsionalnyi bank Ukrainy” [“On the National Bank of Ukraine”] (1999). 679-XIV [online] (modified 2022-03-17). Available at: <https://zakon.rada.gov.ua/laws/show/679-14> [Accessed 18 April 2022].
- The Law of Ukraine “Pro pravovu okhoronu heohrafichnykh zaznachen” [“On Legal Protection of Geographical Indications”] (1999). 752-XIV [online] (modified 2020-10-14). Available at: <https://zakon.rada.gov.ua/laws/show/752-14> [Accessed 18 April 2022].
- The Law of Ukraine “Pro zakhyst suspilnoi morali” [“On Protection of Public Moral”] (2003). 1296-IV [online] (modified 2022-04-13). Available at: <https://zakon.rada.gov.ua/laws/show/1296-15> [Accessed 18 April 2022].

- The Law of Ukraine “Pro zakhody shchodo poperedzhennia ta zmeshennia vzhivannia tiutiunovykh vyrobiv i yikh shkidlyvoho vplyvu na zdorovia naselennia” [“On Measures of Prevention and Reduction of Use of Tobacco Products and Their Harmful Influence on People’s Health”] (2005). 2899-IV [online] (modified 2022-03-17). Available at: <https://zakon.rada.gov.ua/laws/show/2899-15> [Accessed 18 April 2022].
- The Law of Ukraine “Pro derzhavni loterii v Ukraini” [“On State Lotteries in Ukraine”] (2012). 5204-VI [online] (modified 2021-11-21). Available at: <https://zakon.rada.gov.ua/laws/show/5204-17> [Accessed 18 April 2022].
- The Law of Ukraine “Pro osvitu” [“On Education”] (2017). 2145-VIII [online] (modified 2022-04-06). Available at: <https://zakon.rada.gov.ua/laws/show/2145-19> [Accessed 18 April 2022].
- The Law of Ukraine “Pro informatsiiu dlia spozhyvachiv shchodo kharchovykh produktiv” [“On the Information for Consumers Concerning Food Products”] (2018). 2639-VIII [online] (modified 2018-12-06). Available at: <https://zakon.rada.gov.ua/laws/show/2639-19> [Accessed 18 April 2022].
- President of Ukraine 2011 November 23 Decree 1063/2011 “Pro Natsionalnu komisiiu z tsinnykh paperiv ta fondovoho rynku” [“On the National Commission on Securities and Stock Market”]. [online] (modified 2020-07-07). Available at: <https://zakon.rada.gov.ua/laws/show/1063/2011> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 1997 September 8 Resolution 997 “Pro zatverdzhennia Poriadku nakladennia shtrafiv za porushennia zakonodavstva pro reklamu ta Poriadku vidrakhuvannia na vyrobnytstvo sotsialnoi reklamoi informatsiiu pro shkodu tiutiunopalinnia ta vzhivannia alkoholnykh napoiv” [“On the Approval of the Procedure of Imposing Penalties for the Breach of the Legislation on Advertising and the Procedure of Transfers for Production of Social Advertising About the Harm of Smoking and Alcoholic Beverages Consumption”] [online] (modified 2004-05-26). Available at: <https://zakon.rada.gov.ua/laws/show/997-97-n> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 1998 June 30 Resolution 990 “Pro zatverdzhennia Poriadku vyrobnytstva i rozpovsiudzhennia sotsialnoi reklamoi informatsiiu orhaniv vykonavchoi vlady” [“On the Approval of the Procedure of Production and Dissemination of Social Advertising Information of Executive Authorities”] [online]. Available at: <https://zakon.rada.gov.ua/laws/show/990-98-n> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 2003 December 29 Resolution 2067 “Pro zatverdzhennia Typovykh pravyl rozmishchennia zovnishnoi reklamuy” [“On the Approval of the Typical Rules of Location of External Advertising”] [online] (modified 2017-04-05). Available at: <https://zakon.rada.gov.ua/laws/show/2067-2003-n> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 2004 May 26 Resolution 693 “Pro zatverdzhennia Poriadku nakladennia shtrafiv za porushennia zakonodavstva pro reklamu” [“On the Approval of the Procedure of Imposing Penalties for the Breach of the Legislation on Advertising”] [online] (modified 2012-10-04). Available at: <https://zakon.rada.gov.ua/laws/show/693-2004-n> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 2014 April 30 Resolution 197 “Pro zatverdzhennia Polozhennia pro Ministerstvo rozvytku hromad ta terytorii Ukrainy” [“On the Approval of the Regulation on the Ministry for Communities and Territories Development of Ukraine”] [online] (modified 2022-02-11). Available at: <https://zakon.rada.gov.ua/laws/show/197-2014-n> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 2015 February 11 Resolution 96 “Pro zatverdzhennia Polozhennia pro Derzhavnu sluzhbu Ukrainy z pytan pratsi” [“On the Approval of the Regulation on the State Service of Ukraine on Labour Issues”] [online] (modified 2021-11-03). Available at: <https://zakon.rada.gov.ua/laws/show/96-2015-n> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 2015 September 2 Resolution 667 “Pro zatverdzhennia Polozhennia pro Derzhavnu sluzhbu Ukrainy z pytan bezpechnosti kharchovykh produktiv ta zakhystu spozhyvachiv” [“On the Approval of the Regulation on the State Service of Ukraine on Food Safety and Consumer Protection”] [online] (modified 2021-06-03). Available at: <https://zakon.rada.gov.ua/laws/show/667-2015-n> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 2019 December 11 Resolution 1024 “Pro realizatsiiu eksperymentalnoho proektu shchodo reklamuvannia na radio okremykh tovariv (posluh) ta osib, shcho yikh realizuiut (nadaiut)” [“On the Implementation of the Experimental Project concerning Advertising on Radio Particular Goods (Services) and Persons Who Sell (Provide) Them”] [online]. Available at: <https://zakon.rada.gov.ua/laws/show/1024-2019-n> [Accessed 18 April 2022].
- Cabinet of Ministers of Ukraine 2020 February 12 Resolution 127 “Pro utvorennia Ahentstva z upravlinnia derzhavnym borhom Ukrainy” [“On Establishment of the Agency for the Management of the State Debt”] [online] (modified 2021-06-05). Available at: <https://zakon.rada.gov.ua/laws/show/127-2020-n> [Accessed 18 April 2022].
- Ministry of Health of Ukraine 2012 June 6 Order 422 “Pro deiaki pytannia zaborony reklamuvannia likarskykh zasobiv” [“On Some Issues of Prohibition on Advertising Medicines”] [online]. Available at: <https://zakon.rada.gov.ua/laws/show/z1189-12> [Accessed 18 April 2022].

## Special literature

- Kirianova, V. V. (2013). Normatyvno-pravovyi aspekt derzhavnogo rehuliuвання reklamy v Internet-seredovyskhi [Normative legal aspect of state regulation of advertising on the Internet space]. *Investytsiyi: praktyka ta dosvid*, 1, 128–132.
- Mamchur, L. V. (2006). *Pravove rehuliuвання reklamy (tsyvilistychnyi aspekt) [Legal regulation of advertising (civil aspects)]*. Dissertation Summary, Law, Civil Law and Civil Process; Family Law; Private International Law, Ivan Franko National University of Lviv. Lviv: Vydavnytstvo MDHU im. Petra Mohyly.
- Oliinyk, A. Yu. and Lysenkova, O. O. (2020). Naukovi ta normatyvni dzhherela doslidzhennia pravovoho rehuliuвання reklamy v Ukraini ta krainakh Yevropeiskoho Soiuzu [Scientific and regulatory sources of research of legal regulation of advertising in Ukraine and countries of the European Union]. *Juridical scientific and electronic journal*, 8, 39–42 [online]. Available at: <https://doi.org/10.32782/2524-0374/2020-8/7>

## Other sources

- International Chamber of Commerce. *ICC Advertising and Marketing Communications Code* [online]. Available at: <https://iccwbo.org/publication/icc-advertising-and-marketing-communications-code> [Accessed 18 April 2022].
- Report “Internet: case-law of the European Court of Human Rights” (2011). [online] (modified 2015-06). Available at: [https://www.echr.coe.int/documents/research\\_report\\_internet\\_eng.pdf](https://www.echr.coe.int/documents/research_report_internet_eng.pdf) [Accessed 18 April 2022].

## The Legal Environment of Advertising in Ukraine

**PhD Nataliia Bulat**

(Vilnius University)

(Odesa I. I. Mechnikov National University)

### S u m m a r y

The legal environment of advertising is created by a number of international treaties, national laws and subordinate legislation. Regarding national legislation, the Constitution of Ukraine may be considered as a basis for regulation of relations in the field of advertising. Other laws and subordinate acts may be classified as follows: acts concerning advertising activity directly, acts regulating activity of control bodies in the field of advertising, special acts regulating relations in particular fields but having norms concerning advertising activity in these fields, acts regulating relations in fields of intellectual property, information in general and particularly media, and acts regulating business activity in general.

Subjects of relations in the field of advertising are government authorities, subjects of advertising industry (advertising producers and advertising disseminators), advertisers and advertising consumers.

The relations in the field advertising arise in production, dissemination and consumption of advertising. Based on legal provisions, it is possible to classify advertising depending on the following criteria: a placement of advertising, legality, an advertised object, containing comparisons with other persons and/or goods (activities) of another person, aims of advertising, containing all the essential conditions of a contract, and advertising tools.

The content of the relations in the field of advertising is represented by rights and duties of their subjects. The relations between government authorities and subjects of advertising industry are an issue of administrative law regulation. Relations between subjects of advertising industry (advertising producers and advertising disseminators) and between them and advertisers are based on judicial equality, free will expression, and property independence of their participants. These relations are an issue of civil law regulation. Relations between advertising consumers and subjects of advertising industry and advertisers are also an issue of civil law regulation. However, while rights and duties of advertising producers, advertising disseminators and advertisers correspond each other, consumers in the field of advertising are an uncertain number of persons who have absolute rights protected by law.

## Teisinė reklamos aplinka Ukrainoje

**PhD Nataliia Bulat**

(Vilniaus universitetas)

(Odesos nacionalinis I. I. Mečnikovo universitetas)

### S a n t r a u k a

Reklamos teisinę aplinką kuria daugybė tarptautinių sutarčių, nacionalinių įstatymų ir poįstatyminių teisės aktų. Kalbant apie nacionalinės teisės aktus, Ukrainos Konstitucija gali būti santykių reklamos srityje reguliavimo pagrindu. Kiti įstatymai ir poįstatyminiai aktai gali būti klasifikuojami taip: tiesiogiai su reklama susiję aktai; kontrolės įstaigų veiklą reklamos srityje reglamentuojantys aktai; specialieji teisės aktai, reglamentuojantys santykius konkrečiose srityse, susijusiose su reklamos teisėmis; teisės aktai, reglamentuojantys santykius intelektualinės nuosavybės srityje bei verslo veiklą reglamentuojantys teisės aktai. Reklamos srityje vyraujantys subjektai: Vyriausybės institucijos, reklamos pramonės subjektai (reklamos rengėjai ir reklamos platintojai), reklamuotojai ir reklamos naudotojai.

Santykiai reklamos srityje atsiranda reklamos kūrimo, platinimo ir naudojimo metu. Vadovaujantis teisinėmis nuostatomis, reklamą galima klasifikuoti pagal šiuos kriterijus: reklamos platinimo platformą (vietą), teisėtumą, reklamuojamą objektą, atsižvelgiant į tai, ar reklama nėra susijusi su kitais asmenimis arba kito asmens prekėmis (veikla), reklamos tikslus, įskaitant visas esmines sutarties sąlygas, ir reklamos priemones.

Reklamos subjektų santykius atspindi jų teisės ir pareigos. Valdžios institucijų ir reklamos pramonės subjektų santykius reglamentuoja administracinė teisė. Reklamos pramonės subjektų (reklamos rengėjų ir reklamos platintojų) bei reklamuotojų santykiai grindžiami lygybės principu. Šiuos santykius reguliuoja civilinės teisės normos. Reklamos vartotojų ir reklamos pramonės subjektų bei reklamuotojų santykiai taip pat yra reguliuojami civilinės teisės normomis. Reklamos rengėjų, reklamos platintojų ir reklamuotojų teisės ir pareigos sutampa, tačiau, nors naudotojų skaičius nėra apibrėžtas, jie turi absoliučias ir saugomas teises.

Nataliia Bulat, Department of Civil Law Disciplines of the Faculty of Economics and Law of the Odesa I. I. Mechnikov National University

Nataliia Bulat, Odesos nacionalinio I. I. Mečnikovo universiteto Ekonomikos ir teisės fakulteto Civilinės teisės disciplinos katedra