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Methodology of legal regulation of private relations in Ukraine

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Abstract. The relevance of the study is determined by the necessity to align Ukrainian legislation in the field of regulating private legal relations with pan-European requirements and standards, considering the Eurointegration processes and the path to European Union membership. The purpose of the study is to assess the effectiveness of the method of regulating relations in the field of private law. The research used a variety of scientific inquiry approaches, including historical, comparative, and legal hermeneutics, among others. Several ideas relevant to the research issue were discovered, including private and public law, private legal interactions, and dispositive and imperative regulatory procedures. The differences between these methods and their characteristics were outlined, and the current issues in the research area were examined, such as a considerable number of legal collisions and an outdated approach to regulating entrepreneurial activities. Solutions to these problems were proposed, including the process of abolishing codified economic legislation. The advantages of recodification as a method of reforming the field of private law and civil legislation in general were substantiated. Recommendations were provided for improving and optimising this process to minimise negative public perception, encompass and consider modern needs of private law and relations arising in the field, including those related to information technologies, international law, and more. The significance of this process for the effective integration of Ukraine into the European Union, as well as the assertion of safeguards for protecting the rights and freedoms of persons and legal entities as participants in private legal interactions, were

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emphasized. The findings of the study can be utilised by legislators to enhance regulations in the respective field and by researchers to expand the scientific doctrine in the field of private law

Keywords: dispositiveness; Eurointegration; recodification; economic activity; freedom of will expression

Introduction

Private law and private legal relations play a leading role in the formation of the rule-of-law state because these categories define ways to protect the interests of individuals and legal entities, contribute to the development of entrepreneurial freedom and competition, and the functioning of the market economy. Private legal relations research is important in modern times because, in the context of globalization and European integration, there is a growing need to ensure proper protection and regulation of individuals' interactions within private law, which includes family, contractual, labor, housing, and other social relations. The fundamental issue within scientific doctrine is a lack of research on how to enhance the control of these relationships.

Regarding the correlation and peculiarities of private and public relations, L. Herasymchuk (2023) aptly expressed those public legal relations are characterised by a greater degree of activity and intervention by the state, which uses the imperative method of legal regulation in relations where it acts as a subject. In public relations, compliance with instructions from authorities is envisaged, which cannot be altered by agreement and is obligatory. As for private relations, the author notes that state intervention is minimal since the dispositive method of regulation is used, which involves freedom of contract and will expression and providing space for dispute resolution by agreement between the parties.

O.D. Krupchan's (2014) paper contains considerations on the necessity of distinguishing between a private law and a public law approach to regulating contacts in the realm of economic activity. The author indicates the existing dualism in the regulation of these legal relations, which is due to the combination of methods of both public and private law in special legislation. This creates an impossibility to define the limits of state intervention in relations arising in the field of economic activity and having characteristics of private law. B.V. Derevyanko (2020) holds opposing views on state participation in economic legal relations, indicating that the economy and economic relations, in general, cannot exist without state intervention, as they require support and legal certainty.

The issue of private law regulation in the provision of medical care was investigated by G.A. Myronova (2020), who noted that the main legal act allowing the classification of activities in the field of medical law as private is the individual's expression of will regarding medical intervention and the agreement on the patient's representation based on power of attorney. The author notes that these are two fundamental instruments that allow patients to control their treatment, make wishes regarding care, and further life continuation. The execution of a power of attorney creates the possibility for making decisions through representatives when the patient is not capable of doing so. According to the researcher, this specifically allows affirming the presence of private legal relations in the field of medical law.

The question regarding the main instrument designed to regulate private law relations – legislation – was outlined by G.S. Fedyniak (2020). The author stated that the quality and accessibility of legislation, which is designed to regulate private law relations in various fields, can be achieved through terminology and language clarity. The researcher proposed to replace some terms in the civil legislation of Ukraine and other laws with Ukrainian equivalents. The term "verification" in legislation on state payments should be translated as "checking". Such a replacement will help avoid misunderstandings on the part of a private individual referring to the law for the interpretation of their rights and obligations, requirements of certain procedures.

The analysis of the above-mentioned works allows concluding that the issue of private legal relations and their regulation has many aspects and branch ramifications reflected in the scientific doctrine. The studies of the mentioned authors contain proposals for specific reforms and changes in legislation, while the challenges of the present and the necessity of European integration indicate the path to a comprehensive reform of the regulatory framework for private legal relations. Furthermore, special attention should be made to the assessment of the relevant industry's regulatory process. Therefore, the purpose of this study is to assess the effectiveness of the dispositive method in the regulation of private legal relations. The main task of the study was to identify several areas of private law requiring additional attention and improvement in legal regulation, considering the challenges of European integration.

Materials and methods

The research was carried out utilizing a variety of scientific cognitive methodologies. Among these, the historical approach assisted in clarifying the step-by-step growth and formation of both private law and private legal relations in general, as well as their significance in various historical times. The comparative technique proved effective in analyzing the distinguishing aspects of public and private law ideas, as well as the various approaches to their regulation utilizing dispositive and imperative methods.

In addition to the comparative method, a formal-logical approach was used to analyse the codified acts of Ukrainian legislation and theoretical developments related to private law, private legal relations, and their impact on the socio-political life of the country. Alongside the formal-logical approach, the method of legal hermeneutics was applied to analyse the normative legal framework of the studied field, including the Civil Code of Ukraine (2003), the Civil Procedure Code of Ukraine (2004), the Economic Code of Ukraine (2003), and a separate legislative act – the Law of Ukraine No. 2709-IV "On International Private Law" (2005). Furthermore, the method was needed during the analysis of European principles regulating private legal relations, in particular, the Principles of European Contract Law (1998) and the Principles of International Commercial Contracts (1994).

The method of analysis allowed clarifying issues related to the characteristic features of private law and relations arising in this field, the current problems that are relevant and require attention to enhance the effectiveness of regulating these legal relations. This method was also employed to investigate the concept of recodification as the primary method of civil law reform. Thus, the analytical approach

is used to identify the major aspects of this process, stages, features, and grounds for its execution. It's notable that the synthesis approach was employed concurrently with the analysis method, allowing for the assessment of existing difficulties and their consideration while developing general ways of improvement and suggestions connected to the process of civil law recodification in Ukraine.

A statistical method of scientific knowledge was also used in conjunction with the method of analysis and synthesis, which allowed highlighting the state of judicial consideration of civil claims and the main reasons for refusing to accept or return applications from subjects of private legal relations. Based on the extracted data and issues and using a systemic-structural approach, ways to resolve them and methods of improvement and supplementation were investigated, considering digitisation, globalisation processes, the need to consider public opinion, European regulatory principles, and more. The official website of the Supreme Court (Court statistics, 2022) was used as a source for presenting current statistical data. The forecasting method allowed outlining the future vision of the place of private law and private legal relations in the socio-political life of the country and economic development. Moreover, through the method of scientific knowledge, such as induction, a general conclusion and recommendations for further research were developed.

Results

The emergence of private legal relations can be traced back to the development processes of early civilisations with the emergence of such institutions as marriage and family. In medieval Europe, private relations were subordinated to the interests of the church and the state. Marriage was considered a sacred union, and the family was the basis of social order (Graham, 2021). The contemporary age of private legal relations development is distinguished by their constant evolution, which is governed by changes in socioeconomic situations, technological developments, and globalization processes.

In the field of law, private legal relations are defined as relations that arise between natural and legal persons who are equal subjects of law. The main features that allow attributing certain socio-legal relations to the field of private law are:

- equality of subjects, which means that the relevant relations arise between subjects who are equal before the law, have equal rights and obligations;
- free will, which means that participants in relations can independently define the terms and rules when concluding contracts or agreements;
- property independence, which involves the right to independently dispose of one's property.

The legislative definition of private legal relations, which is present in the Law of Ukraine No. 2709-IV (2005), is identical to the one mentioned above. However, it is worth noting the Civil Code of Ukraine (2003) as the main law regulating private relations, which does not contain a definition of this concept but indicates its certain characteristics. Under Article 1 of Ukraine's Civil Code (2003), this legislative act controls both property and non-property personal relationships developed in line with the principles of legal equality, free choice, and property independence. Part 2 of this article emphasizes that civil law cannot be applied to property relationships based on administrative subordination of one party to the connections of another.

This norm is entirely logical in terms of the fact that alongside private law, there is public law, but it is important to outline the main differences between these categories, which consist of several aspects: private relations arise between persons who are equal subjects of law, while public ones are between the state or its bodies and natural or legal persons; private relations are regulated in accordance with the property or non-property interests of their participants, while public ones are formed based on the interests of the entire society; the methods of regulation are also different, as public relations are characterised by imperative, and private ones – by a dispositive method of regulation.

The dispositive method implies that the parties involved in legal relations have the right to independently determine their behaviour unless otherwise provided by law. This method is used to regulate relations that are not crucial for society as a whole but only concern the interests of individuals, such as relations in the field of private law (Hesselink, 2022). Among the method's distinguishing features is that in civil relations, the parties have equal rights and obligations, regardless of their status, and can independently decide whether to enter into these relations and how to regulate and determine their behavior, if it does not contradict the law (Gawlik, 2021). However, given the necessity to secure the legality of this or that transaction and the preservation of persons' rights and freedoms in private relationships in the case of damage, even the dispositive technique may contain aspects of imperativeness.

In general, the issue of strengthening systems for managing private legal interactions is linked to the requirement to optimize court assessment of civil matters. (Fig. 1).

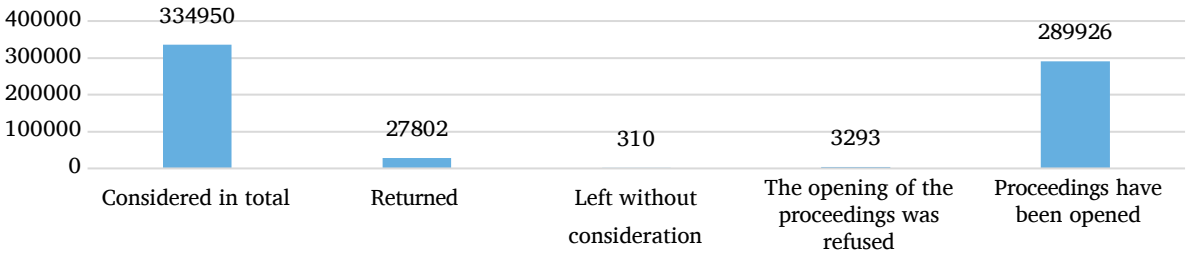

Figure 1. Adjudication of cases in civil proceedings by first-instance courts during 2022
Source: compiled by the authors based on Court statistics (2022)

Taking into account the provided statistical data, approximately 10% of applications are returned or left without consideration. According to the provisions of the Civil Procedure Code of Ukraine (2004), the incorrect determination of the procedural order in which the case should be considered may be the reason for this. Therefore, there is

a problem of distinguishing between civil and commercial procedural law in disputes concerning legal acts based on contractual relations or the necessity to ensure the primary obligation under the contract. Considering the provisions of the Code of Commercial Procedure of Ukraine (1991), commercial courts are authorised to consider disputes related to economic activities, and regulations involving legal entities and individuals engaged in entrepreneurial activities. The legislator has established a subjective criterion for distinguishing the jurisdiction of commercial courts and general jurisdiction courts. However, the Grand Chamber of the Supreme Court, in its Resolution of the Supreme Court No. 904/2538/18 (2019), noted that the subjective composition in legal acts concluded to ensure the performance of an obligation is irrelevant when determining the court to which the relevant application should be submitted. Moreover, the norms of the Code of Commercial Procedure of Ukraine (1991) indicate that individuals without entrepreneur status can be participants in economic legal relations, and exceptions regarding legal disputes involving an individual that cannot be considered within the framework of economic jurisdiction are defined. Corresponding provisions are absent in the norms of the Code of Commercial Procedure of Ukraine (1991), creating a situation where clear boundaries and criteria for general jurisdiction courts are absent, like for participants in private legal relations, leading to a lack of understanding of the dispute's specificity and the court to which its resolution falls.

The resolution of this issue is currently relevant and involves the recodification of the Civil Code of Ukraine (2003). Overall, recodification is an important reform affecting not only the normative component but also social relations in the field of private law, as civil law is the mainstay of private legal relations (van den Berge, 2018). The process of recodifying civil legislation currently involves two approaches: the first, in which the updated Civil Code of Ukraine (2003) will contain norms aimed at regulating all relations arising in the field of private law; the second approach focuses on the need to include general principles of private law in the Civil Code of Ukraine (2003), with the simultaneous existence of separate special laws regulating relations in the field of commercial law, intellectual property, and so on (van Leeuwen, 2019). Currently, lawmakers lean towards the first approach, which involves the repeal of the Economic Code as such, but commercial courts will continue to function, guided by the updated civil legislation.

The main task within the framework of recodification as a way to optimise and improve the methodological regulation of private law relations is to change the legislation in accordance with the requirements and principles of the EU (Janssen, 2019). The developers of the recodification programme have identified a set of principles (Bilousov & Podolianchuk, 2020):

- the classification of legal entities should be based on whether they were created publicly or privately;
- the development of an exhaustive list of organisational and legal forms of private legal entities;
- the elimination of Soviet institutions of economic management and property control;
- the status of public legal entities should be regulated by a separate law;
- the rights of public law entities are equated to the rights of other participants and subjects of civil legal relations.

The stages of recodification will be conducted in several main areas (Fig. 2).

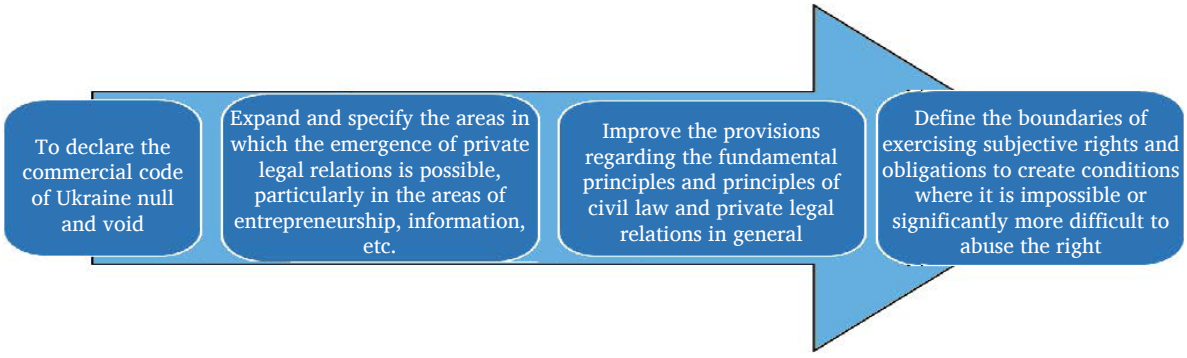

Figure 2. The stages of recodification
Source: compiled by the authors based on J. Kiršienė *et al.* (2019)

There is also an emphasis on the need to supplement civil legislation with provisions that define methods of protecting individual rights in the fields of information, personal data, reproductive activity. Such a legislative approach to improving the methodology of regulating private legal relations is revolutionary and will significantly impact the conventional sphere of private law relations (Schwartz & Scott, 2022). However, this step is necessary due to the processes of European integration and the inadequacy of the current system of regulation and protection of private legal relations, as it causes collisions and forms gaps that affect both the efficiency and quality of justice. It is important to note that the recodification process should take place not only for the purpose of European integration but also by utilising the developed norms and customs of European law, which have been successfully integrated into the civil legislation of several countries, including Germany, which reformed the regulation of private legal relations (Totry-Jubran, 2020); and France, whose civil legislation has also undergone transformations to harmonise with general European law (Tan, 2023).

Among the main European approaches and principles for regulating the private sphere, it is worth highlighting the Principles of International Commercial Contracts (1994) and the Principles of European Contract Law (1998). The advantage of these provisions is that they are practically applicable in both business and judicial activities. They were developed not based on individual national requests but through the

joint efforts of scholars and practitioners from various countries representing different legal systems (Karaba *et al.*, 2022). This implies a certain universality and international applicability of these principles as general rules of contract law.

The codification of civil laws may also include legal relationships originating under private international law. It is especially important to analyze the presence of legal standards that encompass and define private legal interactions complicated by a foreign element in Ukraine's Civil Code (2003). It is also prudent to distinguish between aspects of imperative and dispositive nature that govern private legal relations in international law, ensuring that the Civil Code in Ukraine (2003) and its legal nature correspond to a dispositive approach to private legal relations regulation. Positive duties and governmental interference should be clearly differentiated in a distinct part or special statute.

It is critical to address contemporary facts such as the ongoing coding process, the expansion of the digital economy, new technologies, changes in social interactions, and the continual evolution of intellectual property. This is especially true for topics such as e-commerce, personal data protection, and distance contracts (Kud, 2021). The process of recodifying the Civil Code of Ukraine (2003) should be transparent and open to the public. This will allow for the involvement of a wide range of experts and professionals in working on the new code and ensure an appropriate level of public trust in the new code. For instance, it would be beneficial to establish an expert council on the recodification of the Civil Code of Ukraine (2003), including the involvement of not only scholars and practitioners but also representatives of business, entrepreneurial activities. It is also essential to consider that the reformed Civil Code of Ukraine (2003) will mean the repeal of the Economic Code of Ukraine (2003) and the inclusion of a set of improved and new norms, leading to different reactions from society. Therefore, preparing the public through organising public consultations, online conferences, is necessary (Bartley, 2022). Even due to the sequence of the recodification process, the actual formation and implementation of norms may not coincide with European principles, so it is necessary to qualitatively adapt the legal awareness and awareness of potential participants in private law relations.

The updated civil code will considerably contribute to improving the regulation of private legal relations, particularly by focusing on enhancing the protection of private rights and interests of individuals and legal entities, reducing the number of conflicting acts regulating identical legal relations, and considering modern realities, including technological developments, digitalisation processes, and the importance of intellectual property.

Discussion

The issue of regulating private law relations is recognised as relevant not only in Ukraine. A number of researchers and authors analyse the likely development and future appearance of the field of private law both in individual countries and at the world level. For instance, there are opinions on the possibility of a greater role for private law compared to public law, as discussed by N. Malhotra (2019). According to these authors, the methodology of private regulation, encompassing dispositiveness and freedom of discretion, succeeds not only at the national but also at the local level, especially within large enterprises. According to this study, such enterprises are perceived as more socially responsible and person-oriented. The study also indicates that the dispositive method of regulation can be more effective in achieving environmental goals than the imperative method, as the former is considered more flexible and adaptable to the specific needs of a particular industry or sector. The results of these authors partially align with the findings of this study, particularly in terms of the differences between the dispositive and imperative methods. Indeed, the dispositive method is characterised by greater freedom of discretion, free will, and the absence of clear and mandatory rules, allowing for its application to most legal relationships, including private ones.

Questions concerning the development and improvement of private law as a science and a legal field, in general, have been explored by A.S. Gold (2020). The author emphasises the concept of the new private law that emerged in the late 20th century and its research methodology, which relies on internal and external perspectives. Internal perspectives focus on the normative dimension of private law, examining the rules and principles regulating private legal relations. They are based on ideas from moral philosophy, economics, and political theory to assess the coherence and legitimacy of doctrines in private law. On the other hand, external perspectives consider the social, economic, and historical contexts in which private law operates. According to the researcher, a successful combination of these aspects allows the formulation of contractual norms and rules recognised at the international level. The author's results have some differences from the findings of this study since private law and private legal relations are regulated by coordinating rules and requirements in the conclusion of legal transactions between participants in the respective relationships, and such coordination is based not on imperative rules but on the principles and fundamental principles of civil law.

The investigation of institutions as components of the field of private law is present in the work of A.J. Treviño (2011). The author asserts that private law institutions, such as contracts, property, and proprietary rights, and other legal transactions, serve as the foundation and guarantee for ensuring the proper regulation of individual rights and freedoms. The author also noted certain functions that are inherent in both private law institutions and the field as a whole. These include the effective and just resolution of disputes, contribution to social justice, orientation towards private interests, and the protection of private property. The researcher indicates that despite various problems and challenges currently facing the field of private law, its future as a legal domain will be successful because the nature of the field itself involves flexibility and adaptability. The author's results are valuable for understanding the specifics of the field of private law and the development of features for regulating private legal relations, although they do not fully correspond to the results of this study.

Reflections on the defining features of private law are present in the paper by P.B. Miller (2023), who asserts that private law is normatively distinctive in three aspects: private law is based on a set of values different from other legal branches. It exhibits autonomy, along with a different set of methods for developing and implementing legal norms. The author also states that private law and its legislative expression often prove to be more just, efficient, and democratic. The researcher particularly emphasised some drawbacks of

the field, such as the inability of private law to be equivalent to public law. Similar discussions on the role of private law are found in the study of M.W. Hesselink (2016). The author argues that the traditional view of private law as a system of rules regulating relations between private parties is no longer relevant. Instead, private law should be considered as principles and fundamental principles according to which the regulation of private legal relations between individuals and legal entities takes place. The authors' findings add to understanding of the characteristics of private law and its influence on the evolution of legal interactions in general, however they only partially validate the findings of this study.

It is worth examining G. Képes's (2021) study on the abolition of the "aviticitas" institution and its impact on the development of modern private law and private legal relations in Hungary. Aviticitas was a legal system that existed in Hungary from the Middle Ages until the 19th century. According to aviticitas, land was passed down from generation to generation through a system of undivided inheritance. This system had a number of negative consequences, including inhibition of economic development. In 1848, according to the author, the Hungarian Revolution led to the abolition of aviticitas. This was a significant step forward for the development of modern private law in Hungary, as it allowed for the creation of a more flexible and efficient system of property ownership (Bauer & Köhler, 2023). The author's results complement this study. It is advisable to note a certain similarity between the reform of the sphere of private law and civil legislation on the part of both Hungary and Ukraine as the abolition of the above-mentioned Hungarian institution is equivalent to the Ukrainian way of improving the sphere – the recodification of civil legislation. In the case of Hungary, this reform contributed to the improvement of the sphere of private law relations, economic development and became a guarantee of further membership in the EU, so it is reasonable to predict a similar result for the Ukrainian state.

Conclusions

The study allowed for a more in-depth examination and identification of critical components of Ukraine's way of managing private legal interactions. The historical element and phases of private law development were clarified. The notion of private legal relations has been discussed in depth in a variety of situations, including the social environment. A number of distinguishing characteristics of private law relationships, such as equality, free choice, and property independence, have been highlighted. Legislative interpretation of private connections was also offered, taking into account the rules of Ukraine's Civil Code and Law No. 2709-IV. The idea of private legal relations was found to be lacking from the primary regulatory statute. Still, there are basic criteria for attributing certain relations between natural and/or legal persons to the field of private law.

Given the above, the study includes a comparison of the methodology of regulation in private and public law, outlining the main differences between the two areas. For instance, the imperative method is inherent in administrative and criminal law, while the dispositive method is characteristic of civil and family law, among others. The main features of the dispositive method of legal regulation, which is the primary method in the field of private relations, were highlighted. These include freedom of contract, equality in rights and obligations, and the ability to independently define conditions and requirements within the concluded legal transaction. It was emphasised that the dispositive method demonstrates greater effectiveness and efficiency due to the absence of clear duties and rules and state control, providing more space and opportunities for dispute resolution through non-jurisdictional means. Attention was paid to current issues in private law, particularly the need to enhance the effectiveness of judicial power in the adjudication of civil cases. The study noted that due to legal conflicts existing in the Economic and Civil Codes, individuals seeking judicial protection find it challenging to determine the jurisdiction within which the case should be considered. It was also indicated that the main solution to this issue involves the recodification of civil legislation and the repeal of the Economic Code. Such a step is deemed necessary in the context of Ukrainian Eurointegration and the optimisation of judicial review of civil disputes within the framework of private legal relations. For further research, it is suggested to investigate issues such as the correlation between public and private law in the field of entrepreneurial activity, social and environmental aspects of private law, the impact of digital technologies on private law, legal issues of digital property.

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Conflict of interest

None.

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Методологія правового регулювання приватних відносин в Україні

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Анотація. Актуальність дослідження зумовлено необхідністю узгодити українське законодавство у сфері регулювання приватноправових відносин з загальноєвропейськими вимогами й стандартами, з огляду на євроінтеграційні процеси та шлях до членства в Європейському Союзі. Мета науково-дослідної роботи – з'ясувати ефективність методу регулювання відносин у сфері приватного права. У дослідженні було використано різноманітні підходи до наукового пошуку, зокрема історичний, порівняльний та метод правової герменевтики. Було виявлено кілька ідей, що мають відношення до теми дослідження, включаючи приватне та публічне право, приватноправові взаємодії, диспозитивні та імперативні регуляторні процедури. Окреслено відмінності вказаних методів та їхні особливості; вивчено актуальну проблематику сфери дослідження, зокрема значну кількість правових колізій та застарілий підхід до регулювання сфери підприємницької діяльності. Запропоновано шляхи вирішення цих проблем, наприклад, через процес скасування господарського кодифікованого законодавства. Обґрунтовано переваги рекодифікації як способу реформування галузі приватного права та цивільного законодавства загалом. Надано рекомендації щодо вдосконалення та оптимізації цього процесу задля мінімізації негативного сприйняття з боку громадськості, охоплення та врахування сучасних потреб приватного права та відносин, котрі виникають у галузі та стосуються інформаційних технологій, міжнародного права тощо. Було наголошено на значенні цього процесу для ефективної інтеграції України до Європейського Союзу, а також утвердження гарантій захисту прав і свобод фізичних та юридичних осіб як учасників приватноправових взаємодій. Результати дослідження можуть використати законодавці для вдосконалення нормативно-правових актів у відповідній сфері, а також дослідники задля розширення наукової доктрини в галузі приватного права

Ключові слова: диспозитивність; євроінтеграція; рекодифікація; господарська діяльність; свобода волевиявлення